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Tuesday
September 1, 1998

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NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1306

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: This rule amends the Compact Over-order Price Regulation to establish a reserve fund for reimbursement to school food authorities. The reserve fund is required to implement the previously issued regulation exempting certain milk sold by school food authorities from the Over-order Price Regulation.

EFFECTIVE DATE: September 10, 1998.

ADDRESSES: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission (the ''Commission'') was established under authority of the Northeast Interstate Dairy Compact (''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact. The Compact empowers the Commission to promulgate and enforce ''rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.'' Article III, Section 7. The Compact authorizes the Compact Commission to consider adopting a compact Over-order Price Regulation. Article IV, Section 9. A *compact over-order price* is defined as:

> A minimum price required to be paid to producers for Class 1 milk established by the Commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

Article II, Section 2(8).

The regulated price authorized by the Compact is actually an incremental amount above, or ''over-order'' the minimum price for the same milk established by Federal Milk Market Order I. The price regulation establishes the minimum procurement price to be paid by fluid milk processors for milk that is ultimately utilized for fluid milk consumption in the New England region. Price regulation also provides for payment of a uniform ''over-order'' price, out of the proceeds of the price regulation, to dairy farmers making up the New England milkshed, regardless of the utilization of their milk. See, e.g., Compact, Art. IV, Sections 9 and 10.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a Compact Over-order Price Regulation. See, 62 FR 29626 (May 30, 1997). The Commission subsequently amended and extended the Compact Over-order Price Regulation. See,62 FR 62810 (November 25, 1997). The Commission further amended the Over-order Price Regulation relative to certain milk sold by school food authorities in New England. See 63 FR 10104 (February 27, 1998). The current Compact Over-order Price Regulation is codified at 7 CFR 1300 through 1308.

Article V, Section 11 of the compact delineates the administrative procedure the Commission must follow in deciding whether to adopt or amend a price regulation. That section requires the Commission to conduct an informal rulemaking proceeding governed by section four of the federal Administrative Procedures Act (''APA''), as amended, 5 U.S.C. 553, to provide interested persons with an opportunity to present data and views. The informal rulemaking proceeding must include public notice and opportunity to participate in a public hearing and to present written comment. In addition, section 553(d) of the APA provides that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date,'' subject to several enumerated exceptions, including situations where the agency finds ''good cause'' for dispensing with this requirement. *See,* 5 U.S.C. 553(d)(3). To the extent that this rule is viewed as a substantive rule, the Commission finds that there is good cause for dispensing with the 30-day waiting period of 553(d) because compliance is impracticable, unnecessary, and contrary to the public interest.

The Commission emphasizes that this rule merely implements the February 27, 1998 final rule adopted by the Commission after a comprehensive administrative process, including public hearing, notice-and-comment rulemaking, and a producer referendum, as well as a full 30-day notice period prior to the effective date. *See,* 63 FR 10104 (February 27, 1998). Additionally, the Commission has entered into a Memorandum of Understanding between the Compact Commission and the appropriate state agencies of the participating states, as required by the previously issued rule, which establishes the procedure for providing reimbursement to the school food service programs. *See,* 7 CFR 1301.13. This rule implements that reimbursement procedure.

On June 11,1998 the Commission issued a notice of proposed rulemaking [1]

[1] 63 FR 31943 (June 11, 1998). In this same notice of proposed rulemaking, the Commission also proposed to exclude milk from the pool which is either diverted or transferred, in bulk, (not including bulk transfers of skimmed milk and condensed milk) out of the Compact regulated area. The Commission is continuing its deliberations on these proposed rules to Parts 1301 and 1304 regarding diverted and transferred milk, and is holding an additional public hearing and has extended the comment period on these proposals

Continued

to amend the Compact Over-Order Price Regulation to establish a reserve fund for reimbursement to school food authorities. The reserve fund established by this rule is simply the administrative mechanism selected by the Commission, in its discretion, and incorporated into the Memorandum of Understanding with the participating states pursuant to 7 CFR 1301.13, for implementing the previously-issued regulation exempting certain milk sold by school food authorities from the Over-Order Price Regulation.[2]

The Northeast Dairy Compact Commission held a public hearing to receive testimony on the proposed rules at 9:00 AM on July 1, 1998 at the Capitol Center for the Arts, Governor's Hall, 44 South Main Street, Concord, New Hampshire. Pursuant to Article VI(D) of the Commission's Bylaws, additional comments and exhibits were received until 5:00 PM on July 15, 1998.

Based on the oral testimony and written comments and exhibits received, the Commission hereby amends the current Over-Order Price Regulation, 7 CFR 1306.3, to establish a reserve fund for reimbursement to school food authorities.

II. Summary and Analysis of Issues and Comments

The Commission held its deliberative meeting on August 5, 1998[3] to duly consider all oral and written comments received at the public hearing held on July 1, 1998 and the additional comments received by the Commission's published comment deadline of July 15, 1998[4] and to deliberate and act on the proposed amendments to the Over-order regulation.

School Milk Reserve Regulation

The Commission's Regulations Administrator, Carmen Ross, testified at the public hearing on July 1, 1998 and explained the issue and why the proposed amendment was needed. Mr. Ross testified that in order to implement the regulation[5] promulgated by the Commission providing a reimbursement to school food authorities for certain milk sold in eight-ounce containers, the Over-Order Price Regulation must be amended to establish a reserve account.[6]

The proposed regulation authorizes the Commission to establish the reserve fund necessary to process any qualified reimbursement claims that are submitted by school food authorities. The proposed regulation also authorizes the Commission to return any surplus funds from this reserve account to the producer-settlement fund.[7]

Discussion of Comments

A total of ten individuals submitted oral and/or written public comments. Of the total comments received, six commenters[8] supported the proposed rule relating to establishing a reserve account for reimbursement of school food authorities, no commenters opposed the proposed amendment. The Commission adopts the rule as proposed.

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-Order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments

The first finding considers whether the amendment of the Compact Over-Order Price Regulation to establish a reserve fund for the reimbursement to school food authorities serves the public interest. The Commission reaffirms its prior finding that the establishment of an exemption mechanism for milk sold in eight-ounce containers by school food service programs serves the public interest.[9] For all of the same reasons the Commission adopted the previous regulation,[10] the Commission finds that the public interest will be served by amending the Over-Order Price Regulation to provide for a reserve fund to implement that regulation.

b. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The second finding considers the impact of the amendment on the level of producer price needed to cover the costs of production and to assure an adequate local supply of milk for the inhabitants of the regulated area and for manufacturing purposes.[11]

The Commission reaffirms its prior findings regarding the sufficiency of pay prices for milk needed to meet the New England market demand.[12] The Commission previously concluded that, although amending the Compact Over-order Price Regulation to exempt certain milk sold by school food authorities would decrease the producer pay price, the price regulation would nevertheless remain at a sufficient level to assure that producer costs of production are covered and to elicit an adequate supply of fluid milk for the region.[13] The Commission now reaffirms this finding and further concludes that the establishment of a reserve account to implement the school milk exemption will assure producers of a sufficient price and will elicit an adequate local supply of milk.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed To Achieve the Purposes of the Order

The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendment serves to implement the prior regulation establishing an exemption from the price regulation for certain milk sold by school food authorities. Therefore, the matter of the public interest is addressed under the first required finding and not under this finding. In any event, the Commission concludes that the price regulation, as hereby amended, remains in the public interest

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until 5:00 p.m. September 16, 1998. *See,* 63 FR 43891(August 17, 1998).

[2] The regulation provides: ''Effective April 1, 1998, all fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the 1998–1999 contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact Over-Order Price Regulation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies not later than May 1, 1998. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order price obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food service programs, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments.'' 7 CFR 1301.3.

[3] Public notice of this meeting was published at 63 FR 40069 (July 27, 1998).

[4] 63 FR 31943 (June 11, 1998).

[5] 63 FR 10104 (February 27, 1998).

[6] Carmen Ross, Tr. at 22–23.

[7] Ross Tr. at 22–23.

[8] Wellington Tr. at 62, and on behalf of Agri-mark and Dairylea WC 11; Ellinwood Tr. at 99; Berthiaume at WC 5, 7; Graves at WC 14; and Beach at WC 17.

[9] 63 FR 10106–10110 (February 27, 1998).

[10] *See,* footnote 2 for text of the regulation.

[11] As noted in prior rulemaking proceedings, the Commission limits its assessment to issues relating to the fluid milk market. 62 FR 29632 (May 30, 1997); 62 FR 62812 (November 25, 1997); and 63 FR 10109 (February 27, 1998).

[12] 62 FR 29632–29637 (May 30, 1997); 62 FR 62812–62817 (November 25, 1997); and 63 FR 10109–10110 (February 27, 1998).

[13] 63 FR 10110 (February, 27, 1998).

in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendment Are Approved by Producers

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article V. Section 13 of the Compact is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR part 1371.

Pursuant to 7 CFR 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of August 14 through August 24, 1998. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during March, 1998, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before August 14, 1998 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on August 24, 1998. The ballots were opened and counted in the Commission offices on August 25, 1998 under the direction and supervision of Mae S. Schmidle, Vice-Chair of the Commission and designated ''Referendum Agent.''

Twelve Cooperative Associations were notified of the procedures necessary to block vote by letter dated August 6, 1998. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that 1) timely notice was provided, and 2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on August 24, 1998. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by August 18, 1998 with notice mailed to the Commission offices no later than August 20, 1998.

Notice of Referendum Results

On August 25, 1998 the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. A total of 4,240 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked ''disqualified'' with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following:

A total of 4,240 ballots were mailed to eligible producers.

A total of 3,265 ballots were returned to the Commission.

A total of 43 ballots were disqualified—late, incomplete or duplicate.

A total of 3,222 ballots were verified.

A total of 3,128 verified ballots were cast in favor of the price regulation.

A total of 94 verified ballots were cast in opposition to the price regulation.

Accordingly, notice is hereby provided that of the verified ballots cast, 3,222, 97.1%, or 3,128, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the proposed amendment is approved by producers.

IV. Good Cause for Effective Date Within 30 Day Notice Period

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that the Compact Commission publish a substantive rule not less than 30 days before its effective date, except that this time period is not required for a substantive rule which grants or recognizes an exemption or relieves a restriction or as otherwise provided by the agency for good cause found and published with the rule. In the event this final rule is viewed as a substantive rule, the Commission concludes that there is good cause for non-compliance with the 30-day advance publication provision of 553(d) and publishes this final rule on September 1, 1998, with an effective date of September 10, 1998.

The Commission previously adopted a regulation exempting certain milk sold by school food authorities from the Compact Over-order Price Regulation and published that final rule on February 27, 1998 with an effective date of April 1, 1998, more than 30 days after its publication.[14] That exemption was duly promulgated with full compliance of all applicable notice, hearing and comment provisions of the Administrative Procedure Act.[15] That exemption regulation also required the Commission to take appropriate steps to enter into a memorandum of understanding with the appropriate state agencies and thus to ''establish the precise mechanics of the reimbursement procedure.'' 63 FR at 10108. *See also*, Proposed Rule, 63 FR 31943, 31944 (June 11, 1998) (confirming that the Commission ''has entered into a Memorandum of Understanding with each of the six New England states regarding the school milk reimbursement program.'')

In addition, the prior exemption regulation was approved by producers pursuant to a producer referendum conducted in February 1998. The producer referendum procedure[16] requires the Compact Commission to distribute a ballot to each producer eligible to cast a ballot in the referendum. The ballot must include a description of the terms and conditions of the referendum and an official copy of the proposed regulation or amendment. This final rule merely recognizes and implements the previously approved regulation and this final rule was also approved by producer referendum conducted in August 1998.

The commission determines that compliance with the 30-day waiting period, in this instance, is excused for three separate reasons: it is (1) impracticable, (2) unnecessary, and (3) contrary to the public interest. *See, e.g.,*

[14] 63 FR 10104 (February 27, 1998).

[15] *See*, 63 FR 10104, 10105 (February 27, 1998)(describing administrative proceedings culminating in the adoption of the rule exempting certain school milk from the operation of the Over-order Price Regulation.)

[16] Compact Commission Bylaws, Article VI, section I, 7 C.F.R. Part 1371.

Service Employees Intern. Union, Local 102 v.*County of San Diego,* 60 F.3d 1346 (9th Cir. 1994) (good cause exemption to § 553(d) includes situations where compliance is impracticable, unnecessary, or contrary to the public interest); *Buschmann* v. *Schweiker,* 676 F.2d 352 (9th Cir. 1982) (same).

(1) It would be impracticable to provide the thirty-day interval because the previously published amendment exempting certain school milk for the 1998–1999 school year applies to milk being distributed to schools opening in New England in August. The full thirty-day notice would not allow the Commission to set aside the funds from the August pool, paid in September, although the potential liability to eligible school food authorities would be established with the opening of the 1998–1999 school year; and

(2) The full thirty-day notice is unnecessary because this amendment merely affects the mathematical computations necessary to implement the existing rule exempting school milk from the Compact Over-order obligation; and

(3) Due to increases in federal market Class I milk prices, there will be no Compact Over-order pool for September, paid in October, from which to reserve funds to implement the school milk exemption. Therefore, the full thirty-day notice requirement would be contrary to the public interest, as found by the Commission in adopting both the underlying school milk exemption regulation, and this amendment which implements that regulation, because the Commission could not begin to establish the reserve account until well into the 1998–1999 school year. Thus, the otherwise required thirty-day notice procedure would seriously impair the effectiveness of the amendment.

Finally, the purpose of the procedural requirement that a rule be published thirty days prior to its effective date is to permit those affected by the amendment a reasonable amount of time to prepare to take whatever action is prompted by the final rule. In this instance, the amendment merely implements a rule that all affected people have had notice of since publication of the school milk exemption regulation on February 27, 1998. The only action required by the amendment is to be taken by the Commission through the establishment of a reserve account. Those most affected by the amendment are (1) the school food authorities whose interests are best served by the Commission funding the reserve account as soon possible after the opening of the 1998–1999 school year, and (2) the producers, all of whom have received ballots in February 1998 and August 1998 to vote on, and approve, the adoption of the school milk exemption and its implementation. For all of these reasons, the full thirty-day notice period is not required.

IV. Required Findings of Fact

Pursuant to Compact Article V. Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the amendment of minimum milk price regulation to dairy farmers under Article IV to establish a reserve fund for reimbursement to school food authorities.

(2) That a level price of $16.94 (Zone 1) to dairy farmers under Article IV will assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum as required by Article V. section 13.

List of Subjects in 7 CFR Part 1306

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR Chapter XIII as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1306.3 redesignate paragraphs (d) through (f) as paragraphs (e) through (g) and add new paragraph (d) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(d) Beginning with the August 1998 pool, subtract from the total value computed pursuant to paragraph (a) of this section, an amount estimated by the Commission for the purpose of retaining a reserve for payment of obligations pursuant to § 1301.13(e) of this chapter. Surplus funds from this reserve shall be returned to the producer-settlement fund.

* * * * *

Dated: August 26, 1998.

Kenneth M. Becker,

Executive Director.

[FR Doc. 98–23427 Filed 8–31–98; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 98N–0392]

Irradiation in the Production, Processing and Handling of Food; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 17, 1998 (63 FR 43875). The document amended FDA's regulations on labeling requirements for foods treated with irradiation. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–21998, appearing on page 43875, in the **Federal Register** of August 17, 1998, the following corrections are made: On page 43875, in the first column, under the document headings, ''Dockte'' is corrected to read ''Docket''; in the first column, under the ''**ADDRESSES**'' caption, beginning in the fourth line ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' is corrected to read ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23398 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N–0201]

RIN 0910–AA01

Pediculicide Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 13, 1998 (63 FR 43302). The document amended the regulation that established conditions under which over-the-counter (OTC) pediculicide drug products (products used for the treatment of head, pubic (crab), and body lice) are generally recognized as safe and effective and not misbranded. The document published with an incorrect address. This document corrects that error.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–21794, appearing on page 43302, in the **Federal Register** of August 13, 1998, the following correction is made: On page 43303, in the first column, beginning in the first line, ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' is corrected to read ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23400 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol Acetate and Oxytetracycline; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of August 3, 1998 (63 FR 41191). The document amended the animal drug regulations to reflect approval of two original new animal drug applications filed by Pharmacia & Upjohn Co. The document published with an incorrect address. This document corrects that error.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–20535, appearing on page 41191, in the **Federal Register** of August 3, 1998, the following correction is made: On page 41191, in the third column, in the first paragraph, beginning in the ninth line, ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' is corrected to read ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23399 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1340

[Docket No. NHTSA–98–4280]

RIN 2127–AH46

Uniform Criteria for State Observational Surveys of Seat Belt Use

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This document establishes uniform criteria for State seat belt use surveys that are to be conducted in connection with a new Federal grant program. Section 157 of Title 23, United States Code, directs the Secretary of Transportation to allocate funds to States that achieve a seat belt use rate that exceeds, for the past two years, the national average use rate, or that exceeds the highest seat belt use rate achieved by the State in certain designated previous years. For calendar years 1998 through 2001, the new law requires the seat belt use rate submitted by the States to be consistent with measurement criteria established by the Secretary. This document sets forth the criteria to be used by the States to determine their seat belt use rates under this program, starting with surveys conducted in calendar year 1998. These uniform criteria replace the Guidelines for State Observational Surveys of Safety Belt and Motorcycle Helmet Use, which are rescinded by this document.

DATES: This interim final rule is effective on September 1, 1998. Comments concerning this rule are due no later than January 29, 1999.

ADDRESSES: Comments should refer to the docket number set forth above and be submitted in writing to the Administrator, National Highway Traffic Safety Administration, Room 5220, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590: For program issues, Joan Catherine Tetrault, State and Community Services, NSC–01, (202) 366–2674; For legal issues, John Donaldson, Office of the Chief Counsel, NCC–30, (202) 366–1834.

SUPPLEMENTARY INFORMATION:

New Seat Belt Incentive Grant Program

Section 1403 of the recently enacted Transportation Equity Act for the 21st Century (Pub. L. 105–178) added a new Section 157 to Title 23 of the United States Code (replacing a predecessor Section 157). The new section authorizes a State seat belt incentive grant program covering fiscal years 1999 through 2003. Under this program, the Secretary of Transportation is directed to allocate funds to the States (beginning in fiscal year 1999) based on their seat belt use rates. Today's rule promulgates the Uniform Criteria for State Observational Surveys of Seat Belt Use (hereafter, Uniform Criteria) to provide guidance to the States on the seat belt use rate information to be submitted

under this new program for calendar year 1998 and beyond.

Section 157 requires the Secretary to allocate funds to States that achieve a seat belt use rate in the preceding two years that is higher than the national average use rate or, failing that, a seat belt use rate that is higher than the highest seat belt use rate achieved by the State during specified previous calendar years. (Section 157 contains another provision for allocation of grant funds, based on innovative projects, but that provision is not addressed in today's notice.) In order to make the calculations necessary to allocate funds under this provision, State seat belt use rate information extending back to calendar year 1996 is needed. For calendar years 1996 and 1997, seat belt use rate information submitted by the States is required to be weighted by the Secretary to ensure national consistency in methods of measurement. Beginning in calendar year 1998, States must measure seat belt use rates following criteria established by the Secretary, to ensure that the measurements are ''accurate and representative.'' In accordance with that mandate, this interim final rule establishes uniform criteria for States to follow in conducting surveys of seat belt use, starting with surveys conducted in calendar year 1998. (Details concerning the procedures the agency will follow in evaluating and adjusting seat belt use rate information to ensure that it is accurate and representative and in making the allocation of funds will be published in the near future in a separate **Federal Register** document.)

State Seat Belt Use Surveys

The Uniform Criteria published today incorporate, in large part, the Guidelines for State Observational Surveys of Safety Belt and Motorcycle Helmet Use (57 FR 28899, June 29, 1992) (hereafter, Guidelines) that relate to seat belts. However, the new criteria differ in one important respect. Section 157 requires the determination of seat belt use rate to be based on ''passenger motor vehicles,'' a category that includes passenger cars, pickup trucks, vans, minivans, and sport utility vehicles. Consequently, the criteria incorporate the statutory requirement that measurements include the seat belt use rate of occupants of these vehicles. A number of States have not included these vehicles in past seat belt surveys.

Another, more minor respect, in which these Uniform Criteria differ from the Guidelines, is that the observation of child restraint use is not included in the survey. The agency has removed this requirement because Section 157 does not include child restraint devices within the definition of seat belts.

Section 157 requires that measurements of seat belt use rates be ''accurate and representative.'' Consequently, these Uniform Criteria clarify the Guidelines in other respects. The agency has made clear that the surveys must include observation of both drivers and front seat outboard passengers (not simply consider them ''eligible'' for observation, as provided in the Guidelines). In addition, measurements of seat belt use must be taken completely within the calendar year for which the seat belt use rate is reported. Finally, beginning with surveys conducted during calendar year 1999, both in-state and out-of-state vehicles must be counted, to improve the representativeness of measurements. This latter requirement is being phased in next year to provide the States necessary flexibility, in view of time constraints associated with the late enactment of TEA–21. These clarifications, together with other procedures the agency expects to publish in the near future in the **Federal Register** (further discussed below), will ensure consistency and fairness in the allocation of funds.

NHTSA is recommending, in this notice, that seat belt use data be collected so as to enable separate identification for passenger cars and other covered vehicles, and separate identification for drivers and front-seat outboard passengers within these vehicle groups. NHTSA believes that this separation, although not a requirement, will produce useful information for the States, the agency, and others to evaluate trends in seat belt use.

In other particulars, these Uniform Criteria track the Guidelines. For example, the important requirement that surveys have a probability-based design has been retained. So, too, have the requirements that data be collected through direct observation of seat belt use; that the relative error of the estimate of seat belt use not exceed five percent; that counties or other primary sampling units totaling at least 85 percent of the State's population be eligible for inclusion in the sample; and that all daylight hours for all days of the week be eligible for inclusion in the sample. The new criteria continue to require all sample design, data collection and estimation procedures to be well documented. The appendix, containing a sample design that satisfies these criteria, is also retained for useful reference. These and other provisions, continued in today's rule, were previously published for comment in connection with the Guidelines.

In a separate **Federal Register** document to be published in the near future, the agency will explain the process it plans to follow in reviewing and evaluating surveys submitted by the States in accordance with today's rule, in determining the national average seat belt use rate, and in making allocations of funds. In that document, the agency may consider applying adjustment factors to survey information submitted by the States before making allocations of funds, to further ensure that seat belt use measurements are accurate and representative.

Assistance in Developing Surveys

The agency stands ready to assist States in their efforts to develop probability-based observational surveys that satisfy the requirements of Section 157 and these uniform criteria. Each NHTSA Regional Office has a data contractor available to provide technical assistance to the States upon request. States that have not yet conducted surveys for calendar year 1998 that satisfy these criteria may wish to submit proposed survey designs to NHTSA for review, in order to verify that the survey design satisfies these new criteria. This may be especially helpful for States that have not received approval of the similar surveys that were required for award of grant funds under the Guidelines.

State Eligibility for Grant Funds

The Uniform Criteria published today are effective immediately. States must become promptly familiar with these criteria because they apply to surveys required to be conducted during the current calendar year. States that fail to conduct a calendar year 1998 survey in accordance with these criteria will not be eligible, during fiscal year 2000 and possibly beyond, for Section 157 grant funds that are based on the submission of seat belt use rate information.

The Uniform Criteria are limited in scope to the substantive requirements related to State observational surveys. The agency expects to publish in the near future, in a separate **Federal Register** document, details concerning the procedures the agency will follow in evaluating seat belt use rate information and in making the allocation of funds. However, in order to provide the States with as much planning flexibility as possible in light of the imminence of the requirements concerning calendar year 1998 surveys, brief information about submission and review procedures is provided here.

The agency anticipates that review procedures for surveys will remain essentially unchanged from those that applied under the Guidelines. Specifically, States seeking to qualify for an allocation of Section 157 funds based on their seat belt use rate will submit the documentation of their survey design described under the ''Documentation'' section of these uniform criteria for review by the agency. Based on the documentation submitted, NHTSA will determine whether the survey meets the requirements of these criteria.

Pending the publication of specific procedural guidance in the **Federal Register**, States that have not yet conducted a survey for calendar year 1998 are encouraged to seek pre-approval of their survey documentation by NHTSA. States that have conducted a survey for calendar year 1998 are also encouraged to submit survey documentation for review by NHTSA, to confirm that the survey they have conducted does, in fact, conform to these criteria. This will avoid the situation where non-compliance is discovered too late to conduct another survey during calendar year 1998.

Previous Survey Guidelines Rescinded

With the publication of these Uniform Criteria for State Observational Surveys of Seat Belt Use, the agency is simultaneously rescinding the Guidelines. The agency published these latter guidelines to describe survey requirements for States seeking to receive grants under Section 153 of Title 23, United States Code, a grant program which is no longer funded.

Regulatory Analyses and Notices

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. While it concerns a new State grant program, this action does not impose any major new requirements on the States. Rather, it makes minor changes to survey procedures that have already been used by many States in a previously authorized grant program and for other purposes.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any preemptive or retroactive effect. It merely revises existing requirements imposed on States to reflect the statutory requirements of a new grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' The action has been determined to be ''significant'' under Executive Order 12866 and under the Department of Transportation Regulatory Policies and Procedures because it is likely to result in significant economic impacts. A Final Economic Assessment (FEA) is being prepared for today's rule and for a companion rule, to be published in the near future, that establishes the procedures for allocating funds under the grant program authorized by 23 U.S.C. 157. A copy of the FEA, describing the economic effects in detail, will be placed in the docket for public inspection when the companion rule is published.

Following is a summary of the cost and benefit information for this rule. The total annual cost of conducting surveys following the procedures of this rule (if each State conducted one) is estimated to be $1.9 million. A State may be eligible for an allocation of funds during each of fiscal years 2000 through 2003 if it conducts a survey of seat belt use during each of calendar years 1998 through 2001, in accordance with the procedures under this rule. Allocations available to the States total $92,000,000 for fiscal year 2000, $102,000,000 for fiscal year 2001, and 112,000,000 for each of fiscal years 2002 and 2003. An allocation totaling $82,000,000 is available for fiscal year 1999, but that allocation is dependent on criteria other than the survey procedures required under this rule. Depending on the results of State surveys, some funds may remain unallocated, and will be allocated under other procedures. Details of the procedures for allocating all funds will be published in another **Federal Register** document in the near future.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the agency has evaluated the effects of this action on small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 157 program, and they are not small entities.

Paperwork Reduction Act

On August 10, 1998, the Department of Transportation submitted an emergency processing information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). On August 17, OMB approved the request for clearance, assigning the collection OMB Clearance No. 2127–0597. The emergency clearance will expire on February 28, 1999. Through February 28, 1999, NHTSA is authorized to collect 17,942 burden hours from the affected States, the District of Columbia, and Puerto Rico.

National Environmental Policy Act

The agencies have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold.

Interim Final Rule

This document is published as an interim final rule, without prior notice and opportunity to comment. Because this regulation relates to a grant program, the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are not applicable. Moreover, even if the notice and comment provisions of the APA did apply, the agency believes that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest, since it would delay the availability of guidance to States concerning new requirements applicable during calendar year 1998. For the same reasons, we have

determined that notice and an opportunity for comment are not required under the Department's regulatory policies and procedures.

States need this information immediately in order to comply with requirements that are applicable to the observational seat belt surveys they must conduct during the current calendar year. The statute authorizing the grant program to which this interim final rule applies (Pub. L. 105–178) was enacted on June 9, 1998, leaving little time for States to both become familiar with new requirements that apply to these surveys and conduct these surveys before the end of calendar year 1998. Moreover, for safety and practicability reasons, many States in the northern latitudes must conduct surveys before the winter months, leaving even less time for these States to meet the new requirements. For these reasons, pursuant to 5 U.S.C. 808 (Pub. L. 104–121) (The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act), the agency also, for good cause, finds that notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and, therefore, this rule can be made effective upon publication.

As an interim final rule, this regulation is fully in effect and binding upon its effective date. No further regulatory action by the agency is necessary to make the rule effective. However, in order to benefit from comments which interested parties and the public may have, the agency is requesting that comments be submitted to the docket for this rule. All comments submitted in response to this rule, in accordance with the procedures outlined below, will be considered by the agency. Following the close of the comment period, the agency will publish a document responding to the comments and, if appropriate, the agency will amend the provisions of this rule.

Comments

The agency is providing a 150-day comment period for interested parties to present data, views, and arguments concerning this rule. The agency invites comments on the issues raised in this notice and any other issues relevant to this action. Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

All comments received by the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, the agency will publish a document responding to the comments and, if appropriate, the agency will amend the provisions of this rule. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified of receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 23 CFR Part 1340

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 23, chapter III of the Code of Federal Regulations is amended as set forth below.

1. Part 1340 is added to read as follows:

PART 1340—UNIFORM CRITERIA FOR STATE OBSERVATIONAL SURVEYS OF SEAT BELT USE

Sec.
1340.1 Purpose.
1340.2 Applicability.
1340.3 Basic design requirements.
1340.4 Population, demographic, and time/day requirements.
1340.5 Documentation requirements.
Appendix A to Part 1340—Sample Design

Authority: 23 U.S.C. 157; delegation of authority at 49 CFR 1.50.

§ 1340.1 Purpose.

This part establishes uniform criteria for surveys of seat belt use conducted by States under 23 U.S.C. 157.

§ 1340.2 Applicability.

These uniform criteria apply to State surveys of seat belt use, beginning in calendar year 1998 (except as otherwise provided in this part), and continuing annually thereafter through calendar year 2001.

§ 1340.3 Basic design requirements.

Surveys conducted in accordance with this part shall incorporate the following minimum design requirements:

(a) *Probability-based requirement.* The sample identified for the survey shall have a probability-based design such that estimates are representative of safety belt use for the population of interest in the state and sampling errors may be calculated for each estimate produced.

(b) *Observational requirement.* Minimum requirements include the following:

(1) The sample data shall be collected through direct observation of seat belt use on roadways within the State, conducted completely within the calendar year for which the seat belt use rate is being reported;

(2) Seat belt use shall be determined by observation of the use or non-use of a shoulder belt;

(3) Observers shall be required to follow a predetermined, clear policy in the event that observations cannot be made at an assigned site at the specified time (due to heavy rain, construction, safety problems, etc.);

(4) Instructions to observers shall specify which road and which direction of traffic on that road are to be observed (observers must not be free to choose between roads at an intersection); and

(5) Observers shall follow clear instructions on how to start and end an observation period and how to stop and start observations if traffic flow is too heavy to observe all vehicles or if vehicles begin moving too quickly for observation (to remove any possible bias, such as starting with the next belted driver).

(c) *Precision requirement.* The relative error (standard error divided by the estimate) for safety belt use must not exceed 5 percent.

§ 1340.4 Population, demographic, and time/day requirements.

Surveys conducted in accordance with this part shall comply with the following minimum population, demographic, and time/day requirements:

(a) *Population of interest.* (1) Drivers and front seat outboard passengers in passenger motor vehicles (passenger cars, pickup trucks, vans, and sport utility vehicles) must be observed in the survey. (Only overall restraint use for the population of interest is required. However, in order to assist in the evaluation of trends, it is recommended that data be collected in such a way that restraint use estimates can be reported separately for passenger cars and other

covered vehicles, and separately for drivers and front-seat outboard passengers within those vehicle groups.)

(2) Surveys conducted during calendar year 1998 shall be deemed to comply with paragraph (a)(1) of this section if passenger motor vehicles registered in-State are included in the survey. For surveys conducted during calendar year 1999 and thereafter, passenger motor vehicles registered both in-state and out-of-state must be included in the survey.

(b) *Demographics.* Counties, or other primary sampling units, totaling at least 85 percent of the State's population must be eligible for inclusion in the sample. States may eliminate their least populated counties, or other primary sampling units, to a total of fifteen percent or less of the total State population, from the sampling frame.

(c) *Time of day and day of week.* All daylight hours for all days of the week must be eligible for inclusion in the sample. Observation sites must be randomly assigned to the selected day-of-week/time-of-day time slots. If cluster sampling is used, assignment of sites and times within clusters must be random.

§ 1340.5 Documentation requirements.

All sample design, data collection, and estimation procedures used in State surveys conducted in accordance with this part must be well documented. At a minimum, the documentation must:

(a) For sample design—

(1) Define all sampling units, with their measures of size;

(2) Define what stratification was used at each stage of sampling and what methods were used for allocation of the sample units to the strata;

(3) Explain how the sample size at each stage was determined;

(4) List all samples units and their probabilities of selection; and

(5) Describe how observation sites were assigned to observation time periods.

(b) For data collection—

(1) Define an observation period;

(2) Define an observation site and what procedures were implemented when the observation site was not accessible on the date assigned;

(3) Describe what vehicles were observed and what procedures were implemented when traffic was too heavy to observe all vehicles; and

(4) Describe the data recording procedures.

(c) For estimation—

(1) Display the raw data and the weighted estimates;

(2) For each estimate, provide an estimate of one standard error and an approximate 95 percent confidence interval; and

(3) Describe how estimates were calculated and how variances were calculated.

Appendix A to Part 1340—Sample Design

Following is a description of a sample design that meets the final survey guidelines and, based upon NHTSA's experience in developing and reviewing such designs, is presented as a reasonably accurate and practical design. Depending on the data available in a State, substitutions in this design can be made without loss of accuracy. This information is intended only as an example of a complying survey design and to provide guidance for States concerning recommended design options. These are not design requirements. It is recommended that State surveys of safety belt use be designed by qualified survey statisticians.

I. Sample Design

A. *Sample population:* It is recommended that all controlled intersections or all roadway segments in the State (or in the parts of the State that have not been excluded by the 85 present demographic guideline) be eligible for sampling.

B. *First Stage:* Usually, counties are the best candidates for primary sampling units (PSUs). In large States with differing geographic areas, it is recommended that stratification of PSUs by geographic region be employed prior to PSU selection. Counties should be randomly selected, preferably with probabilities proportional to vehicle miles of travel (VMT) in each county. If VMT is not available by county, PSUs can also be selected with probability proportional to county population. When sampling PSUs, States should ensure that an adequate mix of rural and urban areas are represented. In some cases, urban/rural stratification must be employed prior to PSU selection. In other cases, it may be more practical to perform urban/rural stratification at the second sampling stage.

C. *Second Stage:* Within sampled PSUs, it is recommended that road segments be stratified by road type. For example, a two-strata design might be major roads vs. local roads, a three strata design might be high, medium and low traffic volume roads. The sample should be allocated to these strata by estimated annual VMT in each stratum. The sample of road segments within a stratum should be selected with probability proportional to average daily VMT. When enumerating all local roads is impractical, additional stages of selection can be introduced and alternative sample probabilities can be used. For example, census tracts within counties can be selected with probability proportional to VMT, or, if VMT is not available, proportional to the square root of the population. Next, within each sampled census tract, road segments can be selected.

D. *Sample Size:* The following tables are provided as rough guidelines for determining sample size for estimating belt use with the required level of precision. The numbers are based on results from previous probability-based seat belt surveys.

DETERMINING FIRST STAGE SAMPLE SIZE

Number of counties in State	Number of counties in sample
10	7
20	11
30	13
40	15
50	16
60	17
70	18
80	19
90	19
100–120	20
130–170	21
More than 180	22

DETERMINING SECOND STAGE SAMPLE SIZE

Average number of road segments in each sampled county	Number of road segments sampled in each sample county
50	19
60	20
70	21
80	21
90	22
100	23
200	26
300	27
400	27
500–900	28
More than 1000	29

E. *Example:* To achieve the required level of precision, a State with 100 counties would sample 20 counties at the first stage. At the second stage, assuming an average of 100 road segments in each sampled county, a sample of 23 road segments per county would be selected. The total sample size would be 20×460 observational sites.

II. Data Collection

A. Exact observation sites, such as the specific intersection on a road segment, should be determined prior to conducting the observations.

B. Direction of traffic to be observed should be determined prior to conducting the observations.

C. If traffic volume is too heavy to accurately record information, predetermined protocol should exist for selecting which travel lanes to observe.

D. Observations should be conducted for a predetermined time period, usually one hour. Time periods should be the same at each site.

E. To minimize travel time and distance required to conduct the observations, clustering of sampled sites can be done. Sample sites should be grouped into

geographic clusters, with each cluster containing major and local roads. Assignment of sites and times within clusters should be random.

F. Two counts should be recorded for all eligible vehicles:

1. Number of front seat outboard occupants.

2. Number of these occupants wearing shoulder belts.

III. Estimation

A. Observations at each site should be weighted by the site's final probability of selection.

B. An estimate of one standard error should be calculated for the estimate of belt use. Using this estimate, 95 percent confidence intervals for the estimate of safety belt use should be calculated.

Issued on: August 26, 1998.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98–23410 Filed 8–27–98; 11:54 am]

BILLING CODE 4910–59–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

[4310–55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Bristol Bay Federal Subsistence Regional Advisory Council Meeting; Subsistence Management Regulations for Public Lands in Alaska

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

ACTION: Notice of meeting.

SUMMARY: This notice informs the public of the Regional Council meeting identified above. The public is invited to attend and observe meeting proceedings. In addition, the public invited to provide oral testimony before the Bristol Bay Advisory Council on a Special Action request to change Subsistence Management Regulations for Public Lands in Alaska for the 1998–1999 regulatory year as set forth in a final rule on June 29, 1998 (63 FR 35332–35381). The Regional Council will receive testimony and consider six requests from local villages asking that federal public lands in Unit 9(E) be closed to taking of caribou by non-qualified subsistence users. Three requests from local villages additionally ask that federal lands be closed to the taking of moose by non-qualified subsistence users. The requests cite recent information on the continuing decline in population of the North Alaska Peninsula caribou herd. In addition, the severe reduction in the commercial fishery incomes this year is said to result in higher reliance on subsistence food resources.

DATES: The Federal Subsistence Board announces the forthcoming public meeting for the Federal Subsistence Regional Advisory Council. The Bristol Bay Regional Council will meet in Naknek, AK on September 2, 1998 at 10:30 A.M. in the Bristol Bay Borough Assembly Chambers.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, (907) 786–3888. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION: The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, 36 CFR part 242 and 50 CFR part 100, subparts A, B, and C (57 FR 22940–22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act.

The Bristol Bay Regional Council meeting will be open to the public. The public is invited to attend this meeting, observe the proceedings, and provide comments to the Regional Council.

This document provides less than the required 15 days notice. However, these requests were just received, and the Federal closure is requested to coincide with a comparable closure by the Alaska Department of Fish and Game which takes effect on September 10, 1998. Thus, in order to provide the Regional Council and the public an opportunity to comment on this proposal before Board action and for the board to act in a timely manner on this proposal, the Board finds good cause under 41 CFR 101–6.1015(b)(2) to conduct the meeting with less than 15 days notice. Additional notice of the meeting will be placed in local papers and broadcast on local radio and television stations.

Dated: August 25, 1998.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: August 25, 1998.

Ken Thompson,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 98–23562 Filed 8–28–98; 10:19 am]

BILLING CODE 3410–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002, 1182, 1187, and 1188

[STB Ex Parte No. 559]

Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) adopts revised procedures governing finance applications involving motor passenger carriers filed under 49 U.S.C. 14303. In addition, the regulations in parts 1187 and 1188 are removed and replaced by new provisions incorporated in part 1182. The rules at part 1002 are modified to redescribe fee categories.

DATES: This rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: By decision served and published in the **Federal Register** on July 8, 1997 (49 FR 36477), the Board issued a notice of proposed rulemaking (NPR) proposing to establish revised procedures governing finance applications involving motor passenger carriers, filed under 49 U.S.C. 14303. The proposed regulations would adopt, with modifications, the existing procedures promulgated by the Interstate Commerce Commission (ICC) at 49 CFR 1182.[1] Also, we proposed to remove the regulations at 49 CFR parts 1187 and 1188 and to replace them with provisions incorporated in part 1182. Comments were received from the American Bus Association, Inc. (ABA),

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), which took effect on January 1, 1996, abolished the ICC and transferred certain of its motor carrier regulatory functions to the Secretary of Transportation (Secretary) and to the Board.

Coach USA, Inc. (Coach), and Greyhound Lines, Inc. (Greyhound).

Analysis

Jurisdiction over Affiliates

The provisions of 49 U.S.C. 14303(g) give the Board jurisdiction over finance transactions involving motor carriers of passengers only if the carriers' aggregate gross operating revenues exceed $2 million during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties. Our proposal at § 1182.2(a)(5)[2] would have required that, pursuant to 49 U.S.C. 14303(g), applications include a jurisdictional statement ''that the aggregate gross operating revenues, including revenues of all motor carrier parties and all of their motor carrier affiliates from all transportation sources (whether interstate, intrastate, foreign, regulated, or unregulated) exceeded $2 million[.]'' ABA supports the proposed revision to the jurisdictional threshold as consistent with the statute, which speaks to ''gross operating revenues'' without limitations.[3] Coach suggests that the adopted rules should clarify that the Board also has jurisdiction over transactions between a noncarrier applicant that controls carriers with aggregate revenues exceeding $2 million and a carrier with revenues below the statutory threshold.

We agree with Coach that the proposed rule should be clarified to include the revenues of the affiliates of noncarrier applicants. As we stated in the NPR at 3, the intent of Congress ''was not to measure the strict extent of revenues generated subject to Federal regulatory jurisdiction, but rather to gauge the economic power of the parties participating in a finance transaction. * * *'' Accordingly, we will modify the proposed rule to state that the jurisdictional threshold is based on the ''revenues of all motor carrier parties and all motor carriers controlling, controlled by, or under common control with any party. * * *'' We will also modify the proposed rule by repeating the statutory one-year time frame in referring to aggregate gross operating revenues.

Safety Ratings

The rule we proposed at § 1182.2(a)(8)[4] would require that applicants certify their safety fitness ratings issued by the U.S. Department of Transportation's Federal Highway Administration (FHWA). Coach suggests that the requirement for certification of safety ratings should be revised to clarify that each carrier party may certify as to its own safety rating or attach a copy of any safety rating letter it may have received from FHWA, so as not to require each carrier to obtain an official certification before filing its application. We agree with Coach's request and will modify the regulation to indicate that the certification can be made by the applicant.

Under current safety inspection protocols, some carriers do not have a safety rating, either because they are exempt from the safety inspection program or because an inspection has not yet been conducted. In these cases, the appropriate certification would be that the carrier is ''unrated'' for whatever particular reason is applicable.[5] Moreover, as the final regulations will make clear, we are interested only in current safety ratings.

Coach also suggests that (a) the Board should state its policy with respect to transactions involving carriers that have unsatisfactory ratings and (b) that safety certifications should be required only of actual parties to transactions, not of affiliates. We understand Coach's point, but will not adopt the precise approach it suggests. First, we will consider the effect of unsatisfactory ratings on a case-by-case basis. As a general matter, we would be concerned if an *acquiring* carrier has an unsatisfactory safety rating. On the other hand, as Coach points out, acquisition of a carrier with an unsatisfactory rating by a carrier with a superior operating and safety record could be a positive development. Secondly, as to carriers affiliated with an acquiring carrier or controlled by an acquiring noncarrier, we believe it is relevant to know whether an acquiring applicant's affiliate has a less-than-satisfactory rating, even if an acquiring carrier's own safety rating is satisfactory. In sum, it appears prudent to have all relevant information on the record, with the weight to be given to that information determined in each particular case.

Copies of Applications To Be Filed With State Agencies

Our proposed rule at § 1182.3(a)(1) would require one copy of each application to be delivered to the appropriate regulatory body in each State in which any of the parties to the transaction operates in intrastate commerce. Greyhound argues that the proposed requirement is burdensome. Greyhound points out that it is authorized to engage in intrastate operations over all routes on which it provides interstate transportation, and it operates in nearly every one of the continental 48 States. Greyhound submits that a given application, however, is ordinarily only of interest to affected States. Greyhound suggests revising the provision to provide for delivery of copies of an application only to those States in which the motor carrier proposed to be merged or acquired operates in intrastate commerce. ABA supports Greyhound's comments in this regard.

We will revise the proposed regulation accordingly. The purpose of the proposed requirement is to provide adequate and appropriate notice to those States directly affected by the proposed transaction. This would include any State in which the operator of intrastate bus services (pursuant either to State or to federal operating authority) will change or where that operator will come under control of (or under common control with) another carrier. States unaffected by the proposed transaction do not realistically need direct notice of the filing of the application.

Time Frame for Final Decisions

Our proposed rule in § 1182.6 describes the manner in which opposed applications would be processed. Comments would be due 45 days after notice of the application is published and replies would be due 60 days after the notice. The reply could include a request for expedited action, and commenters could reply to such a request within 70 days of the publication of the notice. The proposed rules do not contain a deadline for deciding the case, nor do they mention

[2] (a) The application must contain the following information: * * *

(5) A jurisdictional statement, under 49 U.S.C. 14303(g), that the aggregate gross operating revenues, including revenues of all motor carrier parties and all of their motor carrier affiliates from all transportation sources (whether interstate, intrastate, foreign, regulated, or unregulated) exceeded $2 million; (NOTE: The motor passenger carrier parties and their motor passenger carrier affiliates may select a consecutive 12-month period ending not more than 6 months before the date of the parties' agreement covering the transaction. They must, however, select the same 12-month period.)

[3] Indeed, no comment has challenged our substantive interpretation of the meaning of the statute in this regard.

[4] (a) The application must contain the following information: * * *

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction.

[5] There may be carriers that had either conditional or unsatisfactory ratings at the time when the safety inspection process was changed, and were unable to obtain reinspection so as to expunge the less-than-satisfactory ratings from their records. In cases of this nature, carriers should attach an explanation of the circumstances of the rating.

the statutory requirement in section 14303(e) that the Board is to complete evidentiary proceedings within 240 days after the notice and to issue a final decision within 180 days after the close of the record.

Coach suggests that, in order to provide a greater degree of certainty, the Board should provide that it will normally process applications within a fixed time frame not to exceed 100 days from the date that a notice of the application is published, absent unusual circumstances that might require more extended evidentiary proceedings. We do not believe it is prudent or necessary to establish such a rule. Our experience has been that opposition to these applications is unusual, but it is difficult to predict whether some future case will be opposed or what the nature of any opposition might be. In any event, our goal is to process opposed applications quickly, and our rules are consistent with what Coach seeks. After the record closes (60 or 70 days after the notice), the Board will determine whether to decide a particular case on the existing record (which we hope to do within 100 days) *or* to establish a procedural schedule for the submission of further evidence (which will be done only in unusual cases).

Coach also suggests that the Board consider a class exemption that would allow control proceedings to be finalized following a notice filed with the Board, subject to petitions for revocation of the exemption. We do not believe the record warrants granting that request at this time. To the extent that there are time constraints on the closing of a transaction, the use of voting trust procedures (as discussed below) or interim approval would be the appropriate solution.

Voting Trusts

Our proposed rules in § 1182.7 cover interim approval of motor passenger carrier finance applications. Greyhound seeks confirmation that the provisions for interim operations are not intended to foreclose the use of the voting trust procedures of 49 CFR part 1013, which permit parties to proceed on a proposed merger or acquisition pending Board approval.

While the voting trust provisions are available for use by parties to motor passenger finance transactions, as well as rail finance matters, we do not see the need to reference them specifically in connection with these rules.

Compliance With State Transfer Regulations

Our proposed rules in § 1182.8(f)[6] would require applicants to comply with State procedures if completion of a transaction requires the transfer of operating authorities issued by a State regulatory body. Coach argues that this provision is directly contrary to the preemption provisions of 49 U.S.C. 14303(f).

Under 49 U.S.C. 14303(f),[7] motor carriers of passengers subject to our jurisdiction are subject to our exclusive and plenary jurisdiction in carrying out a consolidation, merger, or acquisition of control. Accordingly, a State may not take any action that would in any way interfere with the applicants' consummation of a section 14303 transaction. *See Colorado Mountain Express, Inc., and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc.—Consolidation and Merger—Colorado Mountain Express*, STB Docket No. MC–F–20902 (STB served Feb. 28, 1997) at 3–4.

Nevertheless, to accomplish the necessary transfer of operating rights, ministerial actions by the State may be necessary to amend State records so as to give full effect to transactions we approve.[8] That action is all that was contemplated by the proposed rule. To clarify the matter, we will modify the rule by stating that parties are to ''comply with ministerial requirements of relevant State procedures.''

[6] (f) If completion of a transaction requires the transfer of operating authorities or registrations from one or more parties to others, the parties shall comply with relevant procedures of State authorities and of the Office of Motor Carriers of the U.S. Department of Transportation, to accomplish such transfers.

[7] The full text of section 14303(f) provides:

A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

[8] *Cf. Leaseway Transp. Corp* v. *Bushnell*, 888 F.2d 1212, 1215 (7th Cir. 1989), where the court discussed 49 U.S.C. 11341(a) (the predecessor of section 14303(f)), and stated that a State:

may not act as a ''gate-keeper'' handing down prior approval of Leaseway's acquisition, but it may certainly impose filing or notice requirements and taxes (as long as these do not interfere with Leaseway's ability to carry out the acquisition or exercise control as provided in section 11341(a)).

Filing Fees and Removed Regulations

The proposed rules included a redescription and clarification of the categories in which the filing fees applicable to these matters are specified. No change was proposed in the level of the filing fees. In the interim, however, the Board's filing fees have been revised, pursuant to *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—1998 Update*, STB Ex Parte No. 542 (Sub-No. 2) (STB served Feb. 18, 1988). The filing fee for an application in a motor passenger finance case was increased from $1,100 to $1,300, and the filing fee for a request for interim approval (temporary authority) was increased from $250 to $300. The final rules we are adopting include the redescriptions of the fee categories, as proposed, and reflect the current fee schedule.

Finally, as proposed, we are removing the regulations in part 1187 (concerning temporary authority) and part 1188 (pertaining to gross operating revenues) and replacing them with provisions incorporated in part 1182.

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. We received no comments in response to the notice of proposed rulemaking concerning effects on small entities. These rules establish simple processing procedures and impose no new reporting requirements on small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common Carriers, Freedom of information, User fees.

49 CFR Part 1182

Administrative practice and procedure, Motor carriers.

49 CFR Part 1187

Administrative practice and procedure, Motor Carriers.

49 CFR Part 1188

Administrative practice and procedure, Motor carriers.

Decided: August 24, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1002,

1182, 1187, and 1188 of the Code of Federal Regulations are amended as follows:

PART 1002—FEES

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

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

2. Section 1002.2 is amended by revising paragraphs (f)(2) and (f)(5) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fee
(2) An application to consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers, under 49 U.S.C. 14303	1,300
* * * * *	
(5) A request for interim approval in connection with a finance application involving a motor carrier of passengers, under 49 U.S.C. 14303(i)	300
* * * * *	

3. Part 1182 is revised to read as follows:

PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS

Sec.
1182.1 Applications covered by this part.
1182.2 Content of applications.
1182.3 Filing the application.
1182.4 Board review of the application.
1182.5 Comments.
1182.6 Processing an opposed application.
1182.7 Interim approval.
1182.8 Miscellaneous requirements.

Authority: 5 U.S.C. 559; 21 U.S.C. 853a; and 49 U.S.C. 13501, 13902(c), and 14303.

§ 1182.1 Applications covered by this part.

The rules in this part govern applications for authority under 49 U.S.C. 14303 to consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers. There is no application form for these proceedings. Applicants shall file a pleading containing the information described in 49 CFR 1182.2. *See* 49 CFR 1002.2(f) (2) and (5) for filing fees.

§ 1182.2 Content of applications.

(a) The application must contain the following information:

(1) Full name, address, and authorized signature of each of the parties to the transaction;

(2) Copies or descriptions of the pertinent operating authorities of all of the parties (**Note:** If an applicant is domiciled in Mexico or owned or controlled by persons of that country, copies of the actual operating authorities must be submitted.);

(3) A description of the proposed transaction;

(4) Identification of any motor passenger carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom;

(5) A jurisdictional statement, under 49 U.S.C. 14303(g), that the 12-month aggregate gross operating revenues, including revenues of all motor carrier parties and all motor carriers controlling, controlled by, or under common control with any party from all transportation sources (whether interstate, intrastate, foreign, regulated, or unregulated) exceeded $2 million. (**Note:** The motor passenger carrier parties and their motor passenger carrier affiliates may select a consecutive 12-month period ending not more than 6 months before the date of the parties' agreement covering the transaction. They must, however, select the same 12-month period.)

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources;

(7) Information to demonstrate that the proposed transaction is consistent with the public interest, including particularly: the effect of the proposed transaction on the adequacy of transportation to the public; the total fixed charges (e.g., interest) that result from the proposed transaction; and the interest of carrier employees affected by the proposed transaction. *See* 49 U.S.C. 14303(b);

(8) Certification by applicant of the current U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction;

(9) Certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 13906 (a) and (d) for the service it intends to provide;

(10) A statement indicating whether any party acquiring any operating rights through the transaction is either domiciled in Mexico or owned or controlled by persons of that country; and

(11) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name, that individual must complete the following certification:

I, _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that I have been so convicted, but I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) The application shall contain applicants' entire case in support of the proposed transaction, unless the Board finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case.

(c) Any statements submitted on behalf of an applicant supporting the application shall be verified, as provided in 49 CFR 1182.8(e). Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void ab initio.

§ 1182.3 Filing the application.

(a) Each application shall be filed with the Board, complying with the requirements set forth at 49 CFR 1182.8.

(1) One copy of the application shall be delivered, by first-class mail, to the appropriate regulatory body in each State in which intrastate operations are affected by the transaction.

(2) If the application involves the merger or purchase of motor passenger carriers (contemplating transfer of operating authorities or registrations from one or more parties to others), one copy of the application shall be delivered, by first-class mail, to:

Chief, Lic. & Ins. Div., U.S.D.O.T. Office of Motor Carriers-HIA 30, 400 Virginia Ave., S.W., Ste. 600, Washington, DC 20004

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

§ 1182.4 Board review of the application.

(a) All applications will be reviewed for completeness. Applicants will be given an opportunity to correct minor errors or omissions. Incomplete applications may be rejected, or, if omissions are corrected, the filing date of the application, for purposes of calculating the procedural schedule and statutory deadlines, will be deemed to

be the date on which the complete information is filed with the Board.

(b) If the application is accepted, a summary of the application will be published in the **Federal Register** (within 30 days, as provided by 49 U.S.C. 14303(c)), to give notice to the public, in the form of a tentative grant of authority.

(c) If the published notice does not properly describe the transaction for which approval is sought, applicants shall inform the Board within 10 days after the publication date.

(d) A copy of the application will be available for inspection at the Board's offices in Washington, DC. Interested persons may obtain a copy of the application from the applicants' representative, as specified in the published notice.

§ 1182.5 Comments.

(a) Comments concerning an application must be received by the Board within 45 days after notice of the application is published, as provided by 49 U.S.C. 14303(d). Failure to file a timely comment waives further participation in the proceeding. If no comments are filed opposing the application, the published tentative grant of authority will automatically become effective at the close of the comment period. A tentative grant of authority does not entitle the applicant to consummate the transaction before the end of the comment period.

(b) A comment shall be verified, as provided in 49 CFR 1182.8(e), and shall contain all information upon which the commenter intends to rely, including the grounds for any opposition to the transaction and the commenter's interest in the proceeding.

(c) The docket number of the application must be conspicuously placed at the top of the first page of the comment.

(d) A copy of the comment shall be delivered concurrently to applicants' representative(s).

§ 1182.6 Processing an opposed application.

(a) If timely comments are submitted in opposition to an application, the tentative grant of authority is void.

(b) Applicants may file a reply to opposing comments, within 60 days after the date the application was published.

(1) The reply may include a request for an expedited decision on the issues raised by the comments. Otherwise, the reply may not contain any new evidence, but shall only rebut or further explain matters previously raised.

(2) The reply shall be verified, as provided in 49 CFR 1182.8(e), unless it consists strictly of legal argument.

(3) Applicants' reply must be served on each commenter in such manner that it is received no later than the date it is due to be filed with the Board.

(4) Opposing commenters may reply to a request for an expedited decision, within 70 days after notice of the application was published.

(c) The Board may:

(1) Dispense with further proceedings and make a final determination based on the record as developed; or

(2) Issue a procedural schedule specifying the dates by which: applicants may submit additional evidence in support of the application, in response to the comment(s) in opposition; and the opposing commenter(s) may reply.

(d) Further processing of an opposed application will be handled on a case-by-case basis, as appropriate to the particular issues raised in the comments filed in opposition to the application. Evidentiary proceedings must be concluded within 240 days after publication of the notice of the application.

§ 1182.7 Interim approval.

(a) A party may request interim approval of the operation of the properties sought to be acquired through the proposed transaction, for a period of not more than 180 days pending determination of the application. This request may be included in the application or may be submitted separately after the application is filed (e.g., once a comment opposing the application has been filed). An additional filing fee is required, whether the request for interim approval is included in the application or is submitted separately at a later time. *See* 49 CFR 1002.2(f)(5) for the additional filing fee.

(b) A request for interim approval of the operation of the properties sought to be acquired in the application must show that failure to grant interim approval may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

(c) If a request for interim approval is submitted after the application is filed, it must be served on each person who files or has filed a comment in response to the published notice of the application. Service must be simultaneous upon those commenters who are known when the request for interim approval is submitted; otherwise, service must be within 5 days after the comment is received by applicants or their representative.

(d) Because the basis for requesting interim approval is to prevent destruction of or injury to motor passenger carrier properties sought to be acquired under 49 U.S.C. 14303, the processing of such requests is intended to promote expeditious decisions regarding interim approval. The Board has no obligation to give public notice of requests for interim approval, and such requests are decided without hearing or other formal proceeding.

(1) If a request for interim approval is included in the application, the Board's decision with regard to interim approval will be served in conjunction with the notice accepting the application.

(2) If an application is rejected, the request for interim approval will be denied.

(3) If an application is denied, after comments in opposition are submitted, any interim approval will terminate 30 days after service of the decision denying the application.

(e) A petition to reconsider a grant of interim approval may be filed only by a person who has filed a comment in opposition to the application.

(1) A petition to reconsider a grant of interim approval must be in writing and shall state the specific grounds upon which the commenter relies in opposing interim approval. The petition shall certify that a copy has been served on applicants' representative.

(2) The original and 10 copies of the petition to reconsider a grant of interim approval shall be filed with the Board, and one copy of the petition shall be served on applicants' representative(s).

(f) The Board may act on a petition to reconsider a grant of interim approval either separately or in connection with the final decision on the application.

§ 1182.8 Miscellaneous requirements.

(a) If applicants wish to withdraw an application, they shall jointly request dismissal in writing.

(b) An original and 10 copies of all applications, pleadings, and other material filed under this part must be filed with the Board.

(c) All pleadings (including motions and replies) submitted under this part shall be served on all other parties, concurrently and by the same (or more expeditious) means with which they are filed with the Board.

(d) Each pleading shall contain a certificate of service stating that the pleading has been served in accordance with paragraph (c) of this section.

(e) All applications and pleadings containing statements of fact (i.e., except motions to strike, replies thereto,

and other pleadings that consist only of legal argument) must be verified by the person offering the statement, in the following manner:

I, [*Name and Title of Witness*], verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to five years for each offense.

[*Signature and Date*]

(f) If completion of a transaction requires the transfer of operating authorities or registrations from one or more parties to others, the parties shall comply with relevant procedures of the Office of Motor Carriers of the U.S. Department of Transportation, and comply with ministerial requirements of relevant State procedures.

PARTS 1187 AND 1188—[REMOVED]

4. Under the authority of 49 U.S.C. 721 and 14303, parts 1187 and 1188 are removed.

[FR Doc. 98–23352 Filed 8–31–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018—AE96

Migratory Bird Harvest Information Program; Participating States for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) herein amends the Migratory Bird Harvest Information Program (Program) regulations. The Service requires all States except Hawaii to participate in the Program annually, beginning with the 1998–99 hunting season. This regulatory action will continue to require all licensed hunters who hunt migratory game birds in participating States to register as migratory game bird hunters and provide their name, address, and date of birth to the State licensing authority. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds in participating States. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys.

DATES: This rule takes effect on September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028, (301)497–5980, FAX (301)497–5981.

SUPPLEMENTARY INFORMATION: This final rule expands the Program to include all States except Hawaii, beginning in the 1998–99 hunting season.

Background

The purpose of this cooperative Program is to annually obtain a nationwide sample frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys. State wildlife agencies will provide the sample frame by annually collecting the name, address, and date of birth of each licensed migratory bird hunter in the State. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter answer a series of questions to provide a brief summary of his or her migratory bird hunting activity for the previous year. States are required to ask each licensed migratory bird hunter approximately how many ducks (0, 1–10, or more than 10), geese (0, 1–10, or more than 10), doves (0, 1–30, or more than 30), and woodcock (0, 1–30, or more than 30) he or she bagged the previous year, and whether he or she hunted coots, snipe, rails, and/or gallinules the previous year. States that have band-tailed pigeon hunting seasons are also required to ask migratory bird hunters whether they intend to hunt band-tailed pigeons during the current year. States are not required to ask questions about species that are not hunted in the State (for example, Maine does not allow dove hunting, therefore, the State of Maine is not required to ask migratory bird hunters how many doves they bagged the previous year). States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published on June 24, 1991 (56 FR 28812). A final rule establishing the Program and initiating a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published on March 19, 1993 (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota. A State/Federal technical group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Changes incorporated into the Program as a result of the technical group's evaluation were specified in an October 21, 1994 final rule (59 FR 53334), that initiated the implementation phase of the Program. Implementation of the Program began with the addition of one State in 1994, three States in 1995 (60 FR 43318), ten States in 1996 (61 FR 46350), and five States in 1997 (62 FR 45706). Final implementation of the Program will be accomplished with the addition of 27 States (all except Hawaii) in this final rule.

All licensed hunters who hunt migratory game birds in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on, written on, or attached to the annual State hunting license or on a State-specific supplementary permit. The State may charge hunters a handling fee to compensate hunting-license agents and to cover the State's administrative costs. The Service's survey design calls for hunting-record forms to be distributed to hunters selected for the survey before they forget the details of their hunts. Because of this design requirement, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service. Currently, participating States must send the required information to the Service within 30 calendar days of issuance of the migratory bird hunting authorization.

The Service has requested the cooperation of participating States to facilitate obtaining harvest estimates for

hunters who are exempted from a permit requirement and those that are also exempted from State licensing requirements. This includes several categories of hunters such as junior hunters, senior hunters, landowners, and other special categories. Because exemptions and the methods for obtaining harvest estimates for exempt groups vary from State to State, the Service will incorporate these methods into individual memoranda of understanding with participating States. Excluding from the Program those hunters who are not required to obtain an annual State hunting license also excludes their harvest from the estimates. The level of importance of the excluded harvest on the resulting estimates depends on how many hunters are excluded and on the number of birds they bag. If the level of importance is significant, excluding these hunters will result in serious bias. Minimum survey standards are being developed for exempted categories. States may require exempted hunters to obtain permits (e.g., Maryland required exempted hunters to obtain permits upon entry to the Program in 1994).

Review of Comments and the Service's Response

The Service received comments on the proposed rule from two States. Missouri expressed strong support for the Program, calling it an exemplary model of mutual cooperation between the States and the Service. Florida also supported the Program's objectives but expressed several concerns about the Program's information collection requirements.

1. Type of Information Provided by Hunters

Comments: Florida stated that the questions they ask migratory bird hunters, which were approved by the Service prior to Florida's implementation of the Program in 1997, included one more response category for ducks and doves than the number of categories specified by the Service. They also noted that in 1997, the Service approved Florida's request to ask hunters whether they hunted woodcock the previous year rather than how many woodcock they bagged. They requested clarification of the questions they are now required to ask migratory bird hunters.

Service Response: The Service does not require a specific format for the questions that ask migratory bird hunters approximately how many ducks, geese, doves, and woodcock they bagged the previous year. However, the format a State chooses must enable the State to assign hunters' answers to the categories specified by the Service before the State sends the data to the Service. Florida's current format that includes an additional response category meets that criterion and does not need to be changed. The Service has agreed that States such as Florida, that are at the periphery of the woodcock range and that have less than 1,000 active woodcock hunters annually, may elect to ask hunters whether they hunted woodcock the previous year in lieu of asking how many woodcock they bagged. Thus, Florida's current woodcock question format also meets the Service's requirements and does not need to be changed.

2. Impact of Procedures on Hunters and Hunting License Vendors

Comment: Florida stated that the Program places an additional burden on both hunters and hunting license vendors. Migratory bird hunters and license vendors in Florida have expressed dissatisfaction with this burden, particularly the additional questions that all migratory bird hunters are asked to complete. Although Florida recognizes that hunters' responses to those questions provide the Service with useful information, they noted that the benefits to the Service come at increased costs to the States in the form of printing costs, vendor training and implementation time, and confusion and dissatisfaction on the part of hunters and vendors. They requested a critical review of the Program, including a quantitative assessment of the benefits of the required questions as compared to the monetary and social costs assumed by the States.

Service Response: The Service recognizes that this Program imposes an additional burden on States, hunters, and license vendors; that burden is quantified in this document under the caption Regulatory Flexibility Act. The Service believes, based on the experiences of States that have participated in the Program for two or more years, that dissatisfaction will dissipate as hunters and license vendors become more accustomed to the Program. The Service does not have a current assessment of the benefits derived from responses to the questions that States are required to ask migratory bird hunters, and the Service agrees that such an assessment should be included in the critical review of the Program that will be undertaken after all States have participated in the Program for at least one year.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment (EA) on the establishment of the Program and options considered in the ''Environmental Assessment: Migratory Bird Harvest Information Program.'' This EA is available to the public at the location indicated under the **FOR FURTHER INFORMATION CONTACT** caption. Based on review and evaluation of the information in the EA, the Service has determined that amending 50 CFR 20.20 to require all States except Hawaii to participate in the Program annually, beginning with the 1998–99 migratory bird hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Regulatory Flexibility Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will affect about 3,300,000 migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

In total, the Service estimates that the Program information collection will impose costs on society on the order of $4.1 million per year. The Service estimates that hunters will require about 112,000 hours to complete Program forms. At the wage rate, this time is estimated to be valued at $1.5 million (the average estimated cost of time to an individual is less than $0.50). The cost to the States to process and forward the Program information is estimated to be $2.6 million. Service payments of $0.10 per hunter name will mitigate the impact of this requirement on State wildlife budgets to some extent. Several States are imposing additional fees on migratory bird hunter registrations to cover their additional costs. However,

the Service notes that the Program costs less than two tenths of one percent of the $3.1 *billion* migratory bird hunters spent in 1996 for travel, equipment, and hunting rights.

Collection of Information: Migratory Bird Harvest Information Program

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Service has received approval for this collection of information, with approval number 1018–0015. The information to be collected includes: the name, address, and date of birth of each licensed migratory bird hunter in each participating State. Each licensed migratory bird hunter will also be asked to provide a brief summary of his or her migratory bird hunting activity for the previous year. Hunters' names, addresses, and other information will be used to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. The Service needs and uses the information to improve the quality and extent of information about harvests of migratory game birds in order to better manage these populations.

All information is to be collected once annually from licensed migratory bird hunters in participating States by the State license authority. Participating States are required to forward the hunter information to the Service within 30 calendar days of issuance of the migratory bird hunting authorization. Recent information from participating States indicates that the annual reporting and record-keeping burden for this collection of information averages 2 minutes per response for 3,300,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record-keeping burden for this collection is estimated to be 112,000 hours.

The Department considered comments by the public on this collection of information in: (1) Evaluating whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) 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; (3) Enhancing the quality, usefulness, and clarity of the information to be collected; and (4) Minimizing the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments and suggestions on the information collection requirements should be sent to the Office of Information and Regulatory Affairs; OMB, Attention: Interior Desk Officer, Washington, DC 20503; and a courtesy copy to the Service Information Collection Clearance Officer, ms-224 ARLSQ, Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240.

Executive Order 12866

This rule was not subject to OMB review under Executive Order 12866.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities.

Civil Justice Reform

The Department has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Regulations Promulgation

Under 5 U.S.C. 553(d)(3), at least 30 days is required for a rule to become effective unless an agency has good cause to make it sooner. All participating States have prepared for a September 1 implementation date of the Program. Generally, migratory game bird hunting seasons may begin as early as September 1, 1998, and since migratory game bird hunters are required to have a Program validation on their person while hunting migratory game birds in these States, the Service believes good cause exists to make this rule effective on September 1, 1998.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and Recordkeeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is amended as set forth below.

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

2. Amend § 20.20 by revising paragraphs (a), (b), and (e) to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. 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. The information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 2 minutes per response for 3,300,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total annual reporting and record-keeping burden for this collection is estimated to be 112,000 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, ms–224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in any State except Hawaii must have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and must have on his or her person evidence, provided by that State, of compliance with this requirement.

* * * * *

(e) *State responsibilities.* The State hunting licensing authority will ask each licensed migratory bird hunter in the respective State to report approximately how many ducks, geese, doves, and woodcock he or she bagged the previous year, whether he or she hunted coots, snipe, rails, and/or gallinules the previous year, and, in States that have band-tailed pigeon hunting seasons, whether he or she intends to hunt band-tailed pigeons during the current year.

Dated: August 26, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–23541 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 169
Tuesday, September 1, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–035–1]

Importation of Orchids in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations governing the importation of plants and plant products to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We have assessed the pest risks associated with the importation of *Phalaenopsis* spp. orchids established in growing media and have determined that the degree of pest risk is no greater than the pest risk associated with the importation of bare-rooted *Phalaenopsis* spp. orchids, which may already be imported under the regulations. This proposed rule would allow *Phalaenopsis* spp. orchids established in growing media to be imported into the United States under certain conditions.

DATES: Consideration will be given only to comments received on or before November 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–035–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–035–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; fax (301) 734–5786; e-mail: Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations) restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Paragraph § 319.37–8(a) of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

That combination approach found in § 319.37–8(e) provides conditions under which plants from nine listed genera may be imported into the United States established in an approved growing medium. In addition to specifying the types of plants that may be imported, § 319.37–8(e) also:

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the plant protection service of the country where the plants are grown and between the foreign plant protection service and the grower;
- Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);
- Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and
- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

In 1997, the Government of Taiwan requested that APHIS consider amending the regulations to allow orchids of the genus *Phalaenopsis*—commonly known as moth orchids—to be imported into the United States under the provisions of § 319.37–8(e). Taiwan is the largest exporter of *Phalaenopsis* spp. orchids to the United States, exporting most of them as bare-rooted plants under the provisions of § 319.37–8(a). Several other countries, notably Thailand and The Netherlands, also export orchids, including *Phalaenopsis* spp. orchids, to the United States. In its request, the Taiwanese Government specifically requested that we allow *Phalaenopsis* spp. orchids to be imported into the United States established in sphagnum moss, which is one of the approved growing media listed in § 319.37–8(e)(1).

The regulations in § 319.37–8(g) provide that a request such as that made

by Taiwan to allow the importation of additional taxa of plants established in growing media will be evaluated by APHIS using specific pest risk evaluation standards. That analysis is conducted to determine the plant pest risks associated with each requested plant article and to determine whether or not APHIS will propose to allow the requested plant article established in growing media to be imported into the United States. The pest risk evaluation, the standards for which are set forth in § 319.37–8 (g)(1) through (g)(4), involves collecting commodity information, cataloging quarantine pests, conducting individual pest risk assessments, and determining an overall estimation of risk based on a compilation of the component estimates.

After receiving Taiwan's request to allow the importation of *Phalaenopsis* spp. orchids established in growing media, APHIS conducted the required pest risk analysis in accordance with the standards described above. (The analysis is described in a qualitative, pathway-initiated pest risk assessment titled ''Importation of Moth Orchid (*Phalaenopsis* spp.) Seedlings from Taiwan in Growing Media into the United States,'' copies of which are available through the person listed under **FOR FURTHER INFORMATION CONTACT.**) The pest risk assessment identified several arthropod pests (*Planococcus minor, Spodoptera litura,* and *Spodoptera* sp.), mollusks (*Acusta* (*Bradybaena*) *tourranensis* and *Bradybaena* sp.), and fungi (*Colletotrichum phalaenopsidis, Cylindrosporium phalaenopsidis, Phomopsis orchidophila,* and *Sphaerulina phalaenopsidis*) as the plant pests most likely to travel with the plant and having the greatest potential for economic damage. However, the pest risk assessment acknowledged that the risk presented by these plant pests is consistent with any propagative epiphytic orchid materials and pest associations. Further, it is important to note that those plant pest risks were identified in the absence of the mitigative effects of the requirements of § 319.37–8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants. Given that, the pest risk assessment concluded that it is likely that the risk of *Phalaenopsis* spp. orchids, or any other epiphytic orchid, grown in sphagnum moss (an approved growing medium) under modern conditions (i.e., the conditions required by § 319.37–8(e)) is no greater than that posed by epiphytic orchid material currently allowed entry as bare-rooted plants or on other approved epiphytic growing media (tree fern slabs, coconut husks, or coconut fiber).

Based on the conclusions of the pest risk assessment, we have determined that the importation of *Phalaenopsis* spp. orchids from any country—not just Taiwan—under the conditions required by § 319.37–8(e) would pose no greater plant pest risk than is posed by the importation of epiphytic orchid material currently allowed entry from any country as bare-rooted plants under § 319.37–8(a) or established on other approved epiphytic growing media (tree fern slabs, coconut husks, or coconut fiber) under § 319.37–8(d). On the basis of that determination, we are proposing to amend the regulations in § 319.37–8(e) by adding the genus *Phalaenopsis* to the list of genera that may be imported established in approved growing media. This proposed change would allow *Phalaenopsis* spp. orchids to be imported into the United States established in approved growing media from any country provided the orchids were produced, handled, and imported in accordance with the requirements of § 319.37–8(e) and are accompanied at the time of importation by a phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that those requirements have been met.

Miscellaneous

As part of this proposed rule, we are also proposing to renumber an incorrect footnote reference in § 319.37–8.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this proposed rule would result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165 and 167), the Secretary of Agriculture is authorized to regulate the importation of plants and plant products to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification criteria. This proposal follows the completion of our analysis of the pest risks associated with the importation of *Phalaenopsis* spp. orchids established in growing media and our determination that the degree of pest risk is no greater than the pest risk associated with the importation of bare-rooted *Phalaenopsis* spp. orchids. This proposed rule would allow *Phalaenopsis* spp. orchids established in approved growing media to be imported into the United States under certain conditions.

Economic data on potted orchid plants in general is scarce, and specific data on potted *Phalaenopsis* spp. orchids in particular is virtually nonexistent. Nevertheless, certain conclusions and inferences regarding the potential economic impact of the proposed rule are possible.

Domestic Production

The National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture (USDA) publishes data on the value and production of potted orchid plants in the United States. However, that data is of limited usefulness for this analysis because it: (1) Shows only aggregate data for all types of orchid plants, and does not offer specific data for *Phalaenopsis* spp. orchids as a separate orchid type; (2) is available only for the year 1996; (3) includes only the larger producers, i.e., those with annual gross sales of $100,000 or more; and (4) includes only producers in 36 States.

The NASS data shows that there were 169 growers of potted orchid plants in the United States in 1996. These 169 growers sold a combined 8.2 million potted orchids that year, with an equivalent wholesale value of $42.7 million, for an average of $252,781 per grower. Of the 8.2 million potted orchids sold, 5.1 million (62 percent) were less than 5 inches in diameter. The average wholesale price of pots less than 5 inches in diameter was $3.90; the average wholesale price for pots 5 inches or more in diameter was $7.30.

The 8.2 million pots were produced in a 6.3 million sq. ft. area, an average of 36,982 sq. ft. for each of the 169 growers. Three States—California, Florida, and Hawaii—accounted for 55 percent of the growers and 92 percent of the pots sold in 1996. Florida alone accounted for about 25 percent of the growers and about 50 percent of the pots sold (USDA, NASS, ''Floriculture Crops, 1996 Summary''). The American Orchid Society (AOS) does not collect statistical data on the production of potted *Phalaenopsis* spp. orchids in the United States, but it estimates that about half of all potted orchid plants produced in the United States fall within that genus.

Imports and Exports

The USDA's Foreign Agriculture Service (FAS) collects and publishes data on U.S. imports and exports of orchid plants. The FAS data is also of limited usefulness for the purposes of this analysis because it, too, shows only aggregate data for all types of orchid plants without separating out figures for separate orchid types such as *Phalaenopsis*.

As noted in the background section of this proposed rule, most of the *Phalaenopsis* spp. orchids currently imported into the United States arrive as bare-rooted plants. We expect that complying with the growing, inspection, and treatment requirements of § 319.37–8(e) would increase costs for orchid producers in exporting countries. In addition, the cost of shipping orchids in growing media would be higher than the cost of shipping bare-rooted plants. Therefore, it is reasonable to expect that *Phalaenopsis* spp. orchids would be exported to the United States established in growing media only if the higher production and shipping costs were offset by the savings that would accompany the elimination of the costs associated with shipping the plants bare-rooted and then preparing them for sale after their arrival (i.e., de-potting the plants in the country of origin for importation purposes, then re-potting the plants in the United States for sale purposes).

The FAS data shows that the United States is a net importer of orchid plants. In 1996, the United States imported 223 metric tons of orchid plants worth $4.3 million; Taiwan, Thailand, and The Netherlands together accounted for 93 percent of those imports. In 1997, 289 metric tons of orchid plants worth $6.6 million were imported into the United States, with almost 90 percent of those imports originating in either Taiwan (171 metric tons), Thailand (49 metric tons), or The Netherlands (33 metric tons). In comparison, the United States exported 52 metric tons of orchid plants in 1996 and 112 metric tons of orchid plants in 1997. The value of the 1997 U.S. exports was $235,330.

Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Those entities potentially affected by this proposed rule are growers, retailers, and importers of *Phalaenopsis* spp. orchids.

Domestic orchid growers sell their plants primarily at wholesale to general merchandise retailers (e.g., hardware or home improvement stores) and to specialty retailers such as specialty florists and landscapers. Domestic producers would be adversely affected if they lose plant sales to cheaper foreign imports. Currently, *Phalaenopsis* spp. orchids grown in Taiwan are sold in the United States at or below the price of domestically produced *Phalaenopsis* spp. orchids, according to the AOS. This proposed rule would likely enhance the competitive positions of the countries currently exporting orchids to the United States if, as discussed above, it serves to reduce the costs that are incurred in preparing imported, bare-rooted *Phalaenopsis* spp. orchids for sale in the United States.

Domestic growers are already competing with imports of bare-rooted *Phalaenopsis* spp. orchids, so the magnitude of any adverse economic impact would depend on the extent to which they rely on potted *Phalaenopsis* spp. orchids as a source of their overall revenue, the extent to which their sales of potted *Phalaenopsis* spp. orchids are displaced by imports, and the amount of any increase in the overall level of orchid plant imports. Most orchid producers grow only orchids, and many of those—especially the larger producers—grow only one type of orchid. The number of producers who grow potted *Phalaenopsis* spp. orchids exclusively, i.e., those who could be affected most by the rule change, is unknown. However, many producers appear to be in that category, since the AOS estimates that about half of all potted orchid plants produced by U.S. growers are of the genus *Phalaenopsis*.

The amount of lost sales would depend, in turn, on the price differential between domestic and foreign plants and on the volume of plant imports, both of which are unknown at this time. If the price differential in favor of imports was not significant, it is conceivable that some retailers would continue to purchase their plants from domestic growers, especially if those growers provided superior service or other non-price advantages. The volume of imports is significant because it could be too small to satisfy the demand of all retailers, leaving some with no other option but to purchase plants from domestic growers.

The availability of cheaper foreign imports would likely benefit plant retailers and importers. Retailers would benefit because they could pass the savings from lower wholesale prices on to their customers, creating an environment that would lead to increased sales volume and revenue. Importers would benefit from the income that the increased business activity would produce.

The number of commercial growers of potted *Phalaenopsis* spp. orchids in the United States is unknown, but there are at least 300 to 400 producers who grow one or more of the various types of potted orchid plants, since that is the number of growers who advertise their products through the AOS. The number of retailers who sell potted *Phalaenopsis* spp. orchids is also unknown, as is the number of importers. Nevertheless, it is reasonable to assume that most of the entities potentially affected by this proposed rule are small, at least by U.S. Small Business Administration's (SBA) standards. This assumption is based on composite data for providers of the same and similar services in the United States. In 1992, the per-farm average gross receipts for all 38,569 U.S. farms in Standard Industrial Classification (SIC) 0181 (''Ornamental Floriculture and Nursery Products,'' which includes potted orchid producers) was $174,431, well below the SBA's small entity threshold of $0.5 million for those farms. Similarly, the 1993 per-firm average gross receipts for all 9,867 U.S. firms in SIC 5261 (''Retail Nurseries, Lawn and Garden Supply Stores,'' which includes plant retailers) was $688,898, well below the SBA's small entity threshold of $5 million. In 1993, there were 3,877 U.S. firms in SIC 5193 (''Flowers, Nursery Stock, and Florists' Supplies,'' which includes plant importers), and 98 percent of those firms had fewer than 100 employees, the SBA's small entity threshold.

Alternatives Considered

Two alternatives to this proposed rule were considered: (1) To make no changes in the regulations and (2) to limit the scope of the proposed rule to *Phalaenopsis* spp. orchids from Taiwan. We rejected the first alternative—making no change in the regulations—after determining that the degree of pest risk associated with the importation of *Phalaenopsis* spp. orchids in growing

media under the conditions set forth in § 319.37–8(e) is no greater than the pest risk associated with the importation of bare-rooted *Phalaenopsis* spp. orchids. Because there is no greater risk involved, we have no plant pest-based rationale for rejecting the Taiwanese request that we consider allowing the importation of *Phalaenopsis* spp. orchids in growing media. Similarly, we rejected the second alternative of limiting the scope of the proposal to *Phalaenopsis* spp. orchids from Taiwan because our pest risk assessment indicated that *Phalaenopsis* spp. orchids produced in accordance with the growing, inspection, and certification requirements of the regulations could be safely imported from any country, regardless of specific pest associations.

Executive Order 12988

This proposed rule would allow the importation of *Phalaenopsis* orchids established in growing media under certain conditions. If this proposed rule is adopted, State and local laws and regulations regarding *Phalaenopsis* orchids imported under this rule would be preempted while the plants are in foreign commerce. Some nursery stock articles are imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect would be given to this rule, and this rule would not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are proposing to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.37–8 [Amended]

2. In § 319.37–8, paragraph (e), the introductory text of the paragraph would be amended by removing the footnote reference 11 immediately after the word ''*Nidularium*,'' and adding the footnote reference 10 in its place, and by adding the word ''*Phalaenopsis*,'' immediately after the word ''*Peperomia*,''.

Done in Washington, DC, this 25th day of August 1998.

Alfred S. Elder,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–23406 Filed 8–31–98; 8:45 am]

BILLING CODE 3410–34–P

Notices

Federal Register

Vol. 63, No. 169

Tuesday, September 1, 1998

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

Office of the Secretary

Alaska Underground Storage Tank Financial Assistance Program, Tank Cleanup Grant and Loan Program: Determination of Primary Purpose of Program Payments for Consideration as Excludable from Income Under Section 126 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that all grant payments made under the Tank Cleanup Grant and Loan Program within the Alaska Underground Storage Tank Financial Assistance Program are made primarily for the purposes of conserving soil and water resources and for protecting or restoring the environment. This determination is made in accordance with section 126 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 126). This determination permits recipients of these payments to exclude the payments from gross income to the extent allowed by the Internal Revenue Service.

ADDITIONAL INFORMATION OR COMMENTS: Commissioner, Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Juneau, Alaska 99801, (907) 465–5050; or Director, Conservation Operations Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 720–1845.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 126), provides that certain payments made to persons under State conservation programs may be excluded from the recipient's gross income for Federal income tax purposes, if the Secretary of Agriculture determines that the payments are made ''primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.'' The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a ''primary purpose'' determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not increase substantially the annual income derived from the property benefitted by the payments.

The State of Alaska Department of Environmental Conservation (ADEC) has a Tank Cleanup Grant and Loan Program within the Underground Storage Tank Financial Assistance Program. This program was established through an amendment to a portion of Alaska Statute 46.03, effective September 5, 1990. The program is administered by ADEC in accordance with Underground Storage Tank Regulations, 18 AAC 78. Funding for the program comes from the Storage Tank Assistance Fund. The objectives of the Tank Cleanup Grant and Loan Program are to clean up existing leaks associated with underground petroleum storage tanks systems in order to conserve soil and water, and to protect or restore the environment. The objectives of this program are achieved by awarding grants to fund a portion of project costs for cleanup activities at facilities that have reported releases. Eligible project costs may include, but are not limited to:

1. Tank removal and soil excavation;
2. Reports, designs, and plans;
3. Boring and monitoring well installation;
4. Soil and water testing;
5. Soil treatment and disposal;
6. Water treatment and disposal;
7. Force account charges;
8. Tank tightness testing;
9. Assessing a site for contamination from underground storage tanks; and
10. Other costs (must be identified).

All costs funded by the Tank Cleanup Grant and Loan Program are for activities described in a workplan or corrective action plan, which is determined by the ADEC to protect adequately human health, safety, and the environment.

Procedural Matters

The authorizing legislation, regulations, and operating procedures for the Alaska Tank Cleanup Grant and Loan Program have been examined using criteria set forth in 7 CFR Part 14. The U.S. Department of Agriculture has concluded that the grant payments made under this program are made to provide financial assistance to eligible persons for the conservation of soil and water and to protect or restore the environment. A ''Record of Decision, Alaska Tank Cleanup Grant and Loan Program: Primary Purpose Determination for Federal Tax Purposes'' has been prepared and is available upon request from the Director, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, or from the Commissioner, Alaska Department of Environmental Conservation, 410 Willoughby Street, Juneau, Alaska 99801.

Determination

As required by section 126(b) of the Internal Revenue Code of 1986, as amended, I have examined the authorizing legislation, regulations, and operating procedures regarding the Alaska Tank Cleanup Grant and Loan Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all grant payments for the cleanup of leaks associated with underground petroleum storage tank systems made under this program are primarily for the purposes of soil and water conservation and for protecting or restoring the environment. Subject to further determination from the Secretary of the Treasury, this determination permits grant payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such payments made under the Alaska Tank Cleanup Grant and Loan Program.

Signed at Washington, DC, on August 26, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–23520 Filed 8–31–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Alternative Fueled Vehicle Refueling System Program (Refueling System Program); Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all cost-share payments made to individuals by the State of Arizona under the Refueling System Program are made primarily for the purpose of protecting or restoring the environment. This determination is made in accordance with section 126 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 126). This determination permits recipients of these cost-share payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

ADDITIONAL INFORMATION OR COMMENTS: Jackie Vieh, Director of the Arizona Department of Commerce, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, (602) 280–1300; Amanda Ormond, Energy Office Director, Arizona Department of Commerce, 3800 North Central Avenue, Suite 1200, Phoenix, Arizona 85012, (602) 280–1402; or Conservation Operations Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 720–1845.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 126), provides that certain payments made to persons under State conservation programs may be excluded from the recipient's gross income for Federal income tax purposes, if the Secretary of Agriculture determines that payments are made ''primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.'' The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a ''primary purpose'' determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not increase substantially the annual income derived from the property benefited by the payments.

One of Arizona's air quality improvement programs is the alternative fuel vehicle program. This comprehensive program provides various incentives to individuals, businesses, government, and industry to encourage the use of alternative fuels. The incentives include tax deductions and credits, a reduced vehicle license tax, access to high occupancy vehicle lanes, grants to public entities for alternative fuel vehicles, and grants to build infrastructure. The Arizona Legislature began crafting this program in 1988. In 1994, House Bill 2575 was enacted in the Forty-first Legislature Second Regular Session. As part of Arizona's State Implementation Plan (SIP) submitted to the Environmental Protection Agency, this bill required government fleets operating in Arizona to convert a percentage of their vehicles to operate on alternative fuels. These fuels were identified as natural gas, liquid petroleum gas, hydrogen, electric, and alcohol fuels with at least 85 percent alcohol. The percentage of the fleets to be converted stated at 18 percent in 1995, and increases to 75 percent by the year 2000 and every year thereafter. The mandates apply to State fleets, city fleets, county fleets, school districts, and the Federal fleets operating in the Phoenix metropolitan area.

Another part of House Bill 2575, the Refueling System Program, provides incentives for individuals to convert or purchase alternative fuel vehicles and install refueling facilities on their properties. These incentives are in the form of subtractions from adjusted gross income, credit on tax liabilities, and grants. One of the grants available, provided by Arizona Revised Statute (ARS) 41–1516(c)(2), is a grant of up to $1,000 for the purchase and installation of an alternative fuel delivery system for use on the individual's property in Arizona. The purpose of providing these incentives is to increase the use of alternative fuel vehicles, which emit less tailpipe emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen, in Arizona. There are numerous reports on alternative fuel vehicles that indicate a significant reduction in air pollutants versus gasoline powered vehicles. The grant is for the cost of the refueling equipment and the installation of the equipment, with the total grant not to exceed $1,000. The grant will never be awarded for more than the actual cost of the refueling system, and the grant is only for use by the individual.

Individuals who want to apply for this grant must complete an application form that asks for information about the equipment and installation, including the license number of the installing licensed contractors and equipment suppliers. Information on the alternative fuel vehicle(s) must also be supplied. Any taxpayer wishing to receive a tax credit or subtraction on an alternative fuel vehicle must first have the vehicle certified by the Arizona Department of Commerce Energy Office.

Several types of home fueling equipment are expected to be installed on individuals' properties as a result of this program. One possible system is a compressor for natural gas, so that individuals with a Compressed Natural Gas vehicle can fill their vehicle tanks overnight by connecting to their homes' natural gas lines. A natural gas compressor can be purchased for approximately $4,000, plus installation. Another type of alternative fueling system that is expected to be used as a result of this program is an electric vehicle recharging system. A recharging system can be purchased for approximately $2,000, and the infrastructure required for the recharging system may cost up to $750. The $1,000 grant is designed to help offset these costs.

Procedural Matters

The authorizing legislation, regulations, and operating procedures regarding the Refueling System Program have been examined using the criteria set forth in 7 CFR Part 14. The U.S. Department of Agriculture has concluded that the grant payments made for implementation of best management practices under this program are made primarily for the purpose of protecting or restoring the environment. A ''Record of Decision, Alternative Fueled Vehicle Refueling System Program, Primary Purpose Determination for Federal Tax Purposes'' has been prepared and is available upon request from the Director, Conservation Operations Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 720–1845; or the Director of Commerce, Arizona Department of Commerce, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, (602) 280–1300.

Determination

As required by section 126(b) of the Internal Revenue Code of 1986, as amended, I have examined the authorizing legislation, regulations, and operating procedures regarding the

Alternative Fueled Vehicle Refueling System Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all grant payments for implementation of best management practices made under this program are primarily for the purpose of protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes,all or part of such payments made under said program.

Signed at Washington, D.C., on August 26, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–23518 Filed 8–31–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Cancellation of Fiscal Year 1998 Agricultural Telecommunications Program Solicitation of Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Cancellation of Fiscal Year 1998 Agricultural Telecommunications Program Solicitation of Proposals.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is canceling its Solicitation of Proposals for the Fiscal Year 1998 Agricultural Telecommunications Program to comply with Section 245 of the Agricultural Research, Extension, and Education Reform Act of 1998. Proposals submitted to CSREES will be returned to the sender.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Ebaugh, Director, Office of Extramural Programs on (202) 720–9181; e-mail, lebaugh@reeusda.gov; fax, (202) 401–7752.

ADDRESSES: Written comments or requests for information may be sent to: Ms. Louise Ebaugh, Director, Office of Extramural Programs, Cooperative State, Research, Education and Extension Service, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2299.

SUPPLEMENTARY INFORMATION: The Agricultural Telecommunications Program is authorized in Section 1673 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACTA), Pub. L. 101–624 (7 U.S.C. 5926). On June 18, 1998, by **Federal Register** notice (63 FR 33490), CSREES notified eligible organizations of the availability of funding and set forth application procedures and selection criteria for the fiscal year 1998 Agricultural Telecommunications Program. On June 23, 1998, President Clinton signed into law the Agricultural Research, Extension, and Education Reform Act of 1998, AREERA,(Pub. L. 105–185). Section 245 of AREERA modifies Section 1673 of FACTA to require the Secretary of Agriculture to administer an Agricultural Telecommunications Program through a grant provided to the distance education consortium known as A*DEC under terms and conditions established by the Secretary. Therefore, CSREES is canceling the Fiscal Year 1998 Agricultural Telecommunications Program Solicitation of Proposals and will administer the program through an award to A*DEC to enable it to administer a competitive grant project under the program. It is the intent of CSREES to issue an award to A*DEC on or before September 30, 1998.

Information regarding the Agricultural Telecommunications Program, including instructions for the submission of proposals, will be published by A*DEC.

Done at Washington, D.C., on this 26th day of August, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–23521 Filed 8–31–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Calendar Year 1998

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On August 19, 1998, the Under Secretary of Agriculture for Farm and Foreign Agricultural Services determined that not more than 2.5 million metric tons of surplus wheat that may be acquired by CCC would be available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during calendar year 1998.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: August 14, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–23519 Filed 8–31–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Cairo (IL), Louisiana, and North Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Cairo Grain Inspection Agency, Inc. (Cairo), the Louisiana Department of Agriculture and Forestry (Louisiana), and the North Carolina Department of Agriculture (North Carolina) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: October 1, 1998, for Louisiana and North Carolina and November 1, 1998, for Cairo.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1998, **Federal Register** (63 FR 15827), GIPSA asked persons interested in providing official services in the geographic areas assigned to Cairo, Louisiana, and North Carolina to submit an application for designation. Applications were due by April 30, 1998. Cairo, Louisiana, and North Carolina, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Cairo, Louisiana, and North Carolina were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Cairo, Louisiana, and North Carolina are able to provide official services in the geographic areas

for which they applied. Effective November 1, 1998, and ending September 30, 2001, Cairo is designated to provide official services in the geographic area specified in the April 1, 1998, **Federal Register**. Effective October 1, 1998, and ending September 30, 2001, Louisiana and North Carolina are designated to provide official services in the geographic area specified in the April 1, 1998, **Federal Register**.

Interested persons may obtain official services by contacting Cairo at 618–734–0689, Louisiana at 318–487–5088, and North Carolina at 919–733–4491.

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

Dated: August 24, 1998.

Janet M. Hart,

Acting Director, Compliance Division.

[FR Doc. 98–23384 Filed 8–31–98; 8:45 am]

BILLING CODE 3410–EN–P

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 2:00 p.m. on September 18, 1998, at the Central Maine Power Offices, Conference Room, 83 Edison Drive, Augusta, Maine 04336. The purpose of the meeting is to review a draft of its report, ''Limited English Proficiency Students in Maine: An Assessment of Equal Educational Opportunities;'' be briefed by the Maine Attorney General's Office on civil rights issues in Maine, and plan future events.

Persons desiring additional information, or planning a presentation to the Committee, should contact 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 ten (10) 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, August 26, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–23407 Filed 8–31–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders, findings, and/or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders and/or suspended investigations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders, findings, or suspended investigations:

DOC case No.	ITC case No.	Country	Product
C–351–037	C4–21	Brazil	Cotton Yarn.
A–475–059	AA–167	Italy	Pressure Sensitive Tape.
A–428–062	AA–172	Germany	Animal Glue.
A–433–064	AA–173	Austria	Railway Track Equipment.
A–588–066	AA–176	Japan	Impression Fabric.
A–588–068	AA–188	Japan	Steel Wire Strand.
A–405–071	AA–191	Finland	Rayon Staple Fiber.
C–401–056	C4–13	Sweden	Rayon Staple Fiber.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: 'http://www.ita.doc.gov/import_admin/records/sunset/'.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any

updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties:

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations,* if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 27, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23497 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results of New Shipper Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of New Shipper Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting a new shipper administrative review of the countervailing duty order on certain pasta from Italy. We preliminarily determine the net subsidy to be 1.14 percent *ad valorem* for CO.R.EX. S.r.L. for the period January 1, 1997 through December 31, 1997. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, Todd Hansen, or Vincent Kane, Office of AD/CVD Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4207, 482–1276, or 482–2815, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995. All other references are to the Department of Commerce's (the Department) regulations at 19 CFR Part 351 et. seq., *Antidumping duties: Countervailing Duties; Final Rule,* 62 FR 27296, May 19, 1997, unless otherwise indicated.

Background

On July 23, 1996, the Department published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

On January 16, 1998, the Department received a request from CO.R.EX. S.r.L. (''CO.R.EX.'') for a new shipper review of the countervailing duty order on certain pasta from Italy pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and in accordance with 19 CFR 351.214(b) of the Department's regulations.

On February 25, 1998, we initiated a new shipper review for the period January 1, 1997 through December 31, 1997 (63 FR 10590). The review covers an exporter of the subject merchandise, CO.R.EX., and CO.R.EX.'s subcontractor. (CO.R.EX. does not produce pasta but has a subcontractor produce pasta for it from semolina supplied by CO.R.EX.) Also, this review covers 24 programs.

Responses from CO.R.EX. and its subcontractor were received on April 20, 1998, and supplementary responses were received on May 29, June 16, and August 14, 1998.

Scope of the Review

The merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations,* 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, or by QC&I International Services. Furthermore, multicolored pasta imported in kitchen display bottles of decorative glass, which are sealed with cork or paraffin and bound with raffia, is excluded from the scope of this review.

The merchandise under review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Furthermore, on July 30, 1998, the Department issued a scope ruling that multipacks consisting of six one-pound packages of pasta, which are shrinked wrapped into a single package, are within the scope of the orders. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc.)

Period of Review

The period of review (''POR'') for which we are measuring subsidies is calendar year 1997.

Subsidies Valuation Information

Benchmark for Long-term Loans and Discount Rate: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under investigation were given. In the *Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Wire Rod from Italy,* 63 FR 87,077 (July 29, 1998), the Department determined, based on information gathered during verification, that the Italian ABI prime rate is the most suitable benchmark for long-term financing to Italian companies. Therefore, we used the Italian ABI prime rate increased by the average spread over the ABI prime rate charged by banks on loans to commercial customers as the benchmark for long-term loans and the discount rate.

Allocation Period: In *British Steel plc.* v. *United States,* 879 F.Supp. 1254, 1289 (CIT 1955), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix,* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993) (''*GIA*''). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F.Supp 426, 439 (CIT 1996). Accordingly, the Department has applied this method to determine the appropriate allocation period in this review.

Consistent with our approach in the investigation segment of this proceeding, *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy* (61 FR 30288, June 14, 1996) (''*Pasta from Italy*''), we determined that the Law 64/86 grant received by CO.R.EX.'s subcontractor was non-recurring. For purposes of allocating the Law 64/86 grant, CO.R.EX.'s subcontractor submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. This AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past ten years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. In this manner, an AUL of 22 years was calculated for CO.R.EX.'s subcontractor. We have used this calculated AUL for the allocation period for the Law 64/86 industrial development grant, the only non-recurring subsidy received by respondents.

I. Programs Previously Determined to Confer Subsidies

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote industrial development in the Mezzogiorno. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed close to being saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament decided to abrogate Law 64/86. This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993. CO.R.EX.'s subcontractor benefitted from an industrial development grant during the POR.

In *Pasta from Italy,* the Department determined that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They provided a direct transfer of funds from the Government of Italy (GOI), bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A). In this new shipper review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

In *Pasta from Italy,* the Department treated these grants as ''non-recurring'' based on the analysis set forth in the Allocation section of the *GIA,* 58 FR at 37225. In the current new shipper review, we have found no reason to depart from this treatment.

In accordance with our past practice, we have allocated the grant, which exceeded 0.5 percent of sales in the year of receipt, over time. (See *GIA* at 58 FR 37226.)

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to CO.R.EX.'s subcontractor in the POR by its pasta sales. We then attributed a portion of this subsidy to CO.R.EX.'s sales of pasta based on processing fees paid by CO.R.EX to its subcontractor. Thus, we determine the countervailable subsidy for this program to be 0.18 percent *ad valorem* in the POR for CO.R.EX.

B. Social Security Reductions and Exemptions

1. Sgravi Benefits

Pursuant to Law 1089 of October 25, 1968, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period

of 10 years, provided that employment levels showed an increase over a base period.

CO.R.EX.'s subcontractor received Sgravi reductions and exemptions during the POR.

In *Pasta from Italy*, the Department determined that the social security reductions and exemptions were countervailable subsidies within the meaning of section 771(5) of the Act. They represented revenue foregone by the GOI and they conferred a benefit in the amount of the savings received by the companies. Also, they were found to be specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we divided the total savings in social security contributions realized by CO.R.EX.'s subcontractor during the POR by its total sales during the same period. We then attributed a portion of this subsidy to CO.R.EX. based on processing fees paid by CO.R.EX. to its subcontractor. On this basis, we calculated the countervailable subsidy from this program to be 0.01 percent *ad valorem* in 1997 for CO.R.EX.

2. Fiscalizzazione Benefits

In addition to the Sgravi deductions described above, the GOI provides Social Security benefits of another type, called ''Fiscalizzazione.'' Fiscalizzazione is a nationwide measure which provides a reduction of certain social security payments related to health care or insurance. The program provides an equivalent level of deductions throughout Italy for contributions related to tuberculosis, orphans, and pensions. However, the program provides a higher deduction from contributions to the National Health Insurance system for manufacturing enterprises located in southern Italy compared to those located in northern Italy. During the POR, the differential was 3.00 percent of base salary.

CO.R.EX.'s subcontractor received the higher level of Fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR.

In *Pasta from Italy*, the Department determined that the Fiscalizzazione reductions were countervailable subsidies within the meaning of section 771(5) of the Act for companies with operations in southern Italy. They represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they were found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we divided the excess Fiscalizzazione deductions realized by CO.R.EX.'s subcontractor in the POR by its total sales. We then attributed a portion of the subcontractor's subsidy to CO.R.EX. based on processing fees paid by CO.R.EX. to its subcontractor. On this basis, we calculated the countervailable subsidy from this program for CO.R.EX. to be 0.06 percent *ad valorem* in the POR.

3. Law 407/90 Benefits

Law 407/90 grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years or more. A 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption.

During the POR, CO.R.EX. and its subcontractor received the higher level of Law 407 exemptions available to companies located in the Mezzogiorno.

In *Pasta from Italy*, the Department determined that the 100 percent exemption provided to companies with operations in southern Italy under Law 407 was a countervailable subsidy within the meaning of section 771(5). The 100 percent exemption represented revenue foregone by the GOI and conferred a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, it was found to be regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy rate, we divided the amount of the Law 407 exemptions realized by CO.R.EX. in excess of the amount available in northern Italy by CO.R.EX.'s sales. We also divided the amount of the Law 407 exemptions realized by CO.R.EX.'s subcontractor in the POR in excess of the amount available in northern Italy by CO.R.EX.'s subcontractor's sales. We then attributed a portion of the subcontractor's subsidy to CO.R.EX. based on processing fees paid by CO.R.EX. to its subcontractor. On this basis, we calculated the countervailable subsidy from this program to be 0.06 percent *ad valorem* in the POR for CO.R.EX.

4. Law 863 Benefits

Law 863 provides for a reduction of social security payments of 25 percent for companies in northern Italy that hire employees who are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

CO.R.EX.'s subcontractor received the higher level of Law 863 reductions available to companies located in the Mezzogiorno during the POR.

In *Pasta from Italy*, the Department determined that the 100 percent reduction for companies with operations in the South were countervailable subsidies within the meaning of section 771(5) of the Act to the extent that they exceeded the reductions for companies in the North. They represented revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A). In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of this determination.

To calculate the countervailable subsidy, we divided the amount of the Law 863 reductions realized by CO.R.EX.'s subcontractor during the POR in excess of the amount available in northern Italy by its total sales during the same period. We then attributed a portion of this subsidy to CO.R.EX. based on processing fees paid by CO.R.EX. to its subcontractor. On this basis, we calculated the countervailable subsidy from this program to be 0.03 percent *ad valorem* in 1997 for CO.R.EX.

III. Programs Determined To Confer Subsidies in This Review

A. Debt Consolidation Law 341/95

The Ministry of Industry, in accordance with the provisions of Law 341/95, provides interest contributions on medium-term debt consolidation loans to small- and medium-sized companies located in depressed areas. The interest rate on these loans is set at the Bank of Italy's reference rate with the GOI's interest contributions serving to reduce this rate.

CO.R.EX. obtained a Law 341 loan in 1996 and received interest contributions on the loan during the POR.

We preliminarily determine that the loan and interest contributions under

Law 341 are countervailable subsidies within the meaning of section 771(5). They were a direct transfer of funds from the GOI providing a benefit in the amount of the difference between interest paid at the benchmark rate and interest paid by CO.R.EX. after accounting for the GOI's interest contributions. Also, they were found to be regionally specific within the meaning of section 771(5A).

Because the loan received by CO.R.EX. is a long-term loan with a variable interest rate and we did not have a variable benchmark rate, we treated it as a series of short-term loans and calculated the interest savings during the POR to be the sum of the interest contributions received on the loan during the POR and the difference in interest on the loan as calculated at the reference rate and at the benchmark rate. On this basis, we determine the countervailable subsidy for this program to be 0.80 percent *ad valorem* during the POR.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that CO.R.EX. and its subcontractor did not apply for or receive benefits under the following programs during the POR:

A. VAT Reductions
B. Export Credits Under Law 227/77
C. Capital Grants Under Law 675/77
D. Retraining Grants Under Law 675/77
E. Interest Contributions on Bank Loans Under Law 675/77
F. Interest Grants Financed by IRI Bonds
G. Preferential Financing for Export Promotion Under Law 394/81
H. Corporate Income Tax (IRPEG) Exemptions
I. European Agricultural Guidance and Guarantee Fund
J. Urban Redevelopment Under Law 181
K. Local Income Tax (ILOR) Exemptions
L. Industrial Development Loans Under Law 64/86
M. Export Marketing Grants Under Law 304/90
N. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
O. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77
P. European Social Fund
Q. European Regional Development Fund
R. Export Restitution Payments

Preliminary Results of Review

For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for CO.R.EX. to be 1.14 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department will instruct the U.S. Customs Service to assess countervailing duties at this net subsidy rate on all entries of the subject merchandise from CO.R.EX. entered on or after January 1, 1997 and on or before December 31, 1997.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 1.14 percent of the f.o.b. invoice value on all shipments of the subject merchandise from CO.R.EX. entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this new shipper review. The cash deposit rates for all other producers/exporters remain unchanged from the last completed administrative review (see *Final Results of Countervailing Duty Administrative Review: Certain Pasta from Italy* (63 FR 35665, August 14, 1998).)

Public Comment

Parties to this proceeding may request disclosure of the calculation methodology within five days of publication of this notice and interested parties may request a hearing no later than 30 days after the date of publication. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of these preliminary results. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: August 24, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23510 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081198D]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Observer Advisory Committee has scheduled a meeting.

DATES: The meeting will be held on September 23–24 1998, beginning at 8:30 a.m. on Wednesday, September 23, 1998.

ADDRESSES: The meeting will be held in the Observer Training Room, Building 4, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The Committee will continue discussions of observer coverage levels and goals of the program, as well as necessary short-term changes to the existing program while a new fee-based funding mechanism is being developed.

Although other issues not contained in this agenda may come before this committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23528 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081198B]

North Pacific Fishery Management Council (NPFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a committee meeting.

SUMMARY: The NPFMC's Improved Retention/Improved Utilization (IR/IU) Committee has scheduled a meeting.

DATES: The meeting will be held on September 21–22, 1998, beginning at 9:00 a.m. on Monday, September 21.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, Room 2079, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The Committee will review the draft environmental assessment and regulatory impact review for proposed changes to the IR/IU program.

Although other issues may come before this committee for discussion, in accordance with the Magnuson-Stevens Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those specifically identified in the agenda listed as available by this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23530 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081198C]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's Western/Central Gulf of Alaska Management Committee has scheduled a meeting.

DATES: The meeting will be held on Friday, September 25, 1998, beginning at 9:00 a.m.

ADDRESSES: The meeting will be held in the on Historic Federal Building, 605 W. 4th Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The Committee will review analysis for a ''fair start'' provision of the Pacific cod longline fisheries, review the 1998 pollock ''B'' season results, and discuss possible additional management measures for the Western/Central Gulf of Alaska fisheries.

Although other issues not on the agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23532 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082098H]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet during September 13–18, 1998. The Council meeting will begin on Monday, September 14, at 1 p.m. with a closed session to discuss litigation and personnel matters. The open session begins at 1:30 p.m. The Council will reconvene Tuesday through Friday at 8 a.m. in open session. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Red Lion's Sacramento Inn, 1401 Arden Way, Sacramento, CA 95815; telephone: (916) 924–8041.

Council address: Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call

2. Oath of Office for New Members

3. Approve Agenda

4. Approve June 1998 Meeting Minutes

B. Dungeness Crab Management - Determine Need for Council Plan

C. Highly Migratory Species (HMS) Management - Consider Coordinated Management in the Pacific

D. Pacific Halibut Management

1. Status of 1998 Fisheries

2. Proposed Changes to Regulations for 1999

E. Coastal Pelagic Species Management - Adopt Final Plan Amendments

F. Habitat Issues

G. Salmon Management

1. Sequence of Events and Status of Fisheries

2. Preliminary Draft Plan Amendments

3. Risk Analysis for Oregon Coastal Natural Coho Plan Amendment
4. Review of Hooking Mortality and Encounter Rates
H. Groundfish Management
1. Status of Regulations and Other NMFS Activities
2. Final Plan Amendments
3. Preliminary Stock Assessments, Harvest Levels, and Other Specifications for 1999
4. Stocks to be Assessed in 1999
5. Exempted Fishing Permit for Depth-Specific Sablefish Sampling
6. Lingcod and Rockfish Allocation
7. Other Management Measures for 1999
8. Landing of Fish in Excess of Cumulative Limits (Overages)
9. Status of Fisheries and Inseason Adjustments
I. Administrative and Other Matters
1. Report of the Budget Committee
2. Status of Legislation
3. Report of the Council Chairs' Meeting
4. Research and Data Needs and Economic Data Plan
5. NMFS Report on West Coast Seals and Sea Lions
6. Appointments to Advisory Entities
7. Composition of Advisory Entities for 1999–2000
8. Approve November 1998 Agenda
9. Elect Chair and Vice-Chair for Annual Term Beginning October 1, 1998

Advisory Meetings

The Habitat Steering Group meets at 10 a.m. on Monday, September 14, to address issues and actions affecting habitat of fish species managed by the Council.

The Scientific and Statistical Committee will convene on Monday, September 14, at 8 a.m. and on Tuesday, September 15, at 8 a.m. to address scientific issues on the Council agenda.

The Groundfish Management Team will convene on Sunday, September 13, at 3 p.m., and on Monday, September 14 at 8 a.m., and will continue to meet throughout the week as necessary to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene on Monday, September 14, at 1 p.m., on Tuesday, September 15, at 8 a.m., and on Wednesday, September 16, at 8 a.m. to address groundfish management items on the Council agenda.

The Salmon Technical Team will convene on Monday, September 14, at 8 a.m., and on Tuesday, September 15, at 8 a.m. to address salmon management items on the Council agenda.

The Salmon Advisory Subpanel will convene on Monday, September 14, at 1 p.m., and on Tuesday, September 15, at 8 a.m. to address salmon management items on the Council agenda.

The HMS Policy Committee will meet on Monday, September 14, at 11 a.m. to discuss coodinated management in the U.S. exclusive economic zone (EEZ) of the Pacific and other timely HMS issues.

The Enforcement Consultants meet at 7 p.m. on Tuesday, September 15, to address enforcement issues relating to Council agenda items.

The Budget Committee meets on Wednesday, September 16, after Council adjournment, to review the status of the 1998 Council budget and develop a 1999 budget.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23529 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082098I]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Fishery Demonstration Projects Advisory Panel.

DATES: The meeting will be held on September 22–23, 1998, from 10:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: 808–522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Fishery Demonstration Projects Advisory Panel will discuss procedures for soliciting and evaluating applications for fishery demonstration projects and other issues as required.

Although other issues not on the agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23531 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082698A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a modification to scientific research permit 1053.

SUMMARY: Notice is hereby given that Molly Lutcavage, New England Aquarium, has applied in due form for a modification to scientific research permit 1053 to take listed leatherback turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before October 1, 1998.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (978–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Molly Lutcavage, New England Aquarium (1053), requests a modification to scientific research permit 1053 under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Dr. Lutcavage has requested a modification to scientific research permit 1053, issued to her in July 1997 to satellite tag, PIT tag, blood sample, weigh, measure, and photograph eight (8) listed leatherback (*Dermochelys* coriacea) turtles captured incidental to commercial fishing activities in the western north Atlantic ocean. Due primarily to fishery closures, no leatherback turtles have been captured; therefore, the applicant would like to modify her current research permit to allow direct in-water capture of 8 leatherback turtles. The turtles would be captured using a breakaway hoop net, a method that has been used successfully to capture porpoise, pinnipeds, and small cetaceans. Additionally, the applicant requests a 2-year extension to permit 1053 which will expire on December 31, 1998. The applicant has requested an extension through December 31, 2000.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: August 26, 1998.

Kevin Collins,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 98–23534 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080698C]

Marine Mammals; File No. 758–1459

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, has been issued a permit to take Northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On June 30, 1998, notice was published in the **Federal Register** (63 FR 35569) that a request for a scientific research permit to take Northern fur seals (*Callorhinus ursinus*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: August 21, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–23535 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 September 1998 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 24 August 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–23409 Filed 8–31–98; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

August 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for shift, carryover, carryforward and recrediting unused carryforward.

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 66057, published on December 17, 1997). Also see 62 FR 67625, published on December 29, 1997.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 27, 1998.

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 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 2, 1998, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	949,330 kilograms.
219	9,848,644 square meters.
225	4,033,717 square meters.
300/301	4,052,762 kilograms.
313–O [2]	12,185,416 square meters.
314–O [3]	66,517,908 square meters.
315–O [4]	29,950,657 square meters.
317–O/617/326–O [5]	27,459,333 square meters of which not more than 3,834,249 square meters shall be in Category 326–O.
336/636	649,467 dozen.
341	1,026,129 dozen.
342/642	389,493 dozen.
359–C/659–C [6]	1,400,045 kilograms.
359–S/659–S [7]	1,028,505 kilograms.
360	1,434,656 numbers.
369–S [8]	906,740 kilograms.
433	12,070 dozen.
443	94,663 numbers.
604–A [9]	660,360 kilograms.
611–O [10]	4,673,240 square meters.
613/614/615	26,019,560 square meters.
618–O [11]	3,447,922 square meters.
619/620	8,604,542 square meters.
625/626/627/628/629–O [12].	30,770,389 square meters.
638/639	1,541,664 dozen.
641	2,124,830 dozen.
643	272,785 numbers.
644	402,130 numbers.
645/646	817,768 dozen.
647/648	3,576,438 dozen.
847	244,054 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [13], 332, 333, 352, 359–O [14], 362, 363, 369–O [15], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [16], 464, 469pt [17], 603, 604–O [18], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [19], 666, 669–O [20], 670–O [21], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [22], as a group.	95,217,722 square meters equivalent.
In Group II subgroup	
435	49,622 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 617; Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[12] Categories 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[13] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[14] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt).

[15] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt).

[16] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[17] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[19] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt).

[20] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt).

[21] Category 670–O: All HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[22] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–23511 Filed 8–31–98; 8:45 am]

BILLING CODE 3510–DR–F

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 and OMB Number: Gulf War Illnesses Related Information Collections—Generic Clearance; OMB Number 0704-[To be Determined].

Type of Request: New Collection.

Number of Respondents: 3,507.

Responses Per Respondent: 1.

Annual Responses: 3,507.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 2,630.

Needs And Uses: The information collections addressed by this notice are necessary to facilitate the investigations of the Office of the Special Assistant for Gulf War Illnesses into the experiences of Gulf War veterans during the war that may be related to the illnesses experienced by some Gulf War veterans. The information collected will be used to determine which Gulf War veterans may have further information about potential exposure incidents, to discover if there are any other observed incidents of exposure, to contribute to a better understanding of the events during and after the Gulf War, and to encourage veterans to enroll in a Department of Defense or Veterans Affairs medical program.

Information collections covered in the proposed collection Chemical/Biological Incident Survey. Respondents are Gulf War veterans whose units were in the vicinity of a positive chemical/biological detection, alarm, or other reported incident. The purpose of this survey is to develop investigational leads to assist investigators in their search for confirmation of the presence or use of chemical or biological agents during the Gulf War.

Possible Weapons Sites. Respondents are Gulf War veterans who served in units that reported possible storage sites for chemical or biological weapons agents. The purpose of this survey is to develop possible investigational leads that may assist investigators in their search for confirmation of the presence or use of chemical or biological agents during the Gulf War.

Depleted Uranium. Respondents are Gulf War veterans who served in units that may have placed them in contact with equipment potentially contaminated with depleted uranium (DU). Veterans will include personnel who were in or on U.S. combat vehicles at the time they were struck by DU munitions fired from U.S. tanks and personnel who were in contact with equipment either as a member of unit involved in retrograde operations, or as a member of a battle damage assessment team.

Pesticide Exposure Survey. Respondents are Gulf War veterans. Outreach letters will be mailed to Gulf War veterans based on their unit assignment during the Gulf War and their period of deployment. Calls will be made to respondents to ask information on experiences with pesticides during the Gulf War deployment.

Pesticides Use/Application. Gulf War veterans who served as physicians, environmental science officers, entomologists, preventive medicine specialists, field sanitation team members, and veterans who served in logistics and supply positions will be contacted to determine which pesticides were used (including those purchased locally) and how they were employed in the Gulf during Operations Desert Shield and Desert Storm.

Water Contamination. Respondents will be preventive medicine specialists, field sanitation specialists, and transportation personnel involved with the maintenance of water transport vehicles who served in the Gulf War.

Food Contamination. Respondents will be preventive medicine specialists, field sanitation specialists, and food service personnel to determine what steps were taken to ensure the safety of the food provided to Gulf War troops.

Oil Well Fires. Respondents will be Gulf War veterans who reported contact with oil well fires in calls to the DoD Incident Reporting Line. Veterans will be contacted to get first hand accounts of their experience with oil well fire smoke, precautions they took, and the duration of their exposure under the oil well fire plume.

Retrograde Equipment. Respondents will be Gulf War veterans involved in vehicle cleaning operations prior to vehicles being shipped from the Gulf and personnel who accompanied vehicles during their retrograde shipment.

Armed Services Medical Department Personnel. Respondents will be medical personnel who served in the Gulf War. These personnel will be contacted to complete a survey of their experiences with medical surveillance, vaccine administration, and medical recordkeeping during the Gulf War deployment.

Combat Stress Control. Respondents will be military chaplains who served in the Gulf War. These chaplains will be surveyed to understand their experiences as participants in combat stress control.

Enemy Prisoners of War. Respondents will be Gulf War veterans who served in military police or medical units that were involved in the processing and treatment of enemy prisoners of war during the Gulf War deployment.

Petroleums, Oils, and Lubricants. Respondents will be Gulf War veterans who served in units during the Gulf War deployment that were involved in the acquisition, distribution, and use of petroleums, oils, and lubricants.

Personnel Deployed on Designated Deployments. Respondents will be former members of the Armed Services (including active and reserve component) who served during designated deployments. Personnel will be surveyed about their perceptions and experiences with Medical Force Protection, Medical Surveillance, and health support during the designated deployment.

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, 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: August 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–23391 Filed 8–31–98; 8:45am]

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: Application for Annuity—Certain Military Surviving Spouses; DD Form 2769; OMB Number 0704–0402.

Type of Request: Extension.

Number of Respondents: 400.

Responses Per Respondent: 1.

Annual Responses: 400.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 400.

Needs and Uses: The respondents of this information collection are surviving spouses of each member of the uniformed services who, (1) died before March 21, 1974, and was entitled to retired or retainer pay on the date of death or, (2) was a member of a reserve component of the Armed Forces during the period beginning on September 21, 1972, and ending on October 1, 1978, and at the time of the member's death would have been entitled to retired pay. The Defense Authorization Act of Fiscal Year 1998, Public Law 105–85, section 644, requires the Secretary of Defense to pay an annuity to qualified surviving spouses. The DD Form 2769, Application for Annuity—Certain Military Surviving Spouses, used in this information collection, provides a vehicle for the surviving spouse to apply for the benefit. The Department will use this information to determine if the applicant is eligible for the annuity benefit and make payment to the surviving spouse.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. 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 request 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: August 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–23392 Filed 8–31–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday September 16, 1998 from 0900 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest and to discuss an external research program. The agenda will also include further discussion and an update on efforts directed toward consolidation of the DAU structure into a unified educational institute.

The meeting is open to the public; however, because of space limitations, allocations of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: August 26, 1998.

L.M. Bynum,

Alternate, OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 98–23390 Filed 8–31–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement (DEIS) for Developing Home Port Facilities for Three NIMITZ-Class Aircraft Carriers in Support of the United States Pacific Fleet

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearing.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for Developing Home Port Facilities for Three Nimitz-Class Aircraft Carriers in Support of the United States Pacific Fleet. Public hearings will be held for the purpose to receive oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES: See Supplementary Information section for hearing dates.

ADDRESSES: See Supplementary Information section for hearing addresses.

FOR FURTHER INFORMATION CONTACT: Mr. John Coon, telephone (888) 428–6440.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for Developing Home Port Facilities for Three Nimitz-Class Aircraft Carriers in Support of the United States Pacific Fleet.

A Notice of Intent (NOI) for this EIS was published in the **Federal Register** on December 3, 1996. Public Scoping meetings were held in Bremerton, WA, on February 3, 1997; in Everett, WA, on February 4, 1997; in Pearl City, HI, on February 6, 1997; and in Coronado, CA, on February 10, 1997.

The U.S. Navy has analyzed the environmental effects resulting from construction and operation of facilities and infrastructure needed to support the home-porting of three aircraft carriers. Four possible alternative locations are being considered: Naval Air Station North Island (NASNI) Coronado near San Diego, CA; Puget Sound Naval Shipyard (PSNS) Bremerton, WA; Naval Station (NAVSTA) Everett, WA; and Pearl Harbor Naval Shipyard (PHNS) Pearl Harbor, HI.

The Navy proposes to construct and operate facilities and infrastructure needed to support the home-porting of three Nimitz-Class aircraft carriers in the U.S. Pacific Fleet. Two Nimitz-Class aircraft carriers will join the U.S. Pacific Fleet, replacing two conventionally powered aircraft carriers (CVs) currently home-ported at NASNI in the Naval Port San Diego, CA. The current location of a third Nimitz-Class aircraft carrier at NAVSTA Everett is being reevaluated in order to increase efficiency of support infrastructure, maintenance, and repair capabilities, and to enhance crew quality of life.

From the four alternative sites locations (NASNI, PSNS, NAVSTA Everett and PHNS), six different alternative home-porting configurations, including the no-action alternative were developed and analyzed. The Navy currently prefers Alternative Two, which would home port two additional Nimitz-Class aircraft carriers at NASNI (for a total of three Nimitz-Class aircraft carriers), home port a total of two Nimitz-Class aircraft carriers in the Pacific Northwest (one at PSNS and one

at NAVSTA Everett), and would not have any aircraft carrier at PHNS. Alternative Two would result in significant but mitigable impacts on marine biological resources at NASNI and PSNS. All other environmental impacts associated with Alternative Two would be less than significant.

Environmental resource areas addressed in the DEIS include geology, topography, and soils; dredging, hydrology, and water quality; pollution prevention; socioeconomic, environmental justice, schools, and housing; transportation/ circulation/ parking; public facilities and recreation; safety and environmental health; aesthetics; and utilities. Issue analysis includes an evaluation of the direct, indirect, short-term, and cumulative impacts; and irreversible and irretrievable commitment of resources associated with the proposed actions.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed and the Secretary of the Navy, or a designated representative, releases the Record of Decision.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DEIS is also available for public review at the following libraries:

—Coronado Public Library, 640 Orange Avenue, Coronado, CA.
—San Diego Library (Science & Industry Section), 820 E Street, San Diego, CA.
—Hawaii State Library, 478 South King Street, Honolulu, HI.
—Aiea Public Library, 99–143 Moanalua Road, Aiea, HI.
—Pearl City Public Library, 1138 Waimano Home Road, Pearl City, HI.
—Ewa Beach Public and School Library, 91–950 North Road, Ewa Beach, HI.
—Everett Library, 2702 Hoyt, Everett, WA.
—Kitsap Regional Library, 1301 Sylvan Way, Bremerton, WA.
—Sno-Isl Library System, 7312 35th Avenue, Marysville, WA.

The Navy will conduct five public hearings to receive oral and written comments concerning the DEIS. A brief presentation will precede a request for public information and comments. Navy representatives will be available at each hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearings and submitted in writing either at the hearing or mailed to Mr. John Coon (Code 05AL.JC), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132, telephone 888) 428–6440, fax (619) 532–4998, or e-mail address at *CVN HOME PORTING@ efdswest.navfac.navy.mil.* Written comments are requested not later than Monday, October 12, 1998.

DATES AND ADDRESSES:

1. September 21, 1998, 7:00 p.m., Public Utility District County Building, Training Auditorium, 2320 California Street, Everett, WA.
2. September 22, 1998, 7:00 p.m., Star of the Sea Church, Cameran Hall, 500 Veneta Avenue, Bremerton, WA.
3. September 24, 1998, 7:00 p.m., Leeward Community College Theater, 96–045 Ala Ike Street, Pearl City, HI.
4. September 29, 1998, 7:00 p.m., Coronado High School Auditorium, 650 D Avenue, Coronado, CA.
5. September 30, 1998, 7:00 p.m., San Diego County Administration Center, 1600 Pacific Highway, San Diego, CA.

Dated: August 27, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–23536 Filed 8–31–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, 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 November 2, 1998.

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, D.C. 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 Acting Deputy Chief Information Officer, Office of the Chief Information Officer, 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: August 26, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Direct PLUS Loan Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 176,640
Burden Hours: 88,320

Abstract: This form is the means by which a Federal PLUS Loan borrower promises to repay his or her loan.

Office of Postsecondary Education

Type of Review: Revision.

Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 44,160
Burden Hours: 22,080

Abstract: This form is the means by which an endorser for a Federal Direct PLUS Loan borrower with an adverse credit history applies for and promises to repay the Federal Direct PLUS Loan if the borrower does not repay it.

[FR Doc. 98–23418 Filed 8–31–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 1, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. 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, D.C. 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 Acting Deputy Chief Information Officer, Office of the Chief Information Officer, 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.

Dated: August 26, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of Effective Adult Basic Education Programs and Practices.

Frequency: three (3) times per year (May, September, and December).

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 78
Burden Hours: 611

Abstract: The U.S. Department of Education has been working with State Directors of adult education and local providers to document the learning gains of adult education participants. Because little is known about the effectiveness of adult basic education (ABE) programs for first-level learners, this is an exploratory study. Hence, we are developing measures to describe the operational and instructional characteristics of ABE programs and are testing methods of measuring outcomes. The programs participating in the study were selected based on information collected in previous case studies that had evidence of good instruction, where teachers had been trained in a specific model for delivering adult education instruction, and where there was evidence of effective program operations. Respondents are program participants who voluntarily enroll in federally funded adult basic education classes.

Office of the Under Secretary

Type of Review: New.

Title: An Evaluation of the Comprehensive Regional Assistance Centers.

Frequency: One time.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,620
Burden Hours: 1,140

Abstract: This evaluation will describe the work of the Comprehensive Centers, identify particularly promising strategies and assess the availability, quality, and effectiveness of the Centers' services. Recipients and non-recipients of Center services will be surveyed, and Center staff, staff of partner organizations, and ED staff will be interviewed.

[FR Doc. 98–23419 Filed 8–31–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–191]

Application to Export Electric Energy; Sempra Energy Trading Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Energy Trading Corp. (SET) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 1, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586-9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 7, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from SET to transmit electric energy from the United States to Canada. SET, a power marketing company, does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area. SET proposes to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

SET proposes to arrange for the delivery of electric energy to Canada over transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by SET, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protest to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the SET application to export electric energy to Canada should be clearly marked with Docket EA–191. Additional copies are to be filed directly with Michael A. Goldstein, Esq., Vice President and General Counsel, Sempra Energy Trading Corp., One Greenwich Plaza, Greenwich, CT 06830.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menus.

Issued in Washington, D.C., on August 25, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–23483 Filed 8–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant

DATES: Thursday, September 17, 1998: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30 p.m. Call to Order

5:45 p.m. Approve Meeting Minutes

6:00 p.m. Public Comment/Questions

6:30 p.m. Presentations

7:30 p.m. Break

7:45 p.m. Presentations

9:00 p.m. Public Comment

9:30 p.m. Administrative Issues

10:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation.

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes.

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on August 25, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–23479 Filed 8–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES:

Monday, September 28, 1998:
- 9:30 a.m. (National Academy of Sciences Presentation)
- 6:30 p.m.–7:00 p.m. (Public Comment Session)
- 7:00 p.m.–9:00 p.m. (Individual Subcommittee Meetings)

Tuesday, September 29, 1998: 8:30 a.m.–4:00 p.m.

ADDRESSES:

All meetings will be held at: Sheraton Augusta Hotel, 2651 Perimeter Parkway, Augusta, Georgia

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, September 28, 1998

9:30 a.m. National Academy of Sciences presentation
6:30 p.m. Public comment session (5-minute rule)
7:00 p.m. Issues-based subcommittee meetings
9:00 p.m. Adjourn

Tuesday, September 29, 1998

8:30 a.m.
- Approval of minutes, agency updates (~15 minutes)
- Public comment session (5-minute rule) (~10 minutes)
- Risk management & future use subcommittee report (~1 hour)
  - —Environmental report for 1997
  - —FY2000 budget review
- Nuclear materials management subcommittee (~1 hour)
- Defense Nuclear Facilities Safety Board (~30 minutes)

12:00 p.m.
- Lunch
- Environmental remediation and waste management subcommittee report (~1 hour 30 minutes)
- Low-Level Waste Seminar report/action (~30 minutes)
- Administrative subcommittee report (~30 minutes)
- Bylaws amendment proposal
- Budget subcommittee report (~15 minutes)
- Facilitator update (~15 minutes)
- National SSAB Chair Meeting report (~20 minutes)
- Public comment session (5-minute rule) (~10 minutes)

4:00 p.m.

Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, September 28, 1998.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on August 26, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–23480 Filed 8–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Electric and Magnetic Fields Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee

DATES: Thursday, September 17, 1998: 1:30 p.m.–5:00 p.m.; Friday, September 18, 1998: 8:00 a.m.–12:15 p.m.

ADDRESSES: Inn Suites Hotel, 475 North Granada, Tucson AZ, 85701.

FOR FURTHER INFORMATION CONTACT: Dr. Imre Gyuk, EMF Program Manager, EE–14, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1482.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The National Electric and Magnetic Fields Advisory Committee (NEMFAC) advises the Department of Energy and the National Institute of Environmental Health Sciences (NIEHS) on the design and implementation of a five-year, national electric and magnetic fields (EMF) research and public information dissemination (RAPID) program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, Pub. L. 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage exposures, and dissemination of information.

Tentative Agenda

Thursday, September 17, 1998

1:30 p.m Welcome and opening remarks
1:40 p.m. Acceptance of minutes
1:50 p.m. Report on the EMF Working Group
2:45 p.m. Public input process for Working Group report
3:15 p.m. Break
3:30 p.m. Interagency Committee perspective on Working Group report
4:00 p.m. Discussion
5:00 p.m. Adjourn

Friday, September 18, 1998

8:30 a.m. DOE Core program activities
9:00 a.m. Plans for NIEHS final report
10:00 a.m. Break
10:15 a.m. Plans for Interagency Committee final report
10:45 a.m. NEMFAC responsibilities for final reports

11:15 a.m. Open time for public comments
12:15 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation. The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Gyuk at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript and Minutes. A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on August 26, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–23478 Filed 8–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–190]

Application to Amend Presidential Permit Niagara Mohawk Power Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Niagara Mohawk Power Corporation has applied to amend an existing Presidential permit which authorized construction of electric transmission facilities at the United States border with Canada in the vicinity of Buffalo, New York. The amendment is requested in order to upgrade the existing facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before October 1, 1998.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9506 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

Niagara Mohawk Power Corporation (Niagra Mohawk), a generation and transmission-owning regulated public utility in New York State, owns several international electric transmission facilities that were authorized by Presidential permits issued by the Federal Power Commission (FPC).[1] Some of the cross-border facilities permitted to Niagara Mohawk in FPC Docket IT–6797 (FE Docket PP–31) include four, 3-phase, 38-kV, 25 Hz transmission lines at Buffalo—Ft. Erie.

On July 21, 1998, Niagara Mohawk filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for amendment of the Presidential permit issued in FPC Docket No. IT–6797 in order to upgrade one of the four Buffalo-Ft. Erie 38-kV, 25 Hz lines (identified as Huntley-Linde line No. 46) to 115-kV, 60 Hz. When the upgrade is completed, the resulting 115-kV facilities will be maintained as an emergency interconnection with Canadian Niagara Power Company, Limited (CNP) and will be used to supply electric energy to CNP only when CNP looses its normal source of power from Ontario Hydro, the provincial electric utility of the Province of Ontario, Canada.

In order to accomplish the upgrade, Niagara Mohawk proposes to construct two underground concrete pipes (10-inch diameter, each) from Niagara Mohawk's existing ''structure 13'' near Dearborn Street and extending approximately 9,250 feet south along West Street to Terminal House B. Niagara Mohawk will then extend an existing 115-kV line (which originates at the Huntley substation and presently terminates at ''structure 13'') through one of the underground concrete pipes and connect this line to the existing 38-kV border crossing at Terminal House B. The physical change to the portion of the existing 38-kV line which crosses the border will be only reinsulation.

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888, as amended (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities). In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with section 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Susan Hodgson, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202 *and* Scott Klurfeld, Swidler & Berlin, Chtd., 3000 K Street, NW, Suite 300, Washington, DC 20007.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system and also consider the environmental impacts of the proposed action pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

[1] Authority to issue Presidential permits was transferred from the Federal Power Commission to the Department of Energy on October 1, 1977.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menu.

Issued in Washington, DC, on August 25, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 98–23481 Filed 8–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–192]

Application for Presidential Permit, NRG Energy, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: NRG Energy, Inc. (NRG) has applied for a Presidential permit to construct, connect, operate and maintain an electric transmission facility across the U.S. border with Mexico. The proposed facility is a 500,000-volt (500-kV) transmission line originating at the switchyard of the Palo Verde Nuclear Generating Station and extending approximately 177 miles to the southwest where it will cross the U.S. border with Mexico in the vicinity of Calixico, California.

DATES: Comments, protests, or requests to intervene must be submitted on or before October 1, 1998.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On August 17, 1998, NRG, an independent power producer and wholly-owned subsidiary of Northern States Power Company, filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. NRG proposes to construct approximately 177 miles of 500-kV transmission line from the switchyard adjacent to the Palo Verde Nuclear Generating Station, to the U.S.-Mexico border in the vicinity of Calexico, California. South of the border, NRG will construct an additional 2.5 miles of transmission line to the Cetys Substation, located east of Mexicali, Mexico, and owned by Comision Federal de Electricidad (CFE), the national electric utility of Mexico.

The transmission line proposed by NRG will be designed to carry 1000 megawatts (MW) and is expected initially to operate at that capacity. However, under certain conditions, the capacity will be restricted to 600 MW. All but 2.5 miles of the proposed transmission line is expected to be located within an existing utility corridor designated by the Bureau of Land Management. However, the applicant will need to obtain approximately 4,300 acres of additional right-of-way from public and private landowners.

The proposed route parallels the existing Southwest Powerlink 500-kV transmission line beginning at the Palo Verde Nuclear Generating Station Switchyard, 30 miles west of Phoenix, Arizona. The route continues southwest, crossing the Gila Bend Mountains approximately one mile north of the Signal Mountain Wilderness Area. The route will traverse the Muggins Mountains on the northern boundary of the Muggins Mountains Wilderness Area, and 8.2 miles of the Army's Yuma Proving Grounds. The line will cross the Colorado River from Arizona into California and proceed northwest, crossing the northeast corner of the Fort Yuma-Quechan Indian Reservation before turning southwest and paralleling the BLM designated utility corridor through the Imperial Sand Dunes Recreation Area. The route continues west between the U.S.-Mexico border and the All-American Canal. At the Hemlock Canal, the route turns south, following the Hemlock Canal alignment for 2.5 miles to the border.

The NRG application notes that there are no firm contracts in place for the sale of power to Mexico using the proposed transmission line. Prior to commencing electricity exports to Mexico using these proposed facilities, NRG, or any other electricity exporter, must obtain an electricity export authorization required by section 202(e) of the Federal Power Act. NRG expects to submit such an application at a later date.

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888, as amended (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities). In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with section 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Robert S. Evans, Executive Director and Manager, Environmental Services, NRG Energy, Inc., 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403–2445.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969 (NEPA). DOE also must obtain the concurrence of the Secretary of State and the Secretary of

Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Notice of upcoming NEPA activities and information on how the public can participate in those activities will appear in the **Federal Register**. Additional announcements will appear in local newspapers and public libraries and/or reading rooms in the vicinity of the proposed transmission line.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menu.

Issued in Washington, D. C., on August 25, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 98–23482 Filed 8–31–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–731–000]

ANR Pipeline Company; Notice of Application

August 26, 1998.

Take notice that on August 18, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–731–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for authorization and approval to abandon a gas exchange service with Shell Offshore Inc. (Shell), performed under Rate Schedule X–157 which was authorized in Docket No. CP85–393–000, all as more fully set forth in the application on file with the Commission and open to public inspections.

No facilities are proposed to be abandoned as a result of the Commission's approval of this application. This exchange agreement was signed July 31, 1984, and was designated as Rate Schedule X–157. The applicant's facilities will continue to be available for service on an open-access basis pursuant to Part 284 of the Commission's regulations. By a letter dated June 1, 1998, ANR notified Shell of its desire to terminate the Agreement under Rate Schedule X–157, effective as of the date of such letter and or such later date as the Commission may deem appropriate. The abandonment is being proposed because no volumes have been exchanged for at least 10 years, the Purchase Contract was jointly canceled in 1988, and the parties have mutually agreed to terminate this exchange service. No imbalances exist.

ANR states that authorization to abandon the service performed under ANR's Rate Schedule X–157 will not impair any of the service obligations to its remaining customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 16, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23413 Filed 8–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–000 (Phase II)]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

August 26, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, September 2, 1998, at 1:00 p.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at (202) 208–2058 or David R. Cain at (202) 208–0917.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23415 Filed 8–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–529–000; CP98–603–000; CP98–690–000, and CP98–738–000]

Pacific Interstate Transmission Company, Northwest Alaskan Pipeline Company, PG&E Gas Transmission (Northwest Corporation), Transwestern Pipeline Company, Pacific Interstate Transmission Company, Pan-Alberta Gas (U.S.) Inc., and Northwest Pipeline Corporation; Notice of Applications and Notice of Petition for Declaratory Order and Request for Waivers

August 26, 1998.

Take notice that on May 8, 1998, Pacific Interstate Transmission Company (PITCO), 633 West Fifth Street, Suite 5300, Los Angeles, California 90071, filed an application in Docket No. CP98–529–000 pursuant to Section 7(b) of the Natural Gas Act (NGA), Section 157.18 of the Commission's Regulations, and Section 9 of the Alaskan Natural Gas Transportation Act (ANGTA).

Take notice that on June 9, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan), One Williams Center, Tulsa, Oklahoma 74172, filed an application pursuant to Section 7(b) of the NGA, Section 157.18 of the Commission's Regulations, and Section 9 of the ANGTA.

Take notice that on July 24, 1998, PG&E Gas Transmission, Northwest Corporation (PGT), Transwestern Pipeline Company (Transwestern), PITCO, and Pan-Alberta Gas (U.S.) Inc. (Pan-Alberta) (together as Joint Petitioners), filed a petition pursuant to Section 385.207(a)(2) of the Commission's Regulations, requesting a Declaratory Order and waiver of certain tariff provisions to complement the requests by PITCO in Docket No. PC98–529–000.

Take notice that on August 21, 1998, Northwest Pipeline Corporation (Northwest Pipeline), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed an application in Docket No. CP98–738–000 pursuant to Section 7(c) of the NGA, Sections 157.6 and 157.7 of the Commission's Regulations, and Section 9 of the ANGTA.

The above filings are not formally consolidated, but are directly interrelated, and it is now appropriate for the Commission to receive public comments on these related requests. The details of these requests are more fully set forth in the applications and the petition which are on file with the Commission and open to public inspection.

PITCO is a natural gas company under the NGA pursuant to certificates first granted by the Commission in 1980 authorizing PITCO's sale of up to 300 MMCF/D of natural gas to Southern California Gas Company (SoCal Gas), PITCO's corporate affiliate. PITCO's initial certificate was issued as an integral part of the Commission's approvals of the ''pre-build'' of the Western Leg of the Alaska Natural Gas Transportation System (ANGTS) under ANGTA.

Pursuant to Western Leg pre-build certificates, PITCO purchases Canadian natural gas imported by Northwest Alaskan. Northwest Alaskan purchases the gas from Pan-Alberta Gas, Ltd. at the U.S.-Canada border near Kingsgate, British Columbia. PITCO says that the current authority to export 240 MMCF/D of gas granted to Pan-Alberta Gas Ltd. expires on October 31, 2003. In the United States, PITCO's gas is transported from the U.S.-Canada border to Stanfield, Oregon, by PGT where the gas is delivered to Northwest Pipeline. Northwest Pipeline then redelivers the gas to El Paso Natural Gas Company (El Paso) and Transwestern at their interconnections near Ignacio, Colorado.

SoCal Gas purchases the gas from PITCO at either Ignacio, Colorado or Blanco, New Mexico, under PITCO's cost-of-service tariff which aggregates gas supply, pipeline facility, and transportation costs. SoCal gas moves the gas through the El Paso and Transwestern San Juan Basin facilities and mainline transmission facilities for receipt into its intrastate system at the Arizona-California border.

Now, PITCO requests authority for the following in order for SoCal Gas to restructure its gas supply and transportation arrangements under a ''global settlement'' with its customers:

1. Abandonment of its sales to SoCal Gas under its Rate Schedule CQS–1 and Rate Schedule S–1; and

2. Abandonment by sale of its 30% undivided interest in certain jurisdictional facilities which are part of the pipeline system of Northwest Pipeline.[1]

As part of the proposed abandonments and the broader restructuring, PITCO also wants to assign its pipeline capacity rights on the PGT and Northwest Pipeline systems to Pan-Alberta. Likewise, SoCal Gas also intends to permanently transfer by assignment to Pan-Alberta some of its firm capacity on the Transwestern system. PITCO also intends to direct bill SoCal Gas the costs of revising and terminating gas sales and purchase agreements and transferring of capacity, including a payment of $31 million to Pan-Alberta Gas Ltd. PITCO states that its restructuring proposal incorporates a new gas sales agreement between SoCal Gas and Pan-Alberta. PITCO says that the parties intend to execute a Closing Agreement which will control all of the details and timing of the broader restructuring transaction/arrangements.

PITCO requests expeditious consideration of its application by or before October 1, 1998, as the conditions and economic considerations of the proposed restructuring are based on implementation during, but in no event beyond, the end of 1998. PITCO states that the requested abandonment authority and other authorizations are in the present and future public convenience and necessity. As a result of the abandonment and other authorizations requested, PITCO will no longer be a natural gas company providing jurisdictional service.

Northwest Alaskan seeks to abandon the sale to PITCO of a daily average of 240,000 Mcf of Canadian natural gas transported through the pre-build Western Leg of the ANGTS.[2] Northwest Alaskan states that the proposed abandonment is part of the broader restructuring transaction/arrangements among itself, Pan-Alberta, PITCO and SoCal Gas.[3] Northwest Alaskan says that the abandonment approval should become effective on the first day of the first month following the day on which the satisfaction of the conditions precedent to the Closing Agreement.

The Joint Petitioners request waiver of the following tariff provisions:

1. PGT—Section 28 (Capacity Release) of PGT's Transportation General Terms and Conditions, Sheet Nos. 89 through 115.

2. Transwestern—Section 30 (Capacity Release Program) of Transwestern's General Terms and Conditions, Sheet Nos. 95 through 95L.

The Joint Petitioners say that they recognize that capacity release is the strongly preferred method by which

[1] As described herein, Northwest Pipeline has filed an application under Section 7(c) to acquire PITCO's equity interest in these facilities.

[2] On June 9, 1998, Northwest Alaskan filed in Docket No. RP98–247–000 certain related tariff sheets of its FERC Gas Tariff to reflect the proposed abandonment and termination of Rate Schedule X–4 (sale to PITCO) and tariff revisions to Rate Schedules X–1, X–2 and X–3 (sales for pre-build Eastern Leg of the ANGTS). This filing was noticed separately on June 12, 1998, under Section 154.210 of the Commission's Regulations.

[3] On June 9, 1998, Northwest Alaskan filed an application at the Department of Energy requesting a transfer of its import authorization for the pre-build Western Leg supplies to Pan-Alberta.

pipeline capacity is transferred. However, to accommodate the broader restructuring transaction/arrangements for the pre-build Western Leg of ANGTS, the Joint Petitioners request waiver of the respective capacity release tariff provisions of PGT and Transwestern to the extent necessary to accommodate PITCO's requested assignment of capacity. Pan-Alberta will, however, be subject to all other terms and conditions contained within PGT's and Transwestern's tariffs (including but not limited to creditworthiness provisions). The Joint Petitioners say that the requested waivers are needed because PITCO's transfer of capacity to Pan-Alberta on the three pipelines includes, in part, a single payment by PITCO to Pan-Alberta.[4]

They say that in order for the broader restructuring proposal to be implemented as desired, Pan-Alberta must have access to, or control of, firm capacity from the Canadian border to Blanco, New Mexico. They also say that loss of any one segment, if it is posted under the standard capacity release provisions, will cause the overall package to fail. They say that neither current Commission rules nor the tariffs of PGT or Transwestern specifically allow a releasing shipper to condition an award of capacity to an acquiring shipper based on that same acquiring shipper also obtaining complementary capacity on upstream and downstream systems from the same releasing shipper.

Northwest Pipeline seeks certificate authority to acquire PITCO's 30% undivided interest in certain jurisdictional facilities which are part of the pipeline system of Northwest Pipeline. The acquisition would be pursuant to the terms of the August 19, 1998, Sales Agreement between Northwest Pipeline and PITCO. These facilities were constructed and are operated by Northwest Pipeline pursuant to a certificate issued in Docket No. CP79–56. These facilities include abut 350 miles of 30-inch and 24-inch pipeline loops in Oregon and Idaho; 3,500 horsepower of additional compression at Northwest Pipeline's Baker and Caldwell Compressor Stations; and appurtenant facility modifications at three other compressor stations and the Stanfield Meter Station.

Pursuant to the Sales Agreement, Northwest Pipeline will pay PITCO $3,028 for PITCO's interest in the pre-build facilities. Northwest Pipeline says that PITCO stipulates that the stated purchase price represents its current net book value for its pre-build assets. The Sales Agreement also provides that PITCO will pay Northwest Pipeline $2,276,000 as a one-time reimbursement in lieu of the future O&M payments which will be foregone due to the resulting early termination of the 1978 Investment and Operating Agreement for these facilities.

Northwest Pipeline also requests the Commission to grant any waivers of its accounting regulations necessary to allow Northwest Pipeline to record on its books only the proposed payment to PITCO, and not the original cost and associated accumulated depreciation for the thirty percent interest being acquired from PITCO.

Northwest Pipeline says that its acquisition of PITCO's interest in the pre-build facilities is proposed to occur concurrently with implementation of PITCO's restructuring proposals which are at issue in Docket No. CP98–529–000. Accordingly, Northwest Pipeline says that its acquisition is contingent upon acceptable resolution in both that proceeding, and in its related Petition for Tariff Waiver proceeding in Docket No. RP98–370, of all issues associated with PITCO's proposed assignment to Pan-Alberta of its existing firm transportation agreement with Northwest Pipeline.

Any person desiring to be heard or making any protest with reference to said applications and petition should on or before September 16, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by the commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for any parties to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23412 Filed 8–31–98; 8:45 am]

BILLING CODE 6717–01–M

[4] A separate petition for waiver related to the broader transaction was filed by Northwest Pipeline in Docket No. RP98–370–000 on August 3, 1998. This filing was noticed separately on August 7, 1998, under Section 154.210 of the Commission's Regulations.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–739–000]

Tennessee Gas Pipeline Company; Notice of Application

August 26, 1998.

Take notice that on August 21, 1998, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston,

Texas 77002, filed in Docket No. CP98–739–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, requesting authorization to amend the certificate of public convenience and necessity issued to Tennessee on October 9, 1991, in Docket No. CP90–639–000, *et al.*

Specifically, Tennessee requests that the Commission issue an order authorizing Tennessee (1) to abandon 53,000 Dth/day of Section 7(c) transportation service which Tennessee provides to New England Power Company (NEPCO) under Tennessee's Rate Schedule NET, and (2) to provide 53,000 Dth/day of Section 7(c) transportation service to USGen New England, Inc. (USGenNE) under Rate Schedule NET. Tennessee also requests approval of the new USGenNE agreement, which does not entirely conform to Tennessee's *pro forma* NET transportation agreement, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee states that the requested authorizations will enable USGenNE to take assignment of NEPCO's firm entitlement under NEPCO's NET contract with Tennessee. Tennessee also states that the authority requested does not require the construction of any facilities and will not impact service to any of Tennessee's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 8, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such sharing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23411 Filed 8–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1033–004, et al.]

Automated Power Exchange, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Automated Power Exchange, Inc.

[Docket No. ER98–1033–004]

Take notice that on August 14, 1998, Automated Power Exchange, Inc. (APX), tendered for filing in compliance with the Commission's July 15, Order in the above-referenced docket.

A copy of this compliance filing has been served on all parties to this proceeding and on all APX Participants.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Stratton Energy Associates (a New York limited partnership)

[Docket No. EC98–55–000]

Take notice Stratton Energy Associates (SEA), a New York limited partnership, on August 13, 1998, submitted an application, pursuant to 18 CFR 33, seeking authority under Section 203 of the Federal Power Act to sell jurisdictional facilities constituting a 45 MW biomass-fueled power plant located in the Town of Eustis, Maine, together with relevant power sales and interconnection agreements, to Boralex Stratton Energy Inc., a Delaware corporation (Boralex). SEA states that the proposed sales are the final part of a plan that will serve the public interest by lowering costs to CMP and customers of CMP through a restructuring of long term contracts with qualifying facilities. This plan was described by SEA in filings made in Docket Nos. EC98–42–000 and ER98–2931–000. The transactions do not require and will not result in the withdrawal of any capacity from the market. Boralex plans to continue to operate the transferred assets as a qualifying small power production facility.

SEA has requested expedited consideration of the application, in light of that no amendments of any rate schedules are being requested, and that the purchaser intends to continue to operate the transferred assets as a qualifying small power production facility.

Comment date: September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Statoil Energy Trading, Inc., CNG Power Services Corp., CNG Energy Services Corp., CNG Retail Services Corp., Columbia Energy Services Corp., OGE Energy Resources, Inc., and CinCap IV, LLC

[Docket Nos. ER94–964–019, ER94–1554–017, ER96–3068–005, ER97–1845–003, ER97–3667–003, ER97–4345–006, and ER98–421–002]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 31, 1998, Statoil Energy Trading, Inc., filed certain information as required by the Commission's April 5, 1994, order in Docket No. ER94–964–000.

On August 3, 1998, CNG Power Services Corporation filed certain information as required by the Commission's October 25, 1994, order in Docket No. ER94–1554–000.

On August 3, 1998, CNG Energy Services Corporation filed certain information as required by the Commission's October 30, 1996, order in Docket No. ER96–3068–000.

On August 3, 1998, CNG Retail Services Corporation filed certain information as required by the Commission's April 1, 1997, order in Docket No. ER97–1845–000.

On August 3, 1998, Columbia Energy Services Corp., filed certain information as required by the Commission's September 3, 1997, order in Docket No. ER97–3667–000.

On August 3, 1998, OGE Energy Resources, Inc., filed certain information as required by the

Commission's October 17, 1997, order in Docket No. ER97–4345–000.

On August 3, 1998, CinCap IV, LLC filed certain information as required by the Commission's January 15, 1998, order in Docket No. ER97–421–000.

4. Electric Clearinghouse, Inc., LG&E Energy Marketing Inc., NorAm Energy Services, Inc., Illinova Energy Partners, Inc., Citizens Power Sales, Questar Energy Trading Company, PG&E Energy Services, Energy, and Trading Corporation

[Docket Nos. ER94–968–023, ER94–1188–024, ER94–1247–020, ER94–1475–013, ER94–1685–021, ER96–404–011, and ER95–1614–015 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 31, 1998, Electric Clearinghouse, Inc., filed certain information as required by the Commission's April 7, 1994, order in Docket No. ER94–968–000.

On August 3, 1998, LG&E Energy Marketing Inc., filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On July 31, 1998, NorAm Energy Services, Inc., filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On August 3, 1998, Illinova Energy Partners, Inc., filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000.

On July 31, 1998, Citizens Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94–1685–000.

On August 3, 1998, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

On August 3, 1998, PG&E Energy Services, Energy Trading Corporation filed certain information as required by the Commission's October 20, 1995, order in Docket No. ER95–1614–000.

5. LG&E Energy Marketing Inc., Entergy Power Marketing Corp., Russell Energy Services Company, Duke Energy Trading and Marketing, Community Electric Power Corp., NRG Power Marketing Inc., and MIECO Inc.

[Docket Nos. ER94–1188–022, ER95–1615–012, ER96–2882–006, ER96–2921–008, ER97–2792–003, ER97–4281–003, and ER98–51–003]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On May 1, 1998, LG&E Energy Marketing Inc., filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On July 31, 1998, Entergy Power Marketing Corporation filed certain information as required by the Commission's July 4, 1995, order in Docket No. ER95–1615–000.

On May 4, 1998, Russell Energy Services filed certain information as required by the Commission's October 30, 1996, order in Docket No. ER96–2882–000.

On May 1, 1998, Duke Energy Trading and Marketing filed certain information as required by the Commission's October 2, 1996, order in Docket No. ER96–2921–000.

On July 31, 1998, Community Electric Power Marketing filed certain information as required by the Commission's July 15, 1997, order in Docket No. ER96–2792–000.

On July 31, 1998, NRG Power Marketing, Inc., filed certain information as required by the Commission's November 12, 1997, order in Docket No. ER97–4281–000.

On July 31, 1998, MIECO Inc., filed certain information as required by the Commission's November 17, 1997, order in Docket No. ER98–51–000.

6. Cinergy Services, Inc.

[Docket No. ER98–1716–000]

Take notice that on August 17, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing responses to Commission staff directives in the above-referenced docket.

Copies of the filing have been served upon the Cinergy contractual counter party in the above-referenced docket.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket Nos. ER98–1797–000, ER98–1808–000, ER98–1810–000, ER98–1811–000, ER98–1812–000, ER98–2086–000, ER98–2701–000, through ER98–2705–000, ER98–2976–000, ER98–3236–000, and ER98–3419–000]

Take notice that on August 17, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing providing responses to Commission Staff directives in each of the above-referenced dockets.

Copies of the filing have been served upon the Cinergy contractual Counter party in each of the individual dockets.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–2111–000]

Take notice that on August 17, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing responses to deficiency letter issued June 17, 1998, in the above-referenced docket.

Copies of the filing have been served upon the Cinergy contractual Counter party and the Illinois Commerce Commission in the above referenced docket.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Panda Guadalupe Power Marketing, LLC

[Docket No. ER98–3901–000]

Take notice that on August 17, 1998, Panda Paris Power Marketing, LLC (PPPM), 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing a Notice of Amendment of Filing, amending its original filing of Application for Authority to Sell at Market-Based Rates dated July 23, 1998 with the Federal Energy Regulatory Commission, specifically Section II entitled Description of PPM.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Panda Paris Power Marketing, LLC

[Docket No. ER98–3902–000]

Take notice that on August 17, 1998, Panda Paris Power Marketing, LLC (PPPM), 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing a Notice of Amendment of Filing, amending its original filing of Application for Authority to Sell at Market-Based Rates dated July 23, 1998, with the Federal Energy Regulatory Commission, specifically Section II entitled Description of PPM.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Company

[Docket No. ER98–4246–000]

Take notice that on August 17, 1998, Tampa Electric Company (Tampa Electric), filed a Notice of Termination of the Agreement for Interchange Service between Tampa Electric and the Fort Pierce Utilities Authority (Fort Pierce). Tampa Electric requests that the termination be made effective on August 19, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Fort Pierce and the Florida Public Service Commission.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER98–4247–000]

Take notice that on August 17, 1998, Washington Water Power Company, tendered for filing notice of termination of service agreement with American Hunter Energy, Inc., under FERC Service Agreement No. 125, previously filed with the Federal Energy Regulatory Commission by Washington Water Power, under the Commission's Docket No. ER97–2301–000, by request of the power marketer because of its decision to exit the power marketing business with an effective termination date of May 7, 1998.

Notice of the cancellation has been served upon American Hunter Energy, Inc.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER98–4248–000]

Take notice that on August 17, 1998, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 Firm and Non-Firm Point-To-Point Transmission Service Agreements with Illinova Energy Partners, Inc. (Illinova Energy) and PG&E Energy Trading—Power, L.P. (PG&E Energy) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Illinova Energy and PG&E Energy.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Rochester Gas and Electric Corporation

[Docket No. ER98–4250–000]

Take notice that on August 11, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and H.Q. Energy Services (U.S.) Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 11, 1998, for the H.Q. Energy Services (U.S.) Inc., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–4251–000]

Take notice that on August 17, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for power transactions with Griffin Energy Marketing under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Ohio Edison requests that the Commission waive the notice requirement and allow the Service Agreement to become effective on August 15, 1998.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER98–4252–000]

Take notice that on August 17, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing a report for the second quarter of 1998 summarizing the transactions under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–4253–000]

Take notice that on August 17, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with New Energy Ventures, L.L.C. (New Energy), under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to New Energy, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER98–4254–000]

Take notice that on August 17, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement for Network Integration Transmission Service and the Network Operating Agreement between Virginia Electric and Power Company and the towns of Stantonsburg, Black Creek and Lucama, North Carolina. Under the Service Agreement and the NOA, the Company will provide Network Integration Transmission Service to the towns of Stantonsburg, Black Creek and Lucama, North Carolina.

Virginia Power requests an effective date of August 1, 1998.

Copies of the filing were served upon the towns of Stantonsburg, Black Creek and Lucama, North Carolina, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–4255–000]

Take notice that on August 17, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for an increase in the monthly carrying charges. Con Edison has requested that this increase take effect as of July 1, 1998.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Orange and Rockland Utilities, Inc.

[Docket No. ER98–4256–000]

Take notice that on August 17, 1998, Orange and Rockland Utilities, Inc.(Orange and Rockland), filed a Service Agreement between Orange and Rockland and Central Hudson Gas & Electric Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 17, 1998, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER98–4257–000]

Take notice that on August 17, 1998, Western Resources, Inc. (Western Resources), tendered for filing an agreement between Western Resources and Otter Tail Power Company for Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreement is proposed to become effective July 23, 1998.

Copies of the filing were served upon Otter Tail Power Company and the Kansas Corporation Commission.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. LG&E Energy Marketing Inc., Western Kentucky Energy Corp., and WKE Station Two, Inc.

[Docket No. ER98–4258–000]

Take notice that on August 14, 1998, LG&E Energy Marketing Inc. (LEM), and its affiliates Western Kentucky Energy Corp. and WKE Station Two Inc., tendered for filing amendments to four initial service agreements (Service Agreements Nos. 1, 2, 3 and 6) under LEM's rate schedule for the sale of certain generation-based ancillary services at cost-based rates (FERC Electric Service Tariff Original Volume No. 1). These amendments either do not affect or reduce the rates which LEM charges for the sale of ancillary services.

Copies of the filing were served upon Big Rivers, Henderson Union Electric Cooperative Corp., Green River Electric Corporation, the City of Henderson Utility Commission and the Kentucky Public Service Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER98–4259–000]

Take notice that on August 17, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Amendment No. 1, to the Restated Power Sales Agreement between PacifiCorp and Arizona Electric Power Cooperative, Inc., (AEPCO).

Copies of this filing were supplied to AEPCO, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Rochester Gas and Electric Corporation

[Docket No. ER98–4260–000]

Take notice that on August 17, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and Select Energy, Inc. (Transmission Customer), for Firm Point-to-Point Service under RG&E's open access transmission tariff. Specifically dealing with the Retail Access Program under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of August 11, 1998, for the Select Energy, Inc., Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas and Electric Corporation

[Docket No. ER98–4261–000]

Take notice that on August 17, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Econnergy. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff), accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. International Energy Group, Inc.

[Docket No. ER98–4264–000]

Take notice that on August 17, 1998, International Energy Group, Inc. (IEG), petitioned the Commission for acceptance of IEG Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

IEG intends to engage in wholesale electric power and energy purchases and sales as a marketer. IEG is not in the business of generating or transmitting electric power.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Vermont Electric Power Company Inc.

[Docket No. ER98–4265–000]

Take notice that on August 17, 1998, Vermont Electric Power Company, Inc. (VELCO), submitted a non-firm point-to-point service agreement establishing Merchant Energy Group of the Americas, Inc., as a customer under the terms of VELCO's Local Open Access Transmission Tariff. VELCO also filed a revised Index of Customers.

VELCO asks that this agreement and the revised Index become effective as of July 21, 1998. Accordingly, VELCO requests a waiver of the Commission's notice requirements.

Copies of this filing were served on the customer and the Vermont Department of Public Service and the Vermont Public Service Board.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Rochester Gas and Electric Corporation

[Docket No. ER98–4266–000]

Take notice that on August 12, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement

between RG&E and the Cinergy Capital & Trading, Inc., (Customer) for Non-Firm Point-to-Point Transmission Service. This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 12, 1998, for the Cinergy Capital & Trading, Inc., Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Niagara Mohawk Power Corporation

[Docket No. ER98–4267–000]

Take notice that on August 17, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Ontario Hydro for Non-Firm Point-to-Point Transmission Service. This Transmission Service Agreement specifies that Ontario Hydro has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Ontario Hydro to enter into separately scheduled transactions under which NMPC will provide transmission service for Ontario Hydro as the parties may mutually agree.

NMPC requests an effective date of August 7, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Ontario Hydro.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Rochester Gas and Electric Corporation

[Docket No. ER98–4268–000]

Take notice that on August 17, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Merchant Energy Group of the Americas, Inc., (Customer) for Non-Firm Point-to-Point Transmission Service. This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 13, 1998, for the Merchant Energy Group of the Americas, Inc., Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Niagara Mohawk Power Corporation

[Docket No. ER98–4269–000]

Take notice that on August 17, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and American Municipal Power Ohio, Inc., (AMP-Ohio). This Transmission Service Agreement specifies that AMP-Ohio has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of December 1, 1998.

NMPC has served copies of the filing upon the New York State Public Service Commission, the New York Power Authority and AMP-Ohio.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Niagara Mohawk Power Corporation

[Docket No. ER98–4270–000]

Take notice that on August 17, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and SCANA Energy Marketing, Inc. This Transmission Service Agreement specifies that SCANA Energy Marketing, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and SCANA Energy Marketing, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for SCANA Energy Marketing, Inc., as the parties may mutually agree.

NMPC requests an effective date of August 11, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and SCANA Energy Marketing, Inc.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Louisville Gas And Electric Company and Kentucky Utilities Company

[Docket No. ER98–4271–000]

Take notice that on August 17, 1998, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/KU and Statoil Energy Trading, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Storm Lake Power Partners II, LLC

[Docket No. ER98–4280–000]

Take notice that Storm Lake Power Partners II, LLC (Storm Lake II) on August 14, 1998, tendered for filing proposed changes to its Rate Schedule FERC No. 1. Storm Lake II is developing a wind-powered generation facility in Buena Vista and Cherokee Counties, Iowa. Following construction of the facility, Storm Lake II will make sales of capacity and energy at market-based rates to IES Utilities, Inc. (IES), pursuant to an Alternative Energy Production Electric Services Agreement (the PPA) that the Commission accepted for filing as Rate Schedule FERC No. 1 in *Iowa Power Partners I, L.L.C.*, 81 FERC ¶ 61,058 (1997).

The proposed changes to the PPA reflect an increase in the name plate capacity of the facility from 75 MW to 84.75 MW and a change in the construction schedule. Storm Lake II also filed an interconnection agreement with IES as a supplement to its Rate Schedule FERC No. 1.

Copies of the filing were served upon the official service list established in this docket and IES, Storm Lake II's jurisdictional customer.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Texas-New Mexico Power Company

[Docket No. OA97–512–001]

Take notice that on August 13, 1998, Texas-New Mexico Power Company submitted revised standards of conduct under Order No. 889, *et seq.*[1]

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and

Standard Paragraphs

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 these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23446 Filed 8–31–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–040, et al.]

California Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 19, 1998.

Take notice that the following filings have been made with the Commission:

1. California Power Exchange Corporation

[Docket Nos. EC96–19–040 and ER96–1663–041]

Take notice that on August 14, 1998, the California Power Exchange Corporation (PX), tendered for filing Original and First Revised PX Tariff Sheets, incorporating PX Tariff Amendment No. 2 and portions of PX Tariff Amendment No. 3 in compliance with California Power Exch. Corp., 84 FERC 61,017 (1998).

The PX states that its filing has been served on all parties listed on the official service list in the above-captioned dockets.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Rochester Gas and Electric Corp.

[Docket No. EC98–54–000]

Take notice that on August 12, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission), an Application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, for authority to implement a holding company structure.

A copy of this Application was served on the New York Public Service Commission.

Comment date: September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Mountainview Power Company

[Docket No. EG98–104–000]

Take notice that on July 29, 1998, Mountainview Power Company, with its principal office at Thermo Ecotek Corporation, 245 Winter Street, Waltham, MA 02154, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Mountainview states that it is a corporation organized under the laws of the State of Delaware. Mountainview will be engaged directly and exclusively in the business of owning and operating an approximately 126 megawatt electric generating facility located in San Bernardino, California. Electric energy produced by the facility will be sold at wholesale into the California Power Exchange and to other wholesale customers.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Riverside Canal Power Company

[Docket No. EG98–105–000]

Take notice that on July 29, 1998, Riverside Canal Power Company, with its principal office at Thermo Ecotek Corporation, 245 Winter Street, Waltham, MA 02154, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Riverside Canal states that it is a corporation organized under the laws of the State of California. Riverside Canal will be engaged directly and exclusively in the business of owning and operating an approximately 154 megawatt electric generating facility located in Grande Terrace, California. Electric energy produced by the facility will be sold at wholesale into the California Power Exchange and to other wholesale customers.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Storm Lake Power Partners II, LLC

[Docket No. ER97–4222–000]

Take notice that Storm Lake Power Partners II, LLC (Storm Lake II), on August 14, 1998, tendered for filing proposed changes to its Rate Schedule FERC No. 1. Storm Lake II is developing a wind-powered generation facility in Buena Vista and Cherokee Counties, Iowa. Following construction of the facility, Storm Lake II will make sales of capacity and energy at market-based rates to IES Utilities, Inc. (IES), pursuant to an Alternative Energy Production Electric Services Agreement (the PPA), that the Commission accepted for filing as Rate Schedule FERC No. 1 in Iowa Power Partners I, L.L.C., 81 FERC 61,058 (1997).

The proposed changes to the PPA reflect an increase in the name plate capacity of the facility from 75 MW to 84.75 MW and a change in the construction schedule. Storm Lake II also filed an interconnection agreement with IES as a supplement to its Rate Schedule FERC No. 1.

Storm Lake II requests that the Commission permit the amendments and supplement to become effective as of the date of this filing.

Copies of the filing were served upon the official service list established in this docket and IES, Storm Lake II's jurisdictional customer.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Direct Electric Inc. Aquila Power Corp., Yankee Energy Marketing Co., GDK, National Power Marketing Co., LLC, Panda Power Corp., and El Segundo Power, LLC

[Docket Nos. ER94–1161–017, ER95–216–019, ER96–146–008, ER96–1735–008, ER96–2942–003, ER98–447–002, ER98–1127–001, and ER98–2971–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 10, 1998, Direct Electric Inc. filed certain information as required by the Commission's July 18, 1994, order in Docket No. ER94–1161–000.

On August 10, 1998, Aquila Power Corporation filed certain information as required by the Commission's January 13, 1995, order in Docket No. ER95–216–000.

On August 11, 1998, GDK filed certain information as required by the

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Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997) (Order No. 889–A); Order No. 889–B, rehearing denied, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

Commission's June 26, 1996, order in Docket No. ER96–1735–000.

On August 10, 1998, National Power Marketing Company LLC filed certain information as required by the Commission's December 31, 1996, order in Docket No. ER96–2942–000.

On August 11, 1998, Panda Power Corporation filed certain information as required by the Commission's December 22, 1997, order in Docket No. ER98–447–000.

On August 11, 1998, El Segundo Power, LLC filed certain information as required by the Commission's February 12, 1998, order in Docket No. ER98–1127–000.

On August 11, 1998, El Segundo Power, LLC filed certain information as required by the Commission's July 10, 1998, order in Docket No. ER98–2971–000.

7. Duke/Louis Dreyfus, L.L.C.

[Docket No. ER96–108–014]

Take notice that on August 3, 1998, Duke/Louis Dreyfus, L.L.C., tendered for filing a Notification of Change In Status. Duke/Louis Dreyfus, L.L.C. seeks to notify the Commission that it has become affiliated with four new companies, each of which owns a generation facility: (1) Duke Energy Moss Landing, L.L.C.; (2) Duke Energy Morro Bay, L.L.C.; (3) Duke Energy Oakland, L.L.C.; and (4) Bridgeport Energy, L.L.C.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Seagull Power Services, Inc., WPS-Power Development, Inc., New Millennium Energy Corp., Agway Energy Services, Inc., Total Gas & Electric, Inc., Electric Lite, Inc., and Horizon Energy Co.

[Docket Nos. ER96–342–009, ER96–1088–018, ER97–2681–003, ER97–4186–003, ER97–4202–000, ER97–4427–003, and ER98–380–005]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 3, 1998, Seagull Power Services, Inc. filed certain information as required by the Commission's February 15, 1996, order in Docket No. ER96–342–000.

On August 3, 1998, WPS-Power Services, Inc. filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

On August 3, 1998, New Millennium Energy Corporation filed certain information as required by the Commission's July 1, 1997, order in Docket No. ER97–2681–000.

On August 5, 1998, Agway Energy Services, Inc. filed certain information as required by the Commission's September 26, 1997, order in Docket No. ER97–4186–000.

On August 5, 1998, Total Gas & Electric, Inc. filed certain information as required by the Commission's September 26, 1997, order in Docket No. ER97–4202–000.

On August 5, 1998, Electric Lite, Inc. filed certain information as required by the Commission's December 8, 1997, order in Docket No. ER97–4427–000.

On August 6, 1998, Horizon Energy Company filed certain information as required by the Commission's December 23, 1997, order in Docket No. ER98–380–000.

9. Automated Power Exchange, Inc.

[Docket No. ER98–1033–000]

Take notice that on August 14, 1998, Automated Power Exchange, Inc. (APX), filed its revised rate schedule in the above-captioned proceeding.

The rate schedule shall be effective on and after April 1, 1998.

Copies of this filing have been served on all parties to this proceeding and on all APX Participants.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. WKE Station Two Inc.

[Docket No. ER98–1278–002]

Take notice that WKE Station Two Inc., on August 14, 1998, informed the Commission that, on July 17, 1998, it obtained rights to operate the Station Two generating facility and to purchase capacity and associated energy from the City of Henderson, Kentucky, which owns the Station Two generating facility and simultaneously assigned its right to purchase the capacity and associated energy from the Station Two generating facility to its affiliate LG&E Energy Marketing Inc.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Western Kentucky Energy Corp.

[Docket No. ER98–1279–000]

Take notice that Western Kentucky Energy Corp., on August 14, 1998, informed the Commission that it obtained rights to capacity and associated energy from the generating facilities owned by Big Rivers Electric Corporation on July 17, 1998 and that its Rate Schedule FERC No. 1, became effective on July 17, 1998.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corp. and NGE Generation, Inc.

[Docket No. ER98–2179–000]

Notice is hereby given that effective October 11, 1998, Rate Schedules FERC Nos. 130 (AES Power, Inc.), 123 (Allegheny Electric Co-op), 152 (Aquila Power Corporation), 139 (Atlantic City Electric Co.), 122 (Baltimore Gas & Electric Co.), 140 (Cargill-Alliant LLC), 185 (Central Park South), 175 (Central Vermont Public Service), 134 (Citizens Lehman Power Sales), 142 (CNG Power Services Corporation), 190 (Commonwealth Electric Co.), 168 (Coral Power L.L.C.), 186 (DuPont Power Marketing Inc.), 177 (Energy Transfer Group), 149 (Engage Energy US, L.P.), 143 (Engelhard Power Marketing, Inc.), 183 (Equitable Power Services Company), 164 (Federal Energy Sales, Inc.), 148 (Gateway Energy, Inc.), 159 (Global Petroleum Inc.), 136 (Green Mountain Power), 132 (InterCoast Power Marketing Company), 167 (KN Marketing, Inc.), 153 (Koch Energy Trading, Inc.), 129 (LG&E Power Marketing, Inc.), 160 (Long Sault, Inc.), 161 (MidCon Power Services Corp.), 158 (Montaup Electric Co.), 151 (National Fuel Resources, Inc.), 187 (New England Power Company), 120 (Niagara Mohawk Power Corporation), 173 (NorAm Energy Services, Inc.), 99 (Orange and Rockland Utilities), 170 (PanEnergy Power Services, L.L.C.), 157 (PECO Energy Company), 184 (Plum Street Energy Marketing, Inc.), 141 (Rainbow Energy Marketing L.P.), 162 (Rochester Gas & Electric Corporation), 169 (Sempra Energy Trading Corporation), 188 (Sonat Power Marketing L.P.), 178 (Stand Energy Corp.), 182 (The Power Company of America, L.P.), 166 (TransCanada Power Corp.), 165 (Virginia Electric & Power Co.), 176 (Williams Energy Service Company), 172 (Xenergy, Inc.) with various effective dates and filed with the Federal Energy Regulatory Commission by New York State Electric & Gas Corporation (and subsequently assigned to NGE Generation, Inc.) are canceled.

Notice of the proposed cancellation has been served upon each of the affected customers identified above and the New York State Public Service Commission.

Take notice that NGE Generation, Inc. (NGE Gen), on August 12, 1998 amended its filing in the above-referenced docket by submitting the following amended and restated power sales agreements (which were previously assigned by New York State

Electric & Gas Corporation to NGE Gen) (Rate Schedule No.):

128—Catex Vitol Electric, Inc.
144—Central Hudson Gas & Electric Corp.
189—Cincinnati Gas & Electric Co. and PSI Energy, Inc.
119—Consolidated Edison Co. of NY
181—Delmarva Power & Light Co.
176—Duke/Louis Dreyfus L.L.C.
163—Eastex Power Marketing
137—Electric Clearinghouse, Inc.
124—Enron Power Marketing
104—GPU Service Corp.
174—Pennsylvania Power & Light Co.
156—Public Service Electric & Gas Co.
88—New York Power Authority

NGE Gen requests an effective date of February 11, 1998.

NGE Gen served copies of the filing upon the New York State Public Service Commission and each of the purchasers under the above-listed rate schedules.

Take notice that NGE Generation, Inc. (NGE Gen) on August 12, 1998 tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR ¶ 35.15 (1997), a notice of cancellation (Cancellation) of Rate Schedule FERC Nos. 130 (AES Power, Inc.), 123 (Allegheny Electric Co-op), 152 (Aquila Power Corporation), 139 (Atlantic City Electric Co.), 122 (Baltimore Gas & Electric Co.), 140 (Cargill-Alliant LLC), 185 (Central Park South), 175 (Central Vermont Public Service), 134 (Citizens Lehman Power Sales), 142 (CNG Power Services Corporation), 190 (Commonwealth Electric Co.), 168 (Coral Power L.L.C.), 186 (DuPont Power Marketing Inc.), 177 (Energy Transfer Group), 149 (Engage Energy US, L.P.), 143 (Engelhard Power Marketing, Inc.), 183 (Equitable Power Services Company), 164 (Federal Energy Sales, Inc.), 148 (Gateway Energy, Inc.), 159 (Global Petroleum Inc.), 136 (Green Mountain Power), 132 (InterCoast Power Marketing Company), 167 (KN Marketing, Inc.), 153 (Koch Energy Trading, Inc.), 129 (LG&E Power Marketing, Inc.), 160 (Long Sault, Inc.), 161 (MidCon Power Services Corp.), 158 (Montaup Electric Co.), 151 (National Fuel Resources, Inc.), 187 (New England Power Company), 120 (Niagara Mohawk Power Corporation), 173 (NorAm Energy Services, Inc.), 99 (Orange and Rockland Utilities), 170 (PanEnergy Power Services, L.L.C.), 157 (PECO Energy Company), 184 (Plum Street Energy Marketing, Inc.), 141 (Rainbow Energy Marketing L.P.), 162 (Rochester Gas & Electric Corporation), 169 (Sempra Energy Trading Corporation), 188 (Sonat Power Marketing L.P.), 178 (Stand Energy Corp.), 182 (The Power Company of America, L.P.), 166 (TransCanada Power Corp.), 165 (Virginia Electric & Power Co.), 176 (Williams Energy Service Company), 172 (Xenergy, Inc.) between NGE Gen and above enumerated entities. NYSEG requests that the Cancellation be deemed effective as of October 11, 1998.

Notice of the proposed cancellation has been served upon each of the affected customers identified above and the New York State Public Service Commission.

Rate schedule FERC No.	Description
Appendix A—New York State Electric & Gas Corporation Power Sales Agreements To Be Canceled	
130	AES Power Inc., dated October 27, 1994.
123	Allegheny Electric Coop (AEC), dated August 2, 1994.
152	Aquila Power Corporation, dated October 23, 1995.
139	Atlantic City Electric Co. (ACE), dated May 2, 1995.
122	Baltimore Gas & Electric Co. (BG&E), dated February 1, 1994.
140	Cargill-Alliant LLC (formerly Heartland Energy Services, Inc.), dated May 1, 1995.
185	Central Park South (CPS Utilities), dated February 14, 1997.
175	Central Vermont Public Service (CVPS), dated August 27, 1996.
134	Citizens Lehman Power Sales, dated January 17, 1995.
142	CNG Power Services Corporation, dated May 30, 1995.
190	Commonwealth Electric Co. (Cambridge), dated May 13, 1997.
168	Coral Power L.L.C., dated June 6, 1996.
186	DuPont Power Marketing Inc., dated February 14, 1997.
177	Energy Transfer Group, dated February 3, 1997.
149	Engage Energy US, L.P. (formerly Coastal Electric Services Company), dated November 7, 1995.
143	Engelhard Power Marketing, Inc., dated June 20, 1995.
183	Equitable Power Services Company, dated February 6, 1997.
164	Federal Energy Sales, Inc., dated April 3, 1996.
148	Gateway Energy, Inc., dated November 3, 1995.
159	Global Petroleum Inc. dated, January 8, 1996.
136	Green Mountain Power, dated March 15, 1995.
132	InterCoast Power Marketing Company, dated December 9, 1994.
167	KN Marketing, Inc., dated June 5, 1996.
153	Koch Energy Trading, Inc., dated December 7, 1995.
129	LG&E Power Marketing, Inc., dated November 7, 1994.
160	Long Sault, Inc., dated January 10, 1996.
161	MidCon Power Services Corp., dated January 10, 1996.
158	Montaup Electric Co. (EUA), dated December 18, 1995.
151	National Fuel Resources, Inc., dated September 19, 1995.
187	New England Power Company (NEPCO), dated March 3, 1997.
120	Niagara Mohawk Power Corporation (NMPC), dated May 24, 1994.
173	NorAm Energy Services, Inc., dated June 28, 1996.
99	Orange and Rockland Utilities, Inc., dated May 2, 1988.
170	PanEnergy Power Services, L.L.C. (PanEnergy), dated June 26, 1996.
157	PECO Energy Company—Power Team (PECO), dated November 29, 1995.
184	Plum Street Energy Marketing, Inc., dated January 31, 1997.
141	Rainbow Energy Marketing L.P., dated May 25, 1995.
162	Rochester Gas & Electric Corporation (RG&E), dated December 17, 1993.
169	Sempra Energy Trading Corporation (formerly AIG), dated June 25, 1996.
188	Sonat Power Marketing L.P., dated July 18, 1996.
178	Stand Energy Corp., dated September 11, 1996 and amended February 20, 1997.

Rate schedule FERC No.	Description
182	The Power Company of America, L.P., dated January 27, 1997.
166	TransCanada Power Corp., dated June 12, 1996.
165	Virginia Electric & Power Co., dated June 12, 1996.
176	Williams Energy Service Company, dated September 11, 1996.
172	Xenergy, Inc., dated June 21, 1996.
APPENDIX B—New York State Electric & Gas Corporation Power Sales Agreements To Be Restated	
128	Catex Vitol Electric, Inc.
144	Central Hudson Gas & Electric Corp.
189	Cincinnati Gas & Electric Co. and PSI Energy, Inc.
119	Consolidated Edison Co. of NY
181	Delmarva Power & Light Co.
176	Duke/Louis Dreyfus L.L.C.
163	Eastex Power Marketing
137	Electric Clearinghouse, Inc.
124	Enron Power Marketing
104	GPU Service Corp.
174	Pennsylvania Power & Light Co.
156	Public Service Electric & Gas Co.
88	New York Power Authority

Comment date: September 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. LG&E Energy Marketing Inc., Western Kentucky Energy Corp. and WKE Station Two Inc.

[Docket No. ER98–2684–000]

Take notice that LG&E Energy Marketing Inc. (LEM) and its affiliates Western Kentucky Energy Corp., and WKE Station Two Inc., on August 14, 1998, informed the Commission that the Phase II transactions between LEM, certain of its affiliates and Big Rivers Electric Corporation were implemented on July 17, 1998 and that LEM's rate schedule for the sale of generation-based ancillary services at cost-based rates became effective on July 17, 1998.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corp.

[Docket No. ER98–3738–000]

Take notice that on July 15, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing blanket service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service as specified in the submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Continental Energy Services LLC

[Docket No. ER98–4191–000]

Take notice that on August 11, 1998, Continental Energy Services LLC tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 1 in the above-referenced docket.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Central Maine Power Company

[Docket No. ER98–4203–000]

Take notice that on August 11, 1998, Central Maine Power Company tendered for filing a Quarterly Report of transactions for the period April 1, 1998 through June 30, 1998.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. ER98–4207–000]

Take notice that on August 13, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, an executed service agreement under which O&R will provide capacity and/or energy to Central Hudson Enterprise Corporation (Central Hudson).

O&R requests waiver of the notice requirement so that the service agreement with Central Hudson becomes effective as of August 1, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and Central Hudson.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER98–4215–000]

Take notice that on August 13, 1998, PacifiCorp, tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Service Agreement with The Washington Water Power Company under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

PacifiCorp requests an effective date of August 14, 1998.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Lake Benton Power Partners II, LLC

[Docket No. ER98–4222–000]

Take notice that on August 14, 1998, Lake Benton Power Partners II, LLC (Lake Benton Power Partners), tendered for filing pursuant to Rule 205, 18 CFR 385.205, an application for an order accepting its rates of filing, determining of rates to be just and reasonable, and granting certain waivers and preapprovals.

Lake Benton Power Partners is developing an approximately 103.5 MW wind generation facility in Minnesota. Lake Benton Power Partners proposes to sell the facility's energy and capacity at market-based rates to Northern States Power Company. Lake Benton Power

Partners seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its power marketing activities.

Lake Benton Power Partners requests that the Commission permit the Agreement to become effective sixty days from the date of filing of this application.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Central Hudson Gas and Electric Corp.

[Docket No. ER98–4223–000]

Take notice that on August 14, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Public Service Electric and Gas Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–-000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11 and an effective date of June 17, 1998, for the Service Agreement.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas and Electric Corp.

[Docket No. ER98–4224–000]

Take notice that Central Hudson Gas and Electric Corporation (CHG&E), on August 14, 1998, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Wheeled Electric Power Company (WEPCO). The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff), accepted by the Commission in Docket No. ER97–890-000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Arizona Public Service Co.

[Docket No. ER98–4225–000]

Take notice that on August 14, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service to American Electric Power Service Corporation (AEPSC), Merchant Energy Group of the Americas, Inc. (MEGA), and Tractebel Energy Marketing, Inc. (TEM), under APS' Open Access Transmission Tariff.

A copy of this filing has been served on AEPSC, MEGA, TEM and the Arizona Corporation Commission.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corp.

[Docket No. ER98–4226–000]

Take notice that on August 14, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing Service Agreements between NYSEG and Constellation Power Source, Inc., NYSEG Solutions, Cinergy Capital & Trading, Inc., SCANA Energy Marketing, Central Hudson Enterprises Corporation, and MarketSpan Trading Services, LLC (Customers), for Non-Firm Point-to-Point Transmission Service and/or Short-Term Point-to Point Transmission Service. These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of August 14, 1998, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Co.

[Docket No. ER98–4227–000]

Take notice that on August 14, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with ConAgra Energy Services, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3380–000.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Carolina Power & Light Co.

[Docket No. ER98–4228–000]

Take notice that on August 14, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with WPS Energy Services, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Enron Wind Development Corp., and Lake Power Storm Partners I, L.L.C.

[Docket No. ER98–4229–000]

Take notice that on August 14, 1998, Enron Wind Development Corp., and Storm Lake Power Partners I, L.L.C., 13000 Jameson Road, Tehachapi, California 93561, tendered for filing an application for approval under Section 203 of the Federal Power Act of the transfer of ownership of jurisdictional facilities from Enron Wind Development Corp., to Storm Lake Power Partners I, LLC. Enron Wind Development Corp., is the indirect parent company of Storm Lake Power Partners I, L.L.C. No determination has been made that the submittal constitutes a complete filing.

Enron Wind Development Corp., is constructing a wind turbine generation facility near Alta, Iowa that will sell power to MidAmerican Energy Company pursuant to a long-term power purchase agreement. The Commission accepted Enron Wind Development Corp.'s rates for filing. *Zond Dev. Corp. and Zond Minnesota Dev. Corp. II*, 80 FERC ¶ 61,051 (1997). Enron Wind Development Corp. proposes to transfer the generation facility and related jurisdictional facilities to its indirect wholly-owned subsidiary, Storm Lake Power Partners I, LLC.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Washington Water Power Co.

[Docket No. ER98–4230–000]

Take notice that on August 14, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, executed Service Agreements under WWP's FERC Electric Tariff First Revised Volume No. 9, with Duke Energy Trading and Marketing, L.L.C. and Hafslund Energy Trading, L.L.C.

WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1998.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. PacifiCorp

[Docket No. ER98–4231–000]

Take notice that on August 14, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Mutual Netting/Closeout Agreements between PacifiCorp and American Electric Power Service Corporation, LG&E Energy Marketing Inc., and Northern/AES Energy, L.L.C.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Maine Public Service Company

[Docket No. ER98–4232–000]

Take notice that on August 14, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement for Non-Firm Point-to-Point Transmission Service under Maine Public's open access transmission tariff with Griffin Energy Marketing, L.L.C.

Maine Public requests waived of the Commission's 60-day notice requirements to allow the Service Agreement to become effective August 6, 1998.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Washington Water Power Company

[Docket No. ER98–4233–000]

Take notice that on August 14, 1998, The Washington Water Power Company (WWP), tendered for filing a proposed revision to its FERC Electric Tariff, Original Volume No. 9 (Tariff). The proposed change would delete a provision in the tariff which limits the term of any transaction under the Tariff to sixty (60) months from the date service is initiated.

Copies of the filing were served upon all of WWP's Tariff customers.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–4234–000]

Take notice that on August 14, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing service agreements with Merchant Energy Group of the Americas, Inc., for service under its Short-Term Firm Point-to-Point open access transmission service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

UtiliCorp requests and effective date of August 14, 1998, for the Service Agreements.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. UtiliCorp United Inc.

[Docket No. ER98–4235–000]

Take notice that on August 14, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Merchant Energy Group of the Americas, Inc., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

UtiliCorp requests an effective date of August 14, 1998, for the Service Agreements.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Wisconsin Public Service Corporation

[Docket No. ER98–4236–000]

Take notice that on August 14, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed umbrella type transmission Service Agreement between WPSC and Engage Energy US, L.P., providing transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make the agreements effective on August 4, 1998.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Wisconsin Public Service Corporation

[Docket No. ER98–4237–000]

Take notice that on August 14, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Short Term Firm Transmission Service Agreement between WPSC and Engage Energy US, L.P., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date of August 4, 1998, to make the agreement effective.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. IES Utilities Inc. (d/b/a/) Alliant Utilities

[Docket No. ER98–4238–000]

Take notice that on August 14, 1998, IES Utilities (d/b/a Alliant Utilities), tendered for filing a Letter of Understanding between IES Utilities (d/b/a Alliant Utilities) and Amana Society Services Company, Traer Municipal Utilities and Vinton Municipal Electric Utilities, on behalf of themselves and the other members of the Resale Power Group of Iowa (the Customers), regarding interpretation of the IES Utilities (d/b/a Alliant Utilities) Resale Electric Service Rate Schedule RES–3 tariff dated April 30, 1993, with revisions, as filed with the Commission. The Resale Power Group of Iowa comprises all of the utilities purchasing electric service for resale under the RES–3 tariff.

The parties have reached an understanding clarifying RES–3 to allow the Customers to operate their generation to make sales into the wholesale market, when that generation is not required by IES Utilities (d/b/a Alliant Utilities) pursuant to the RES–3 tariff. The parties also agree that the operating of such generation does not reduce the number of hours that Customer-owned generation is available to IES Utilities (d/b/a Alliant Utilities) under RES–3.

IES Utilities (d/b/a Alliant Utilities) requests a waiver of Commission notice requirements and that an effective date of June 1, 1998 be assigned.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. FirstEnergy System

[Docket No. ER98–4239–000]

Take notice that on August 14, 1998, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Electric Clearinghouse, Inc., Minnesota Power, Inc., and WPS Energy Services, Inc., (Transmission Customers). Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing

by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under the Service Agreements is August 1, 1998, for the above mentioned Service Agreements.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Abacus Group, Ltd.

[Docket No. ER98–4240–000]

Take notice that on August 14, 1998, Abacus Group, Ltd. (AGL), tendered for filing Rate Schedule FERC No. 1, under which AGL will engage in wholesale electric power and energy transactions as a marketer. AGL requests blanket authorization to purchase and resell electricity at negotiated, market-based rates.

AGL is a New Jersey corporation with its principal place of business in Bergenfield, New Jersey. AGL intends to principally engage in the marketing and brokering of electricity and natural gas.

AGL proposes to act as a power marketer, purchasing electricity and reselling it to wholesale customers. AGL may also engage in other, nonjurisdictional, activities to facilitate efficient trade in the bulk power market, such as facilitating the purchase and sale of wholesale energy without taking title to the electricity (brokering), and arranging services in related areas such as transmission and fuel supplies. All transactions between AGL and its purchasers and sellers will be at rates negotiated between the parties to the transaction.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Central Hudson Gas & Electric Corporation

[Docket No. ER98–4241–000]

Take notice that on August 14, 1998, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Non-Firm Point-to-Point Service Agreement between CHG&E and SCANA Energy Marketing, Inc., The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11. CHG&E requests an effective date of August 4, 1998, for the Service Agreement.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Central Hudson Gas & Electric Corp.

[Docket No. ER98–4242–000]

Take notice that on August 14, 1998, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Non-Firm Point-to-Point Service Agreement between CHG&E and H.Q. Energy Services (U.S.). The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11. CHG&E requests an effective date of July 17, 1998, for the Service Agreement.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. UtiliCorp United Inc.

[Docket No. ER98–4243–000]

Take notice that on August 14, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with PG&E Energy Trading-Power, L.P., for service under its Non-Firm Point-to-Point open access transmission service for its operating divisions, Missouri Public Service, WestPlains Energy—Kansas and WestPlains Energy—Colorado.

UtiliCorp requests an effective date of August 14, 1998.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Bonneville Power Administration

[Docket No. NJ97–3–003]

Take notice that on August 12, 1998, Bonneville Power Administration tendered for filing its compliance filing in the above-referenced docket.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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, 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 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 these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23447 Filed 8–31–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8732–004–VA]

City of Manassas, Virginia Department of Public Works; Notice of Availability of Environmental Assessment

August 26, 1998.

An environmental assessment (EA) is available for public review. The EA was prepared for an application filed by the City of Manassas, Virginia, Department of Public Works on December 22, 1997, to surrender its existing exemption from licensing for the Broad Run Hydroelectric Project.

The EA evaluates the environmental impacts that would result from permanently discontinuing electric generation at the existing powerhouse located below the City's T. Nelson Elliott Dam and 650-acre Lake Manassas. The document concludes that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C., 20426. Copies also may be obtained by calling the EA coordinator, Peter Yarrington, at (202) 219–2939.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23414 Filed 8–31–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6154–6]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Strategic Ranking Criteria Subcommittee (SRCS)

The Strategic Ranking Criteria Subcommittee (SRCS), an ad hoc subcommittee of the Science Advisory Board's (SAB) Executive Committee, will meet on Friday, September 18, 1998, beginning no earlier than 9:00 am and ending no later than 5:00 pm. The meeting will be held in the SAB Conference Room (Room 3709) at the EPA Waterside Mall Complex, 401 M Street, SW, Washington, DC 20460.

Purpose—The purpose of the meeting is to engage in a consultation with Agency staff from the Office of the Chief Financial Officer (OCFO) on possible criteria that could be applied to evaluate and compare Agency programs and activities in order to inform Agency planning and budgeting.

Background—Under the Agency's strategic planning and budgeting framework, EPA aligns all of its resources, people and activities under 10 strategic goals, 42 objectives and approximately 126 sub-objectives. Over the last two years, the Office of the Chief Financial Officer (OCFO) facilitated a comparative analysis of the risks addressed by EPA's strategic sub-objectives. The results of the comparative analysis were used to better inform EPA's planning and budgeting priorities. OCFO's short-term goal is to improve the scientific basis for the existing comparative risk ranking process and to introduce cost and economic measures into the comparative analysis of the Agency's sub-objectives and relevant activities for use in the FY2001 planning and budgeting process.

Charge—OCFO is asking the Science Advisory Board to engage in a consultation on possible criteria that could be applied to evaluate and compare Agency sub-objectives and activities. OCFO has also begun work to develop cost and economic measures for evaluating sub-objectives. Although the primary focus of the consultation will be on the risk criteria, OCFO is also requesting feedback from panel members on proposed categories of economic evaluation criteria and possible measures for evaluating the relative benefits and costs of EPA's sub-objectives and activities.

OCFO plans to utilize the results from the consultation to develop guidance on comparative analysis for Agency program offices to use in the FY2001 planning and budgeting process. OCFO is also requesting the SAB consider reviewing the results of the program offices' analyses at a subsequent meeting. The primary purpose of the second meeting would be to assess the extent to which the information provided by the program offices scientifically support the comparative analysis of the sub-objectives and relevant activities.

Finally, OCFO is interested in lessons learned from the SAB's past and present efforts (*e.g.*, the SAB's Integrated Risk Project—IRP) that may complement, or have applicability to, developing long-term, scientifically robust approaches for conducting comparative risk and benefit-cost analyses.

Comparative Risk Analysis

Comments are solicited on both the overall approach and the specific sections of the existing and the proposed future risk ranking approach to contribute to the FY 2001 planning and budgeting process. OCFO requests that SAB panel members comment on the strengths and weaknesses of the existing approach, suggest additional factors for consideration, and otherwise provide recommendations for both short-and long-term improvements or alternatives to the existing process.

The following questions apply to all three types of risk (health, ecological, and quality-of-life) used to evaluate the strategic sub-objectives in the previous comparative risk-ranking exercise.

(a) Were the attributes and dimensions used to define the risk ranks adequate? What other risk attributes/dimensions should be incorporated (*e.g.*, sustainability)?

(b) Are three levels of risk (high, medium and low) sufficient to distinguish differences among the various EPA programs? Can additional levels be added and still be defensible given inherently large uncertainties? How many levels would be useful and still feasible and defensible?

(c) Were the threshold values of the attributes/dimensions that define the ranks adequate? Given that any set of values will be somewhat subjective and arbitrary, can the SAB recommend another set, or a process for developing more useful values?

(d) The information for the initial rankings developed for the previous comparative analysis was completely qualitative. How well does the new protocol characterize risk for the risk ranking process, both overall and the specific sections?

(e) How should uncertainty be characterized for the purposes of risk rankings?

(f) Are there alternative ranking methods and/or analytical approaches that should be considered for comparative risk analysis in this context?

(g) What long-term improvements should OCFO consider in conducting comparative risk analysis for planning and budgeting purposes?

(h) What past/present SAB activities (*e.g.*, IRP) complement this effort and what lessons can be learned from these activities?

Comparative Cost, Benefit and Economic Analyses

As noted above, the Agency is working to develop cost and economic measures for evaluating Agency sub-objectives to support the annual planning and multi-year-planning processes and to establish a baseline and framework for utilizing economics in strategic planning.

The most immediate requirement for OCFO is to develop useful cost and economic criteria for evaluating investments and dis-investments for the FY2001 annual planning process. Four categories of economic measures are proposed: agency costs, social costs, benefits (human health, ecological and quality of life, whether monetized, quantitative or qualitative), and equity considerations (*e.g.*, effects of agency actions on sensitive sub-populations, localized geographic effects, and environmental justice). The benefits component of this analysis should correspond closely to the risk reduction information to be acquired as part of the comparative risk analysis.

OCFO requests feedback from SAB panel members on the following areas:

(a) Is the general approach the OCFO is considering adequate for characterizing the relative costs and benefits achieved by EPA's sub-objectives and relevant activities?

(b) Are OCFO's suggested cost and economic measures adequate for characterizing the relative costs and benefits achieved by EPA's sub-objectives and relevant activities?

(c) Are the linkages between the benefits and the reductions in risks for the same sub-objectives and activities clear and unambiguous?

For Further Information—Copies of the materials provided to the Subcommittee are *not* available from the SAB Staff. Single copies of these documents may be obtained from Ms. Anita Street, Office of the Chief Financial Officer, telephone (202) 260–3626, or via E-mail at: street.anita@epa.gov. For additional information, including a draft agenda, contact Ms. Mary Winston, SAB Committee Operations Staff, at tel. (202) 260–2554 or via E-mail at: winston.mary@epa.gov. Any member of the public wishing to submit oral or written comments to the Subcommittee must contact Stephanie Sanzone, Designated Federal Officer for the Subcommittee, *in writing*, no later than 4:00 pm Eastern Time on September 14, 1998 at Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, tel. (202) 260–6557; fax (202) 260–7118; or E-mail: sanzone.stephanie@epa.gov. Oral comments will be limited to 5 minutes per individual or group. Written comments in any length may be provided to Ms. Sanzone at the above address prior to the meeting. See below for details on providing comments to the SAB.

2. Quality Management Subcommittee (QMS)

The Quality Management Subcommittee (QMS), of the Science Advisory Board's (SAB) Environmental Engineering Committee, will meet from Tuesday, September 22, 1998, beginning no earlier than 9:00 am through Thursday September 24, ending no later than 5:00 pm. The meeting will be held in the SAB Conference Room (Room 3709) at the EPA Waterside Mall Complex, 401 M Street, SW, Washington, DC 20460.

Purpose—At its April 27–29, 1998 public meeting, the Subcommittee reviewed the Agency's quality management program and project-level documents (for further information, the charge, and document availability, see 63 **Federal Register** 17000, April 7, 1998). The purpose of the September 22–24 meeting is to review the implementation of EPA's quality system.

For Further Information—For additional information, including a draft agenda, contact Ms. Mary Winston, SAB Committee Operations Staff, at tel. (202) 260–2554 or via E-mail at: winston.mary@epa.gov. Any member of the public wishing to submit oral or written comments to the Subcommittee must contact Kathleen White Conway, Designated Federal Officer (DFO) for the Subcommittee, *in writing*, no later than 4:00 pm Eastern Time on September 16, 1998 at Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, tel. (202) 260–2558; fax (202) 260–7118; or E-mail: conway.kathleen@epa.gov. Oral comments will be limited to 5 minutes per individual or group. Written comments in any length may be provided to the DFO at the above address prior to the meeting. See below for details on providing comments to the SAB.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not repeat previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. This time may be reduced at the discretion of the SAB, depending on meeting circumstances. Oral presentations at teleconferences will normally be limited to three minutes per speaker or organization. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments, which may of any length, may be provided to the relevant committee or subcommittee up until the time of the meeting.

The Science Advisory Board

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1997 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Copies of SAB prepared final reports mentioned in this **Federal Register** Notice may be obtained immediately from the SAB Home Page or by mail/fax from the SAB's Committee Evaluation and Support Staff at (202) 260–4126, or via fax at (202) 260-1889. Please provide the SAB report number when making a request.

Meeting Access

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 26, 1989.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–23506 Filed 8–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00535A; FRL–6025–2]

Changes to Registration Priority System Involving Organophosphate (OP) Alternatives and Reduced Risk Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has issued an updated policy for the prioritization and expedited review of applications for significant organophosphate (OP) alternative new active ingredients and new use registration applications for conventional pesticides handled by the Agency. The policy is available as a Pesticide Registration (PR) Notice entitled ''Changes to Registration Priority System Involving Organophosphate (OP) Alternatives and Reduced Risk Candidates.'' EPA proposed this policy for 30 days of public comment on May 13, 1998. Interested parties may request a copy of the Agency's final policy as set forth in the ADDRESSES unit of this notice.

ADDRESSES: The PR Notice is available from Peter Caulkins; by mail: Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5447, fax: 703–305–6920, e-mail: caulkins.peter@epa.gov.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins at the telephone number or address listed above.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document and the final PR Notice also are available from the EPA Home page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 6111 for a copy of the final PR Notice.

II. Background

In the **Federal Register** of May 13, 1998 (63 FR 26591) (FRL–5786–8), EPA issued for comment a notice announcing the availability of a draft, updated policy for the prioritization and expedited review of applications for significant OP alternative new active ingredients and new uses for conventional, primarily agricultural pesticides. This **Federal Register** notice announces the availability of the final Pesticide Registration (PR). The PR Notice changes how reduced-risk candidates will be treated in the priority system. Specifically, the PR Notice amends EPA's current priority scheme by making OP alternatives that pass the reduced-risk screen the second highest priority (#2) behind methyl bromide alternatives (#1). Also, any submission that is determined to be a significant OP alternative, which is not granted reduced-risk status, but is recommended by the Reduced-Risk Committee for expedited review, may become an Agency priority as well. Furthermore, any submission that passes the reduced-risk screen may become an Agency priority. An Agency priority does not count against a company's limit of five priorities.

Public comments submitted concerning the draft PR Notice and the issues listed in the previous FR Notice of Availability were fully considered before the PR Notice was made final.

III. Public Docket

All public comments, as well as a summary of the Agency's responses to those comments, are filed in the Office of Pesticide Programs's Docket Office under docket control number ''OPP–00535.'' The public record is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. To contact the docket office by mail, telephone, or e-mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; (703) 305–5805; e-mail: opp-docket@epamail.epa.gov.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 24, 1998.

James Jones

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–23477 Filed 8–31–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6154–4]

Availability of Hard Copy Summary Report on the Sector Facility Indexing Project

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a hard copy summary report on the Sector Facility Indexing Project (SFIP). The SFIP is a community-right-to-know and data integration pilot project that provides environmental performance data for facilities within five industrial sectors. The industrial sectors profiled within the SFIP are automobile assembly; petroleum refining; pulp manufacturing; iron and steel; and primary smelting and refining of aluminum, copper, lead, and zinc (nonferrous metals). The summary report is a publication that provides aggregated, pre-formatted information. On May 1, 1998, the EPA released the Internet website containing the SFIP data. (*See* 63 FR 27281, May 18, 1998). The SFIP website is designed as an interactive tool that allows users to customize the information and delve into greater detail to look at information that is too voluminous to include in the hard copy summary report.

DATES: The hard copy summary report is currently available to the public. As previously announced, the Internet SFIP website was released on May 1, 1998.

ADDRESSES: Requests for the hard copy summary report may be sent to: SFIP, 55 Wheeler Street, Cambridge, MA 02138. Requests may also be made to the SFIP telephone hotline at 617–520–3015. The Internet address for the SFIP is the following: http://www.epa.gov/oeca/sfi

FOR FURTHER INFORMATION CONTACT: Robert Lischinsky, U.S. Environmental Protection Agency, Office of Compliance (2223–A), 401 M Street, SW, Washington, DC 20460; telephone: (202)564–2628, fax: (202) 564–0050; e-mail: lischinsky.robert@epa.gov

Dated: August 24, 1998.

Mamie Miller,

Branch Chief, Manufacturing Branch, Manufacturing Energy & Transportation Division, Office of Compliance.

[FR Doc. 98–23499 Filed 8–31–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 25, 1998.

SUMMARY: The Federal Communications 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 collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (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 estimate; (c) ways to enhance the quality, utility, 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 information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 1, 1998. 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: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0767.

Title: Auction Forms and License Transfer Disclosures—Supplement for the Second R & O, Order on Reconsideration, and Fifth NPRM in CC Docket No. 92–297.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 44,000 (180,000 annual responses).

Estimated Time Per Response: 0.5–4.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 773,000 hours.

Cost to Respondents: $47,452,000.

Needs and Uses: The auction rules, among other things, require small business applicants to submit ownership information and gross revenue calculations, and all applicants to submit terms of joint bidding agreements (if any). Furthermore, in case a licensee defaults or losses its license, the Commission retains the discretion to reauction such licenses. If licenses are reauctioned, the new license winner would be required at the close of the reauction, to comply with the same disclosure requirements. Finally, licensees who transfer licenses within three years will be required to maintain certain information to ensure compliance with Commission rules.

Specifically: (1) Small business license winners (and their successors in interest as licensees) will be required to maintain a file over the license term containing ownership and gross revenues information, necessary to determine their business eligibility as a small business and (2) licensees who transfer licensees within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form, application (FCC Form 175), whichever is earlier.

The Commission also adopted rules to determine the amount of unjust enrichment payments to be assessed upon assignment, transfer, partitioning and disaggregation of licenses. This rule, applicable to all current and future licensees, is based upon the unjust enrichment of rule currently applicable to broadband PCS licensees. Additionally, the Commission amended its general anticollusion rules, permitting the holder of a non-controlling attributable interest in an applicant to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. To meet the requirements of the exception, the attributable interest holder will be required to certify to the Commission that it did not communicate with the new applicant prior to the date the original applicant withdrew from the auction, and that it will not convey bidding information, or otherwise serve as a nexus between the previous and the new applicant.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–23440 Filed 8–31–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2294]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 25, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed September 16, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Assessment and Collection of Regulatory Fees for Fiscal Year 1998 (MD Docket No.98–36).

Number of Petitions File: 5.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–23439 Filed 8–31–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1238–DR]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–1238–DR), dated August 12, 1998, and related determinations.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 12, 1998.

Milwaukee and Waukesha Counties for Public Assistance (already designated under the Individual Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–23491 Filed 8–31–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1238–DR]

Wisconsin; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1238–DR), dated August 12, 1998, and related determinations.

EFFECTIVE DATE: August 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–23492 Filed 8–31–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1238–DR]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–1238–DR), dated August 12, 1998, and related determinations.

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 12, 1998.

Rock and Sheboygan Counties for Public Assistance (already designated under the Individual Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–23493 Filed 8–31–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1238–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1238–DR), dated August 12, 1998, and related determinations.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 12, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and flooding beginning on August 5, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Milwaukee, Rock, Sheboygan, and Waukesha Counties for Individual Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–23494 Filed 8–31–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1236–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–1236-DR), dated July 24, 1998, and related determinations.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 24, 1998:

Richland County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–23495 Filed 8–31–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA–REP–3-PA–1]

Pennsylvania Emergency Response and Preparedness Plan for the Susquehanna Steam Electric Station

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Finding and determination.

SUMMARY: FEMA gives notice of approval of the State of Pennsylvania and local Radiological emergency response plans and preparedness site-specific to the Susquehanna Steam Electric Station.

DATES: This certification and approval are effective as of August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Regional Director, FEMA Region III, 105 South Seventh Street, 2nd Floor, and Philadelphia, Pennsylvania 19106. Please refer to Docket No. FEMA–REP–3-PA–1.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Emergency Management Agency (FEMA) Rule, Title 44 CFR, Part 350, the State of Pennsylvania originally submitted the Emergency Response and Preparedness Plans site-specific to the Susquehanna Steam Electric Station, located in Luzerne County, Pennsylvania, to the Regional Director of FEMA Region III for review and approval on June 30, 1989. During the review of the site-specific offsite radiological emergency response plans and preparedness, the FEMA Region III Regional Assistance Committee (RAC) identified several planning issues which required correction prior to a recommendation of formal plan approval under Title 44 CFR, Part 350. During the FEMA Headquarters process, several issues were identified which were referred back to FEMA Region III for clarification. Subsequently, on February 28, 1997, the FEMA Region III Director forwarded her evaluation of the offsite radiological emergency response plans and preparedness and a recommendation for formal approval, in accordance with Section 350.11 of the FEMA Rule. Included in this evaluation a review of the Susquehanna Steam Electric Station offsite radiological emergency preparedness exercise conducted on August 15–16, 1995, in accordance with Section 350.9 of the FEMA Rule, and a report of the Public Meeting conducted on December 9, 1982, in accordance with Section 350.10 of the FEMA Rule.

Based on the evaluation and recommendation for approval by the FEMA Region III Director and the review by the Headquarters staff, in accordance with section 350.12 of the FEMA Rule, I find and determine that the State of Pennsylvania and local radiological emergency response plans and preparedness site-specific to the Susquehanna Steam Electric Station are adequate to protect the health and safety of the public living in the vicinity of the site. The offsite radiological emergency response plans and preparedness are assessed as adequate in that there is reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that the plans are capable of being implemented.

The prompt alert and notification system installed and operational around the Susquehanna Steam Electric Station was previously approved by FEMA on August 15, 1986, in accordance with the criteria of NUREG–0654/FEMA-REP–1, Rev.1, Appendix 3, and FEMA-REP–10, ''Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants.'' FEMA will continue to review the status of the offsite radiological emergency response plans and site-specific to the Susquehanna Steam Electric Station in accordance with Section 350.13 of the FEMA Rule.

Dated: August 21, 1998.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

[FR Doc. 98–23496 Filed 8–31–98; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Carl V. Thomas, Lawrenceville, Georgia; Sophia Leasing Foundation, Duluth, Georgia; William Barber, Snellville, Georgia; Nachalah Holdings Foundation, Duluth, Georgia; Mary Beth Thomas, Lawrenceville, Georgia; Marguerite Thomas, Cooper City, Florida; Herbert J. Phillips, Lawrenceville, Georgia; R.L. Phillips, Buford, Georgia; Don Cox, Hoschton, Georgia; Lloyd & Rhonda Phillips, Buford, Georgia; Stanley Phillips, Braselton, Georgia; Scott & Angela Ward, Buford, Georgia; David J. & Gay Lynn Nieminen, Lilburn, Georgia; Grant Marant, Fort Lauderdale, Florida; Linda Marant, Fort Lauderdale, Florida; Forrest Buckley, Lilburn, Georgia; Sunshine Financial, Lawrenceville, Georgia; James Crow, Lawrenceville, Georgia; R&T Foundation, Watkinsville, Georgia; J.V. Jones, Duluth, Georgia; Solomon King, Lawrenceville, Georgia; Michael Sahlgren, Cumming, Georgia; William L. Carmichael, Conyers, Georgia; Richard Edwards, Lawrenceville, Georgia; Vivian Edwards, Lawrenceville, Georgia; Jeremy Edwards, Lawrenceville, Georgia; James F. Rouse, Lawrenceville, Georgia; Jenene Rouse, Lawrenceville, Georgia; Robert G. & Adele H. Barber, Merritt Island, Florida; Dale Skrobot, Canton, Georgia; Charles Thomlinson, Plant City, Florida; DeWitt Woodward, Tampa, Florida; Harper Guinn, Lilburn, Georgia; Jeff Guinn, Stone Mountain, Georgia; James Agee, Duluth, Georgia; Bertram Smith, Norcross, Georgia; and

Matt Callahan Lawrenceville, Georgia; to retain voting shares of First Western Bank, Cooper City, Florida.

In addition Carl V. Thomas, Lawrenceville, Georgia, has also applied to acquire additional voting shares of First Western Bank, Cooper City, Florida.

Board of Governors of the Federal Reserve System, August 26, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23389 Filed 8–31–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Provincial Corp., Lakeville, Minnesota; to become a bank holding company by acquiring at least 85 percent of the voting shares of Provincial Bank, Lakeville, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Financial Bancorporation, Inc., Minneapoolis, Minnesota, and Delaware Financial, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Walburg State Bank, Georgetown, Texas.

Board of Governors of the Federal Reserve System, August 26, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23388 Filed 8–31–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Appalachian Bancshares, Inc., Ellijay, Georgia; to acquire 100 percent of the voting shares of First National Bank of Union County, Blairsville, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Beemer Corporation, Beemer, Nebraska; to acquire an additional 77.9 percent, for a total of 80.8 percent of the voting shares of Citizens Bank, Bancroft, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Grandview Bancshares, Inc., Grandview, Texas, and Grandview Delaware Financial, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Grandview Delaware Financial, Inc., Dover, Delaware, and thereby indirectly acquire First State Bank, Grandview, Texas.

Board of Governors of the Federal Reserve System, August 27, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23540 Filed 8–31–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be

received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Acadiana Bancshares, Inc., Lafayette, Louisiana; to acquire Cadence Holdings, L.L.C., Lafayette, Louisiana, and thereby engage in consumer lending, pursuant to § 225.28(b)(1) of Regulation Y, issuance and sale of money orders, travelers checks and similar consumer-type payment services, pursuant to § 225.28(b)(13) of Regulation Y, tax-preparation services, pursuant to § 225.28(b)(6)(vi) of Regulation Y, and check cashing services and wire money transfer services, pursuant to *Popular, Inc.*, 84 Fed. Res. Bull. 481 (1998).

Board of Governors of the Federal Reserve System, August 27, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23539 Filed 8–31–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, September 8, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 28, 1998.

Robert DeV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–23677 Filed 8–28–98; 3:41 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 981–0127]

Commonwealth Land Title Insurance Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft compliant that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Willard Tom or Patrick Roach, FTC/H–394, Washington, D.C. 20580. (202) 326–2786 or 326–2793.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 26, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from Commonwealth Land Title Insurance Company (''Commonwealth''), a subsidiary of LandAmerica Financial Group, Inc. The proposed Consent Order is designed to remedy the anticompetitive effects arising from Commonwealth's proposed consolidation of its title plant for Washington, D.C., with that of a competitor, First American Title Insurance Company (''First American''). Title plants are privately owned collections of records and/or indices that are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes. Under the terms of the agreement Commonwealth will be required to take certain steps to ensure that its title plant is operated as a separate, independent competitor; to restore its customers to the competitively-determined prices and terms that existed prior to the proposed consolidation; and to refund to its customers amounts charged for title plant services during the pendency of the proposed consolidation in excess of those prior prices and terms.

The proposed Consent Order has been agreed to by Commonwealth and by its parent corporation.[1] The Consent Order has been placed on the public record for 60 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Title plants are privately-owned collections of title information obtained from public records that can be used to conduct title searches or otherwise

[1] Since the time the proposed Consent Order was agreed to by Commonwealth, Commonwealth has been acquired by Lawyers Title Corporation, now known as LandAmerica Financial Group, Inc. The proposed Order by its terms defines ''Commonwealth'' broadly to include its parent, which has agreed to be bound by the terms of the Order.

ascertain information concerning ownership of or interests in real property. Title plants typically contain summaries or copies of public records or documents (often in a format that is comparatively easy to store and readily retrievable) as well as indices to facilitate locating relevant records that pertain to a particular property. Title plants permit users to obtain real property ownership information with significantly greater speed and efficiency than by consulting the original public records, which may be located in a number of separate public offices (*e.g.*, offices of the county recorder, tax authorities, and state and federal courts), may be stored in an inconvenient form, and may be indexed in a fashion that makes it difficult to readily research a particular property. Because of the county-specific way in which title information is generated and collected and the highly local character of the real estate markets in which the title plant services are used, geographic markets for title plant services are highly localized, consisting of the county or local jurisdiction embraced by the real property information contained in the title plant.

As in other localities across the country, the use of title plants in the District of Columbia is a result of difficulty in effectively using public sources of title information to conduct title searches. A complete title search in the District involves searching a number of public sources of information, including land records and records of the federal and local courts. As recently as 1980 there were as many as seven title plants in the District, but by late 1996 plant closings and consolidations had shrunk the number to two, operated by Commonwealth and First American.[2] In addition to using their respective plants for their own title insurance businesses, Commonwealth and First American each sold access to their plants to other title plant users. Most of these users were independent abstractors or abstract companies conducting title searches for title insurance companies or agents.

Beginning in 1996 or earlier, Commonwealth and First American began to discuss consolidating their title plant operations in the District of Columbia. The purpose of the consolidation was not merely to avoid the duplication of expenditures attendant to the operation of two plants, but also to eliminate competition between the two title plant operators. Both firms had met the costs of the title plants's operations by a combination of revenues received from plant users and from their respective title insurance operations. According to a proposal presented by Commonwealth to First American, the fundamental premise of the consolidation was that the two firms should no longer compete with each other by separately maintaining their respective title plants but should take the ''final step'' of combining the last two title plants in the District of Columbia so that costs could be reduced and title plant services could be sold at pricing that was of competitive pressure.

Commonwealth and First American in September 1997 executed a letter setting forth their understanding that they would form a joint venture entity to consolidate their respective title plant operations. In November 1997, prior to the formation of the planned joint venture entity, Commonwealth relocated its title plant to the same premises as the First American title plant. At that time customers of both Commonwealth and First American were required to execute new agreements that stated that title plant services were being jointly provided by Commonwealth and First American pending formation of a joint title plant entity. Some forms of title plant access available to Commonwealth users prior to the proposed consolidation were no longer available under the interim agreements. The new rates set in these interim agreements resulted in charges to Commonwealth customers as much as two to three times higher than under the rates and terms applicable to the same customers prior to the proposed consolidation.

Commonwealth and First American did not complete formation of the planned joint title plant entity. After the proposed consolidation was questioned by FTC staff, Commonwealth discontinued its participation in the planned joint venture and undertook to re-establish its title plant as an independent competitor to First American's on the terms embodied in the proposed Consent Order.

The Complaint alleges two distinct grounds on which Commonwealth's actions are a violation of the law. First, by undertaking with First American to jointly set the prices for title plant services before the planned joint venture was legally consummated, Commonwealth acted to increase prices and restrict output in the market for title plant services in the District of Columbia. This conduct had the effect of raising, fixing, and maintaining the price, terms and conditions of compensation paid for title plant services in the District of Columbia, in violation of Section 5 of the FTC Act, 15 U.S.C. 45. This charge conforms to prior Commission policy to apply established antitrust law principles of liability to competitors that engage in coordinated conduct in advance of the consummation of a planned merger or joint venture. *See The Torrington Co. and Universal Bearings, Inc.*, 114 F.T.C. 283 (1991).

In addition, the Complaint charges that the effect of the proposed consolidation of the Commonwealth and the First American title plants, if consummated, may be substantially to lessen competition and to tend to create a monopoly, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, by eliminating direct actual competition between Commonwealth and First American and by increasing the likelihood that Commonwealth and First American, acting in concert, can exercise market power in the market for title plant services in the District of Columbia.

The proposed Consent Order requires Commonwealth to segregate its title plant assets from those of First American, move its title plant to a separate location and thereafter operate its title plant as a fully functional title plant providing title plant services in competition with First American. It further requires Commonwealth to cease and desist from claiming any rights under the interim agreements and for a period of one year to restore its users to the most recent prices, terms and conditions in effect prior to the proposed consolidation. In addition, the proposed Consent Order requires Commonwealth to refund to its users all amounts paid for title plant services during the pendency of the proposed consolidation, to the extent the payments exceeded the amounts payable under the most recent prior terms applicable to the user. If the respondent does not promptly comply with these requirements, the Consent Order permits the Commission to appoint a trustee to carry out the

[2] There is one other very limited collection of title information owned by the parent of Commonwealth and leased to a local abstract company. This latter collection of materials is inadequate for conducting title searches but is used by the abstract company for reference purposes. The consent order in *LandAmerica Financial Group, Inc.*, Docket No. C–3808 (May 20, 1998), requires, as to the District of Columbia, that Commonwealth's parent LandAmerica Financial Group, Inc., divest either the Commonwealth title plant interests or its interest in this more limited collection of title information. LandAmerica has requested the Commission's approval to divest the limited title information collection to the abstract company to which it is leased.

required actions. Information available to the Commission indicates that Commonwealth has complied with these remedial provisions of the proposed Order.

The Consent Order also includes a requirement that for ten years the respondent provide the Commission with prior notice of various future transactions by the respondent involving title plant interests in the District of Columbia. A prior notice provision is appropriate in this matter because the small transaction size of most individual title plant acquisitions is below the threshold of reportability under the Hart-Scott-Rodino Act (Clayton Act § 7A, 15 U.S.C. § 18a) and because the underlying conduct at issue establishes a credible risk that the respondent will but for an order to the contrary, engage in otherwise unreportable anticompetitive mergers.[3] In addition, the Consent Order prohibits Commonwealth, for a period of twenty years, from entering into or attempting to enter into agreements or understandings to raise, fix or stabilize prices for title plant services in the District of Columbia.

Properly structured joint ventures between competitors relating to the production of needed supplies or services can reduce costs and improve economic efficiency without unreasonably restricting competition, where the joint venture preserves the freedom and incentives for the joint venture partners to price and market their goods or services competitively. *See, e.g., United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619 (W.D. Ky. 1985) (DOJ Consent); *Ethyl Corp.* and *The Associated Octel Company Limited, and Great Lakes Chemical Corporation,* Docket Nos. C–3814 and C–3815 (June 16, 1998). The proposed Consent Order does not prohibit Commonwealth from entering into arrangements with First American or anyone else to share or reduce the costs of carrying on its title plant operations, so long as the arrangements do not compromise Commonwealth's pricing independence or fix or stabilize the prices or rates for title plant services. Any such arrangements would be subject to review by the Commission under the prior notice provisions of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–23449 Filed 8–31–98; 8:45 am]

BILLING CODE 6750–01–M

[3] See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions (June 21, 1995).

FEDERAL TRADE COMMISSION

[File No. 951–0097]

Merck & Co., Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and PA. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H–394, Washington, D.C. 20580. (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 27, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Order from Merck and Co., Inc. (''Merck'') and Merck-Medco Managed Care, LLC (''Medco''), (or ''Proposed Respondents'') in resolution of antitrust concerns arising from Merck's acquisition of Medco.

The proposed consent order (''Order'') has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Commission has reason to believe that Merck's acquisition of Medco may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45. The Order, if issued by the Commission, would settle the allegations of the proposed Complaint (''Complaint'').

The Complaint in this matter alleges that Merck is engaged in the development, production and sale of pharmaceutical products, including Mevacor and Zocor, which are HMG-CoA reductase inhibitors used for treating high cholesterol; and Prinivil and Vasotec, which are ACE Inhibitors used for treating hypertension, high blood pressure and heart disease. It further alleges that Merck's subsidiary, Medco, is engaged in the business of providing pharmacy benefit management services to corporations, insurance companies, labor unions, third party payors, and other members of the healthcare industry.

The Complaint further alleges that a relevant line of commerce within which to analyze the effects of this acquisition is the provision of pharmacy benefit management (''PBM'') services by national full-service PBM firms, and any narrower markets contained therein. Other relevant lines of commerce within which to analyze the effects of this acquisition are the development, manufacture and sale of pharmaceutical products in specific therapeutic

categories, and narrower markets contained therein (including, but not limited to, the markets for HMG-CoA reductase inhibitors and ACE Inhibitors). It further alleges that the relevant market for PBM services by national full-service PBM firms, as well as the relevant markets for pharmaceutical products in specific therapeutic categories, are moderately to highly concentrated.

The Complaint further alleges that there are substantial barriers to entry into the relevant markets. Even if new entry were to occur, it would take a long time, during which time substantial harm to competition could occur.

The Complaint further alleges that as part of its PBM services, Medco maintains a drug formulary, which is a listing, by therapeutic category, of ambulatory drug products that are approved for use by the U.S. Food & Drug Administration, and which is made available to pharmacies, physicians, third-party payors, and other persons, to guide in the prescribing and dispensing of pharmaceuticals. Merck pharmaceutical products are included on the Medco formulary. Medco provides a variety of other PBM services, including claims processing, drug utilization review, pharmacy network administration, mail service, and related services. Medco negotiates with pharmaceutical manufacturers, including Merck, concerning placement of drugs on the Medco formulary, rebates, discounts, prices to be paid for pharmaceutical products purchased pursuant to pharmacy benefit plans managed by Medco, and similar matters. Medco thereby influences the prices of pharmaceutical products and the availability of such products under the Medco pharmacy benefit plans.

The Complaint further alleges that the effects of the acquisition of Medco by Merck may be substantially to lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) Products of manufacturers other than Merck are likely to be foreclosed from Medco's formularies;

(b) Reciprocal dealing, coordinated interaction, interdependent conduct, and tacit collusion among Merck and other vertically integrated pharmaceutical companies will be enhanced;

(c) Medco has been eliminated as an independent negotiator of pharmaceutical prices with manufacturers;

(d) Incentives of other manufacturers to develop innovative pharmaceuticals will be diminished; and

(e) Pharmaceutical prices are likely to increase and the quality of the pharmaceuticals available to consumers is likely to diminish.

The Complaint further alleges that the acquisition of Medco by Merck violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The Order requires Merck to cause Medco to maintain and make available an Open Formulary, and provides that the Medco ''Universal Formulary'' complies with this provision. A copy of this formulary is appended to the Order. For the purposes of the Order, an open formulary is defined as a formulary that allows the inclusion of any ambulatory (*i.e.*, non-hospital) prescription drug product which the Medco independent Pharmacy and Therapeutics Committee (''P&T Committee'') determines is appropriate for inclusion in such formulary.

The Order requires that Medco appoint an independent P&T Committee to administer the formulary. This committee will make all decisions concerning the inclusion and exclusion of drugs on the Open Formulary. The Order sets forth the parameters under which the P&T Committee is to operate.

The Order also requires that Merck cause Medco to accept all discounts, rebates or other concessions offered by any other manufacturer of pharmaceutical products on the Open Formulary, and requires that all such discounts, rebates and concessions be truthfully and accurately reflected in determining relative rankings of products on the Open Formulary. Nothing in the Order prohibits Medco from offering closed formularies as well as the Open Formulary.

The Order also prohibits Merck and Medco from providing, disclosing, or otherwise making available to each other Non-Public Information, with certain exceptions for attorneys and auditors. This includes information concerning other persons' bids, proposals, contracts, prices, rebates, discounts, and or other terms and conditions of sale.

The Order also requires Merck for five years to retain all documents, and to cause Medco to separately retain all documents, relating to the exclusion of any prescription drugs from the Open Formulary, any preference or ranking accorded to any prescription drug on the Open Formulary, and statements or indications of discounts, rebates or other concessions.

The Order also requires Merck and Medco to make known the availability of the Open Formulary to persons who currently have a PBM service agreement or formulary agreement with Medco, and (for a period of five years) to prospective customers.

The Order also compels Merck and Medco to fulfill certain standard notification, reporting and inspection requirements.

The Order terminates seven years from the date it becomes final.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the Order, and it is not intended to constitute an official interpretation of the agreement and Order or to modify it in any way.

The proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–23450 Filed 8–31–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket 9286]

Summit Technology, Inc.; and VISX, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The two consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that the Commission issued on March 24, 1998, and the terms of the consent orders—embodied in the consent agreements—that would settle most of these allegations.

DATES: Comments must be received on or before November 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaint. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for August 21, 1998), on the World Wide WEb, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from Summit Technology, Inc. (''Summit''), located at 21 Hickory Drive, Waltham, Massachusetts 02154 and VISX, Inc. (''VISX''), located at 3400 Central Expressway, Santa Clara, California 95051.

The proposed consent orders (''Orders'') have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

On March 24, 1998, the Commission issued a complaint alleging that Summit and VISX violated Section 5 of the FTC Act, as amended, 15 U.S.C. § 45 (the ''Complaint''). The Orders, if issued by the Commission, would settle all of the allegations of the Complaint against Summit and settle part of the allegations of the Complaint against VISX (the ''Complaint'').

The Complaint alleges that Summit and VISX are competitors in the market for photorefractive keratectomy (''PRK''), a form of eye surgery that corrects refractive vision disorders through the use of specialized, computer-guided laser equipment that reshapes the cornea. Summit and VISX each own patents related to PRK, and are also the only firms whose PRK laser systems have received marketing approval from the U.S. Food and Drug Administration.

As set forth in the Complaint, on or about June 3, 1992, VISX and Summit pooled most of their existing patents related to PRK (as well as certain future ones) in a newly created partnership called Pillar Point Partners (''PPP''). According to the Complaint, this pooling arrangement eliminated horizontal competition between VISX and Summit.

The U.S. Department of Justice and the Federal Trade Commission's Antitrust Guidelines for the Licensing of Intellectual Property (April 6, 1995) (the ''Guidelines'') address the analysis of intellectual property licensing in general, and patent pool arrangements such as that between Summit and VISX in particular. The Guidelines recognize that intellectual property licensing arrangements are ''typically welfare-enhancing and procompetitive.'' Guidelines § 3.1. However, ''antitrust concerns may arise when a licensing arrangement harms competition among entities that would have been actual or likely potential competitors in a relevant market in the absence of the license''—what the Guidelines call a ''horizontal relationship'' *Id*. With respect to pooling arrangements, the Guidelines repeat the same analytical principles. The Guidelines note that pooling arrangements ''may provide procompetitive benefits by integrating complementary technologies, reducing transaction costs, clearing blocking positions, and avoiding costly infringement litigation.'' Guidelines § 5.5. However, where pooling arrangements ''are mechanisms to accomplish naked price fixing or market division,'' or where they ''diminish competition among entities that would have actual or likely potential competitors in a relevant market in the absence of the cross-license'' they are subject to challenge. *Id*.

In this case, the Complaint alleges that Summit and VISX were horizontal competitors at the time they formed PPP, because they could and would have competed with one another in the sale or lease of PRK equipment by using their own technology embodied in their respective patents. In addition, Summit and VISX could have engaged in competition with each other in connection with the licensing of technology related to PRK. The pooling arrangement restricted both forms of competition. Price competition in the sale or lease of PRK equipment was restricted because, under the PPP agreement, VISX and Summit were required to pay a fixed ''per procedure fee'' to PPP for each PRK procedure performed with its machinery That ''per procedure fee''—set at the higher of the two proposals submitted by VISX and Summit to PPP ($250)—functioned as a price floor. Because each firm was obligated to pay $250 per use into the pool, neither had any incentive to lower the usage charge below that level. In the absence of the pool, Summit and VISX would have competed with each other, resulting in lower prices to doctors and consumers for the use of each company's PRK equipment.

PPP has also had an anticompetitive effect in the market for PRK technology licensing. Under the PPP agreement, only PPP can license to third parties the PRK patents contributed by VISX and Summit, but VISX and Summit each retain a veto power over licensing of any of the patents in the pool. In effect, this provision of the pool gave each firm a veto over the licensing of the other's patents. Whereas prior to the pool, each firm could have licensed its own patents unilaterally, after the pool no patent could be licensed without the consent of both companies. Since its formation, the Complaint alleges that PPP has not licensed its patents to any third-party manufacturers and any offers have been economically prohibitive.

The Guidelines add that if a pooling arrangement has an anticompetitive effect in the relevant markets, the Commission should consider whether the pool is ''reasonably necessary to achieve procompetitive efficiencies.'' Guidelines, § 4.2. In analyzing whether the pool is ''reasonably necessary,'' the Guidelines further instruct that

> The existence of practical and significantly less restrict alternatives is relevant to a determination of whether a restraint is reasonably necessary. If it is clear that the parties could have achieved similar efficiencies by means that are significantly less restrictive, then the [FTC] will not give weight to the parties' efficiency claim. In making this assessment, however, the [FTC] will not engage in a search for a theoretically least restrictive alternative that is not realistic in the practical prospective business situation faced by the parties.

Id.

Summit and VISX contended that PPP reduced the uncertainty and expense associated with the patent litigation that would have inevitably ensued without PPP, and PPP allows both parties to be in the market, when patent infringement

might have precluded one or both from coming to market. As to the first part of that argument, Summit and VISX could have achieved these efficiencies by any number of significantly less restrictive means, including simple licenses or cross-licenses that did not dictate prices to users or restrict entry. As to the second part of that argument, the Complaint alleges that patent infringement would not have precluded either firm from coming to market.

After concluding that there was reason to believe that the pooling of patents by VISX and Summit was anticompetitive and that PPP was not reasonably necessary to achieve any procompetitive efficientcies, the FTC issued the Complaint. Thereafter, Summit and VISX decided to enter into agreements with the FTC to end the dispute. The Order achieve all of the goals of Counts I and II of the Complaint. As discussed below, PPP has been dissolved and the Orders require Summit and VISX to make pricing and licensing decisions independently. In essence, the Orders return VISX and Summit to the status of competitors in the PRK industry.

The Orders prohibit Summit and VISX (a) from agreeing in any way to fix the prices they charge for the use of their PRK lasers and patents, including the ''per-procedure fee'' charged to doctors each time he or she uses one of the firms' PRK lasers, and (b) from agreeing in any way to restrict each other's licensing rights and decisions for their PRK lasers and patents.

The Orders require Summit and VISX to cross-license, on a royalty-free and non-exclusive basis the patents each firm contributed to PPP. Although the Complaint contends that VISX and Summit could have competed absent the pool, subsequent sunk-cost investments in reliance on the pool make a cross-license desirable to approximate the competitive conditions that would have been achieved by this point in time had the pool not been formed.

The Orders also require Summit and VISX (a) to take no action inconsistent with the dissolution of PPP, except to the extent necessary for PPP to wind up its affairs and to defend or settle litigation in which it is a defendant, and (b) to return the PPP patents to the firm that contributed them to PPP.

The Orders further require Summit and VISX to give notice of the Orders to any person that previously requested a license to use any of the PPP patents in the manufacture, assembly or sale of PRK equipment since June 3, 1992 (the date PPP was created). Summit and VISX must also give notice to their customers that they have the opportunity to stop using the lasers without any penalty or continuing obligation (with certain exceptions as set forth in the Orders). Customers that entered into any agreement with Summit or VISX between June 3, 1992 (the date PPP was formed) and June 5, 1998 (the date of PPP's dissolution) that included an obligation to pay a per-procedure fee to license any of the PPP patents will have the opportunity to stop using the laser covered by the patents and negotiate a new licensing agreement with their current licensor or, alternatively, seek a licensing agreement with a competitor. This provision is necessary to restore competitive conditions to those which would have existed had there been no pool at the time these contracts were entered into.

The Orders also compel Summit and VISX to fulfill certain standard notification, reporting and inspection requirements.

The Orders will terminate upon the expiration of the last PPP patent to expire.

The purpose of this analysis is to facilitate public comment on the Orders, and it is not intended to constitute an official interpretation of the agreements and the Orders or to modify them in any way. Additionally, the proposed consent orders have been entered into for settlement purposes only, and do not constitute admissions by Summit and VISX that the law has been violated as alleged in the Complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–23448 Filed 8–31–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–27]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice. Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Projects

1. Mammography Rescreening Rates and Risk Factor Assessment—New

The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Control and Prevention proposes to conduct Mammography research to reduce breast cancer deaths by detecting tumors while they are still small and easier to treat. Because new tumors can develop in women previously free of breast cancer, older women who face higher risks of developing breast cancer should complete mammography screening every one to two years. To provide cancer screening for low income women, Congress passed the Breast and Cervical Cancer Mortality Prevention Act (Pub. L. 101–354) in 1990. The Division of Cancer Prevention and Control (DCPC) in the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC) was given funding to establish the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The NBCCEDP now provides mammography and cervical cancer screening services to low income and medically under-served women in all 50 states, the District of Columbia, 4 territories, and 13 tribes. To assist state, territorial, and tribal programs with efficient service delivery, new data are needed to [1] estimate scientifically valid, statistically precise estimates of mammography rescreening rates and [2] identify the factors associated with

timely rescreening among NBCCEDP-enrollees.

To obtain data on mammography rescreening rates and risk factors, DCPC plans to conduct telephone interviews with a random sample of 2,250 NBCCEDP-enrollees from four states. Consenting women will complete a 35 minute telephone interview about their knowledge, attitudes, and experiences with mammography screening. Those who report having received a mammogram during the study period (April 1, 1997 through September 30, 2000) will be asked to sign a release of information form so a copy of the mammography report can be obtained to verify the date the procedure was completed. All women invited to participate in the survey will be 50–73 years of age. Each telephone interview will be scheduled for a time (day, evening, or weekend) and place that is convenient to the participant. There is no cost to respondent.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs)	Total burden (in hrs)
NBCCEDP Enrollees	2,250	1	35/60	1,313
Total				1,313

2. Risk Related Characteristics of the Mining Workforce—New

The National Institute for Occupational Safety and Health (NIOSH) proposes to conduct a survey to replicate the US Bureau of Mines (USBM) Mining Industry Population Survey conducted in 1986. The results of the 1986 sample survey were summarized in two major reports published in 1988: (1) Characterization of the 1986 Coal Mining Workforce, Bureau of Mines Information Circular 9192, and (2) Characterization of the 1986 Metal and Nonmetal Mining Workforce Metal, Bureau of Mines Information Circular 9193. The sample surveyed the following employee characteristics: occupation, principal equipment operated, primary work location, years of employment in present job, years of employment at current mine, years of overall mining experience, age, gender, race, education and hours of job-related training in the past two years. This information combined with the injury and fatality numbers reported to the Mine Safety and Health Administration (MSHA) allowed for the identification of specific occupations, work locations, age ranges, work experience, etc. which may place a miner at higher risk of injury. Updating this demographic information is essential for meaningful comparison or identification of risk-related characteristics of miners.

Additionally, in the past decade there have been significant increases in the numbers and proportion of independent contractor employees working and being injured on mine property. Consequently, the present study will extend the survey to include a sample of independent contractor employers whose employees work on mine property and whose employment hours and work-related injuries are reported to MSHA. The total cost to respondents is $29,250.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs)	Total burden (in hrs)
Mine Operator	1350	1	1	1350
Independent Contractor Employer	590	1	1	590
Total				1940

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–23429 Filed 8–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–19–98]

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 Officer at (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 Projects

1. Contents of a Request of Health Hazard Evaluation (0920–0102)—Extension

In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, the National Institute for Occupational Safety and Health (NIOSH) responds to approximately 400 requests for health hazard evaluations each year to identify potential chemical, biological or physical hazards at the workplace. A NIOSH form is available for requesting these health hazard evaluations. This form provides the mechanism for employees, employers, and other authorized representatives to supply the information required by the regulations which govern the NIOSH health hazard evaluation program (42 CFR 85.3–1). The information provided is used by NIOSH to determine whether or not there is reasonable cause to justify conducting an investigation. The main purpose of investigations conducted in the health hazard evaluation program is to help employers and employees identify and eliminate occupational health hazards. Without the information requested on this form, NIOSH would be unable to perform its legislated function of conducting health hazard

evaluations in workplaces. The total annual burden is 80.

Respondents	No. of respondents	No. of responses/respondent (in hrs.)	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Employees and Representatives	260	1	.2	52
Employers	140	1	.2	28

2. The National Death Index (NDI) (0920–0215)—Extension

A service of the National Center for Health Statistics (NCHS), that assists health and medical researchers to determine the vital status of their study subjects. The NDI is a national data base containing identifying death record information submitted annually to NCHS by all the state vital statistics offices, beginning with deaths in 1979. Searches against the NDI file provide the states and dates of death and the death certificate numbers of deceased study subjects. With the recent implementation of the NDI Plus service, researchers now have the option of also receiving cause of death information for deceased subjects, thus reducing the need to request copies of death certificates from the states. The NDI Plus option currently provides the ICD–9 codes for the underlying and multiple causes of death for the years 1979–1996. The five administrative forms are completed by health researchers in government, universities, and private industry in order to apply for NDI services and to submit records of study subjects for computer matching against the NDI file. The total annual burden hours are 227.

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Government researchers	48	1	1.89	90.8
University researchers	60	1	1.89	113.5
Private industry researchers	12	1	1.89	22.7

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–23393 Filed 8–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–20–98]

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 Officer at (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 Projects

1. Pulmonary Function Testing Course Approval Program, 29 CFR 1910.1043 (0920–0138); Extension

The National Institute for Occupational Safety and Health (NIOSH) has responsibility under the Cotton Dust Standard, 29 CFR 1910.1043, for approving courses to train technicians to perform pulmonary function testing. Successful completion of a NIOSH approved course is mandatory under the Standard. To carry out its responsibility, NIOSH maintains a Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors who seek NIOSH approval to conduct courses, and if approved, notification to NIOSH of any course or faculty changes during the period of approval. The application form and addended materials including agenda, vitae and course materials are reviewed by NIOSH to determine if the applicant has developed a program which adheres to the criteria required in the Standard. The letter seeking approval for subsequent changes is reviewed to assure that changes in faculty or course content continue to meet course requirements. Applications to be a course sponsor and carry out training are submitted voluntarily by institutions and organizations from throughout the country. If an application is not submitted for review, NIOSH is unable to evaluate a course to determine whether it meets the criteria in the Cotton Dust Standard and whether technicians will be adequately trained as mandated under the Standard. The total annual burden hours are 40.5.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
Sponsoring organizations	66	1	.614

2. Audience-Derived Input Regarding Campaign Development To Promote Colorectal Cancer Screening

New—The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control is requesting clearance to gather information about colorectal cancer screening. Colorectal cancer is the second leading cause of cancer-related deaths in the United States. In 1997, approximately 131, 200 new cases of colorectal cancer will have been diagnosed, and an estimated 54,900 deaths will be caused by the disease. When colorectal cancer is detected early, chances for survival are greatly enhanced: current studies indicate that deaths from colorectal cancer could be reduced by approximately 33 percent through screening and by providing special attention to individuals at increased risk for this disease. As a result, in 1997 several major health organizations, including the Centers for Disease Control and Prevention, recommended routine screening be conducted for colorectal cancer among all Americans over 50 years of age in good health. Recent documented usage of colorectal cancer screening by the U.S. population, however, lags far behind screening for other cancers, such as breast and cervical cancers. Finding ways to promote the new recommendation for routine colorectal cancer screening among the target population, therefore, is a necessity in combating the disease.

The Division of Cancer Prevention and Control is planning to obtain input from the target audience of all adults within the U.S. who are in good health and age 50 and older. Information collected from the target audience will assist in the design and implementation of a national campaign intended to promote screening for colorectal cancer. Such information will include knowledge and attitudes regarding colorectal screening as well as responses to draft messages promoting screening, and will be gathered using focus groups, interviews, and the purchase of omnibus survey questions. The total annual burden hours are 225.

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)
Focus Groups	50	1	1.5
Intercept Interviews	100	1	0.5
Questions included in omnibus surveys	1000	1	0.10

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–23428 Filed 8–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director; Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 9 a.m.-5:15 p.m., September 14, 1998; 8 a.m.-3:30 p.m., September 15, 1998.

Place: The Radisson Hotel Atlanta, Courtland and International Boulevard, Atlanta, Georgia 30303, telephone 404/659–6500.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters To Be Discussed: Agenda items include: an update on Health People 2010; a discussion on the results of field testing for the Vaccine Preventable Diseases (VPD) Chapter, a discussion of the VPD Epidemiologic Reviews Manuscript, a discussion on the dissemination, publication and evaluation of the Guide, a review of the draft chapter on Motor Vehicle Occupant Injuries (MVOI) and a review of evidence on interventions for seat belt use for the MVOI Chapter, reports on the progress of the Tobacco, Oral Health and Physical Activity Chapters, and a progress report on the Methods Development.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Marguerite Pappaioanou, Chief, GCPS Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301.

Persons interested in reserving a space for this meeting should call 404/639–4301 by close of business on September 9, 1998.

Dated: August 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–23424 Filed 8–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Immunization Program; Meeting

The National Immunization Program (NIP), Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: The National Immunization Program Techniques for Enabling Immunization Record Exchange.

Times and dates: 9 a.m.–4:30 p.m., September 10, 1998; 9 a.m.–4 p.m., September 11, 1998.

Place: Holiday Inn, 130 Clairemont Avenue, Decatur, Georgia 30030, 404/371–0204.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 30 people.

Purpose: To explore techniques to enable record exchange amongst State-and community-based registries and to identify CDC/NIP's role in the development of strategies to facilitate the process.

Matters To Be Discussed: Agenda items will include a discussion of NIP's Health Level Seven (HL7) Immunization Registry Record Exchange Standard, a description of six Registry Projects' HL7 implementation and needs, and a proposal for solutions.

Contact Person For More Information: Robb Linkins, Ph.D., M.P.H., Chief, Systems Development Branch, Data Management Division, NIP, CDC, 1600 Clifton Road, NE, M/S E–62, Atlanta, Georgia 30333, telephone 404/639–8728, e-mail rxl3@cdc.gov.

Dated: August 26, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–23431 Filed 8–31–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Diseases Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Diseases Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 63 FR 34408–09, dated July 16, 1998) is amended to reflect the restructuring of the Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Diseases Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Retitle the *Division of HIV/AIDS Prevention (CK2)* to the *Division of HIV/AIDS Prevention—Intervention Research and Support (CK2)*. Delete the functional statement and insert the following:

(1) In cooperation with the CDC components, administers operational programs for the prevention of human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrome (AIDS); (2) provides consultation, training, promotional, educational, other technical services to assist State and local health departments, as well as national, State, and local nongovernmental organizations, in the planning, development, implementation, evaluation and overall improvement of HIV prevention programs; (3) conducts behavioral, communications, evaluation, and operational research into factors affecting the prevention of HIV/AIDS; (4) develops recommendations and guidelines on the prevention of HIV/AIDS; (5) evaluates prevention and control activities in collaboration with other CDC components; (6) provides assistance and consultation on issues related to programmatic support, research, evaluation methodologies, and fiscal and grants management to State and local health departments, nongovernmental organizations, national organizations, and other research institutions; (7) promotes linkages between health department HIV/AIDS programs and other governmental and nongovernmental partners who are vital to effective HIV/AIDS prevention efforts; (8) works closely with Health Care Financing Administration (HCFA), Health Resources and Services Administration (HRSA), other governmental and nongovernmental agencies, and the managed care community (or the private medical sector) to enhance and evaluate HIV prevention services in public and private health care delivery systems; (9) provides consultation to other Public Health Service agencies, medical institutions, private physicians, and international organizations or agencies; (10) provides information to the scientific community and the general public through publications and presentations; (11) implements national HIV/AIDS prevention public information programs and assists in developing strategic communications activities and services at the national level to inform and educate the American public about HIV/AIDS, especially people whose behavior places them at risk for HIV infection; (12) provides technical support to CDC assignees to State and local health departments who are working on HIV/AIDS prevention and communications activities.

Delete the functional statement for the *Office of the Director (CK21)* and insert the following:

(1) Plans, directs, and evaluates the activities of the division; (2) develops goals and objective and provides national leadership and guidance in HIV/AIDS prevention policy formulation and program planning and development; (3) provides leadership for developing research in behavioral aspects of HIV/AIDS prevention, evaluation of HIV/AIDS prevention, and in coordinating activities between the division and other NCHSTP divisions, CDC Centers, Institute, and Program Offices (CIOs), and national-level prevention partners who influence HIV/AIDS prevention programs involved in HIV/AIDS investigations, research, and prevention activities; (4) in collaboration with other components of CDC and with other governmental and non-governmental organizations, develop and promotes policies and evaluation methods and recommends research to enhance HIV prevention and control efforts in public and private health care delivery systems; (5) provides oversight for human subjects review of protocols and coordinates human subjects review training; (6) coordinates within the division and between the division and the Communications Office, NCHSTP, the response to the national and local communications media on HIV/AIDS issues; (7) ensures multidisciplinary collaboration in HIV/AIDS prevention activities; (8) provides leadership and guidance for program management and operations and the development of training and educational programs; (9) coordinates the development of guidelines and standards to ensure ongoing, effective HIV prevention programs and their evaluations; (10) oversees the creation of materials designed for use by the media, including press releases, letters to the editor, and other print and electronic materials and programs, and ensures appropriate clearance of these materials; (11) assists in the preparation of speeches and Congressional testimony on HIV/AIDS for the Division Director, the Center Director, and other public health officials; (12) provides program services support in extramural programs management, administrative services, and information systems services; (13) collaborates, as appropriate, with nongovernmental organizations to achieve the mission of the division; (14) provides international consultation in collaboration with the Division of HIV/AIDS Prevention—Surveillance and Epidemiology's lead activity on international HIV/AIDS activities; (15) collaborates with other branches, divisions, and CIOs to synthesize HIV prevention practices; (16) in carrying out these activities, collaborates, as appropriate, with other divisions and offices of NCHSTP, and with other CIOs throughout CDC.

Delete the title and functional statement for the *International Activity (CK211)*.

Delete the title and functional statement for the *Technical Information Activity (CK212)*.

Delete the functional statement for the *Behavioral Intervention Research Branch (CK22)* and insert the following:

(1) Applies current theory, practice, and empirical findings in designing and conducting research on state-of-the-art interventions to prevent HIV infection; (2) conducts research to examine methodological issues related to implementation, design and evaluation aspects of behavioral intervention research trials; (3) conducts research to examine the processes and factors that influence effective and efficient translation, diffusion, and sustainability of behavioral intervention research findings to HIV prevention programs; (4) summarizes and synthesizes the intervention research literature to derive research priorities and specify the characteristics of effective interventions to prevent HIV infection; (5) contributes to the intervention research literature by publishing regularly in peer-reviewed journals and CDC-sponsored publications; (6) collaborates with

Federal, State, and local HIV prevention partners in identifying research priorities and in designing intervention research (7) collaborates and consults with CDC staff, other Public Health Service agencies, State and local health departments, and other groups and organizations involved in HIV prevention activities to devise and facilitate technical assistance systems and activities related to the application of behavioral science research findings to prevention programs and policies.

Delete the functional statement for the *Community Assistance, Planning, and National Partnerships Branch (CK23)* and insert the following:

(1) In collaboration with State and local public health and non-governmental national/regional and local partners, CDC CIOs, and other Federal agencies, develops and implements programs, policies, and activities that enable and mobilize affiliates and communities to become involved with, and support, local and statewide strategic community planning that improves HIV prevention programs and activities; (2) plans, develops, implements, and manages strategies and resources that build a comprehensive public health private-sector partnership to prevent HIV infection/AIDS; (3) provides technical consultation and assistance to State and local health departments, community planning groups,and nongovernmental and other prevention partners in operational aspects of HIV prevention; (4) monitors activities of HIV prevention projects to ensure operational objectives are being met; (5) establishes guidelines and policies for implementation and continuation of State and local HIV prevention programs; (6) provides technical review of grant applications and prevention plans; (7) conducts continuing analysis of support utilization and career development of field personnel and analysis of other resource allocations and utilization in relation to HIV prevention; (8) provides supervision for HIV prevention field staff; (9) assists in the development of new operational programs and program solicitations for HIV prevention; (10) coordinates program development and implementation with State/local/regional community planning groups; (11) facilitates linkages with sexually transmitted diseases (STDs) and other HIV prevention programs at all levels to ensure coordination of harm reduction and intervention strategies for populations with common prevention needs; (12) works with national partners to foster HIV prevention capabilities and activities in affected communities; (13) funds and monitors the progress of minority and other community-based organizations undertaking HIV prevention programs and activities; (14) develops national public information programs for HIV/AIDS prevention, working closely with behavioral scientists to create communications messages that effectively promote adoption or maintenance of safe behaviors; (15) promotes and facilitates the application of social marketing principles to HIV prevention at the State and local levels; (16) collaborates with external organizations and the news, public service, entertainment, and other media to ensure that effective prevention messages reach the public; (17) in collaboration with the Training and Technical Support Systems Branch, creates and disseminates materials that incorporate prevention marketing principles for use at national, State, and local levels.

Delete the title and functional statement for the *Edipdemiology Branch (CK24).*

Delete the title and functional statement for the *HIV/AIDS Surveillance Branch (CK25).*

Delete the title and functional statement for the *HIV Seroepidemiology Branch (CK26).*

Delete the title and functional statement for the *Prevention Communications Branch (CK27).*

Retitle the *Program Evaluation Branch (CK28)* to the *Program Evaluation Research Branch (CK28).*

Delete the title and functional statement for the *Statistics and Data Management Branch (CK29).*

After the functional statement for the *Training and Technical Support Systems Branch (CK2A),* insert the following:

Techical Information and Communications Branch (CK2B). (1) Evaluates the effectiveness, costs, and impact of HIV prevention interventions, strategies, policies, and programs as practiced or implemented by public health agencies and organizations at the national/regional and State/local levels; (2) collaborates in the application of evaluation findings and techniques to the ongoing assessment and improvement of HIV prevention programs; (3) conducts evaluation research activities that include studies to evaluate the effectiveness and impact of prevention strategies and programs, major prevention activities, and policies; economic evaluations of HIV prevention, including assessments of alternative prevention strategies to encourage the best use of prevention resources; and development of both process and outcome measures that HIV prevention programs can use to assess their going performance; (4) seeks to advance the methodology of HIV prevention evaluation through evaluation research activities; (5) applies evaluation methods to improving HIV prevention programs, including serving as a resource to other branches/activities, grantees, and prevention partners regarding evaluation of both domestic and international HIV prevention programs; collaborating with other branches as they develop, test, and disseminate models for quality assurance of programs and services; and collaborating with other branches/activities in the development of methods to support the systematic assessment (including self-assessment) and continuous improvement of HIV prevention programs.

After the title and functional statement for the *Surveillance and Epidemiology Branch (CK46), Division of Tuberculosis Elimination (CK4),* insert the following:

Division of HIV/AIDS Prevention—Surveillance and Epidemiology (CK5). (1) Conducts national surveillance of the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS); (2) provides consultation and statistical, epidemiological, and other technical services to assist State and local health departments, as well as national, State, and local nongovernmental organizations, in the planning, development, implementation, and overall improvement of HIV prevention programs; (3) conducts epidemiologic, surveillance, etiologic, health services and operational research into factors affecting the prevention of HIV/AIDS; (4) develops recommendations and guidelines on the prevention of HIV/AIDS and associated illnesses; (5) monitors surveillance of risk behaviors associated with HIV transmission; (7) determines risk factors and transmission patterns of HIV/AIDS by conducting national and international HIV/AIDS surveillance, epidemiologic investigations, and research studies; (8) develops preventive health services models for a variety of HIV-related activities; (9) provides assistance and consultation on issues related to epidemiology, surveillance, and research to NCHSTP, CDC, other Public Health Service agencies, State and local health agencies, community-based organizations; CDC prevention partners, medical institutions, private physicians, and international organizations; (10) provides epidemic aid, epidemiologic and surveillance consultation, and financial assistance for HIV/AIDS surveillance activities to State and local

health departments; (11) provides information on HIV/AIDS surveillance and epidemiology to the scientific community and the general public through publications and presentations; (12) works closely with National Center for Infectious Diseases (NCID) on HIV/AIDS surveillance and epidemiologic investigations that require laboratory collaboration, and on activities related to the investigation and prevention of HIV-related opportunistic infections; (13) provide technical support to CDC assignees to State and local health departments who are working on HIV/AIDS surveillance activities; and (14) serves as the World Health Organization (WHO) Collaborating Division on HIV/AIDS for epidemiology and surveillance.

Office of the Director (CK51). (1) Plans, directs, and evaluates the activities of the division; (2) develops goals and objectives and provides national leadership and guidance in HIV/AIDS prevention policy formulation and program planning and development; (3) provides leadership in developing research in epidemiology, surveillance, and other scientific aspects of HIV/AIDS prevention, and in coordinating activities between the division and other NCHSTP divisions, CDC CIOs, and national-level prevention partners who influence HIV/AIDS prevention programs involved in HIV/AIDS investigations and research; (4) provides oversight for human subjects review of protocols and coordinates human subjects review training; (5) maintains lead responsibility for HIV/AIDS issues related to epidemiology, surveillance, or policy; (6) provides leadership and guidance for the development of data management systems; (7) assists in the preparation of speeches and Congressional testimony on HIV/AIDS for the division Director, the Center Director, and other public health officials; (8) coordinates international HIV/AIDS activities of the division and ensures interdivisional coordination of international activists within the center and CDC, as appropriate; (9) provides program services support in extramrual programs management, administrative services, and information systems services; (10) collaborates, as appropriate, with nongovernmental organizations to achieve the mission of the division; and (11) in carrying out these activities, collaborates, as appropriate, with other divisions and offices of NCHSTP, and with other CIOs throughout CDC.

Epidemiology Branch (CK52). (1) Designs and conducts epidemiologic and behavioral studies in the United States to determine risk factors, co-factors, and modes of transmission for HIV infection and AIDS; (2) conducts studies of the natural history of HIV infection, including manifestations of HIV disease in adults, adolescents, and children; (3) designs and conducts research on the psychosocial, cultural and contextual determinants of risk behaviors related to HIV risk behaviors; (4) describes psychosocial impact of HIV on infected individuals, their families, and close contacts and identifies psychosocial and cultural determinants of disease outcomes of HIV-infected individuals; (5) conducts both epidemiologic and behavioral studies to evaluate appropriate biomedical interventions for preventing HIV infection (primary prevention) and for preventing manifestations of AIDS (secondary prevention); (6) conducts applied research, including effectiveness trials, to assist in evaluation of strategies, major activities, and policies; (7) conducts epidemic aid investigations of HIV infection and associated infectious diseases, as well as other illnesses related to HIV/AIDS; (8) develops policy related to both primary prevention of HIV infection and secondary prevention of its severe manifestations based on scientific investigations and clinical trials; (9) provides epidemiologic consultation to State and local health departments, other Public Health Service agencies, universities, and other groups and individuals investigating HIV/AIDS; (10) responds to inquiries from physicians and other health providers for information on the medical and epidemiologic aspects of HIV/AIDS; (11) collaborates internationally with HIV/AIDS researchers and the International Activities Branch in the conduct of epidemiologic studies; and (12) works closely with NCID to determine virologic and immunologic factors related to transmission and natural history of HIV infection.

Internatioal Activities Branch (CK53). (1) Designs and executes epidemiologic and interventional studies of HIV infection and its associated illnesses in other Nations; (2) develops and conducts epidemiologic studies of risk factors for AIDS and HIV transmission in other Nations; (3) assists in the design, implementation, and evaluation of AIDS prevention and control activities; (4) manages international field sites and staff assigned to those sites; (5) in collaboration with NCID, conducts international surveillance and studies of HIV genotypic variants and their epidemiologic and diagnostic implications; (6) provides technical assistance to other Nations to develop AIDS case surveillance systems; (7) assists foreign governments in carrying out seroprevalance studies and surveys; (8) collaborates with other branches in assisting developing countries in the design, implementation, and evaluation of strategies to protect their blood supplies; (9) coordinates with other CIOs in CDC that have similar international responsibilities; (10) provides consultation to WHO, USAID, and other organizations whose mission is to prevent and control HIV infection and related outcomes; (11) collaborates with national and international organizations to strengthen public health infrastructures at national levels, contributing to technical and managerial sustainability of national HIV prevention and control programs; (12) assist national and international organizations in identifying, developing, and promoting HIV interventions an technologies that are feasible, effective, and culturally appropriate for use in developing countries.

Prevention Services Research Branch (CK54). (1) Plans, develops, and conducts research to develop and improve HIV preventions strategies and service provision; (2) plans, develops, and coordinates local and regional studies of the determinants of risk for HIV infection in specific populations; (3) plans, develops, and coordinates local and regional studies to identify and evaluate specific at-risk populations, and examines and evaluates prevention service application in these populations; (4) collaborates closely with other NCHSTP and CDC organizations in applying research methods to target, evaluate, and monitor HIV prevention programs in specific geographic settings and at-risk populations; (5) develops and utilizes specific research evaluation and monitoring methodologies including prevalence and incidence studies of HIV and related infections in selected geographic areas and at-risk populations; (6) collects data on the extent of HIV prevalence and incidence in the United States; (7) collaborates with division staff to evaluate HIV/AIDS trends in incidence and prevalence; (8) serves as a focus for national and international activities related to transfusion-related HIV transmission; (9) develops, plans, and conducts studies of HIV counseling and testing activities in a variety of prevention service settings, including but not limited to publicly funded managed care settings; (10) collects and analyzes HIV prevalence and incidence date from publicly funded HIV counseling and

testing sites; (11) assists NCID with the evaluation of new HIV-related tests; (12) conducts local and regional studies of HIV genotypic variations and antiretroviral drug resistance; (13) collaborates with NCID laboratories to develop a repository of stored sera and cells for studies of HIV and related infections.

Statistics and Data Management Branch (CK55). (1) Manages, directs, and coordinates the statistics and data management activities and services for the division and the Division of HIV/AIDS Prevention—Intervention Research and Support (DHAP/IRS); (2) provided leadership in the development of statistical and data management planning, policy, implementation, and evaluation; (3) provides data management and statistical support for HIV/AIDS surveillance, HIV serosuryveys, epidemiologic studies and other studies conducted within the division and DHAP/IRS; (4) creates mathematical models to project the incidence of AIDS and HIV infection; (5) develops, monitors, and evaluate projects to construct mathematical models of the spread of AIDS and HIV infection and other HIV and AIDS studies; (6) provides statistical models of epidemiologic parameters to describe the efficiency of HIV transmission and the incubation time for AIDS; (7) responds to inquiries from medical professionals, health departments, the media, and the public about AIDS epidemic statistical issues, including projections of the number of AIDS cases and estimates of person infected with HIV; (8) coordinates contracted programming services for the division.

Surveillance Branch (CK56). (1) Conducts surveillance of HIV infection and AIDS in coordination with State and local health departments to provide population-based data for public health policy development and evaluation; (2) maintains, analyzes, and disseminates information from the national confidential registry of HIV/AIDS cases; (3) monitors HIV-related morbidity and mortality and the use of recommendations for prevention and treatment of HIV infection and AIDS; (4) promotes uses of surveillance data for prevention and evaluation; (5) conducts surveillance of special populations of epidemiologic importance, e.g., persons with HIV–2 infection, health care workers for occupationally related HIV transmission, and person reported with unrecognized modes of transmission; (6) in coordination with State and local health departments, conducts population-based surveillance of HIV-related risk behaviors; (7) assesses socioeconomic, educational, and other factors of use in targeting and evaluating prevention and care programs; (8) evaluates surveillance systems for HIV infection and AIDS and modifies surveillance methodologies as needed to meet changing needs of HIV/AIDS programs; (9) manages extramural funding of surveillance activities and provides consultations and technical assistance on surveillance activities and methodologies to State and local health departments and national and international organizations and agencies.

Dated: August 24, 1998.

Stephen B. Thacker,

Acting Deputy Director, Centers for Disease Control and Prevention.

[FR Doc. 98–23476 Filed 8–31–98; 8:45am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0378]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Color Additive Certification Requests and Recordkeeping

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 1, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Color Additive Certification Requests and Recordkeeping—(21 CFR Part 80)—(OMB Control Number 0910–0216)—Extension

Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed unsafe unless the additive and its use are in conformity with a regulation that describes the conditions under which the additive may be safely used, or unless the additive and its use conform to the terms of an exemption for investigational use. If a regulation prescribing safe conditions of use has been issued, the additive must be from a batch certified by FDA to conform to the requirements of that regulation and other applicable regulations, unless the additive has been exempted from the certification requirement.

Section 721(c) of the act instructs the Secretary of Health and Human Services (through FDA) to issue regulations providing for batch certification of color additives for which she finds such requirement to be necessary in the interest of protecting the public health. FDA's implementing regulations in 21 CFR part 80 specify the information that must accompany a request for certification of a batch of color additive and require certain records to be kept pending and after certification. FDA requires batch certification for all color additives listed in 21 CFR part 74 and for all color additives provisionally listed in 21 CFR part 82. Color additives listed in 21 CFR part 73 are exempt from certification.

Under § 80.21, a request for certification must include: Name of color additive, batch number and weight in pounds, name and address of manufacturer, storage conditions, statement of use(s), fee, and signature of requestor. The request for certification must also include a sample of the batch of color additive that is the subject of the request. Under § 80.22, the sample must be labeled to show: Name of color additive, batch number and quantity, and name and address of person requesting certification. A copy of the label or labeling to be used for the batch must accompany the sample. Under § 80.39, the person to whom a certificate is issued must keep complete records showing the disposal of all the color additive covered by the certificate. Such records are to be made available upon request to any accredited representative of FDA until at least 2 years after disposal of all of the color additive.

The request for certification of a batch of color additive is reviewed by FDA's Office of Cosmetics and Colors to verify

that all of the required information has been included. Since the information required in the request for certification is unique to the specific batch of color additive involved, it must be generated for each batch. The information submitted with the request helps FDA to ensure that only safe color additives will be used in foods, drugs, cosmetics, and medical devices sold in the United States. The batch number assigned by the manufacturer is a means of temporary identification until a certification lot number has been issued by FDA. After certification, the manufacturer's batch number helps ensure that the proper batch of color is indeed being used under the certification lot number issued by FDA. In the case of a batch that has been refused certification for noncompliance with the regulations, the manufacturer's batch number aids in tracing the ultimate disposition of that batch of color additive. The batch weight serves to account for the disposition of the entire batch. For example, it might be used in determining whether uncertified color has been sold under the lot number assigned to the batch by FDA or, in the event of a recall after certification, to determine whether all unused color has been recalled. In addition, the batch weight is the basis for assessing the certification fee. The name and address of the manufacturer of the color additive being submitted for certification allows FDA to contact the person responsible for its manufacture should a question arise concerning compliance with the regulations. Information on storage conditions pending certification is used to evaluate the possibility that the batch could have been inadvertently or intentionally altered in a manner that would make the sample submitted for certification analysis no longer representative of the batch. It is also used when an FDA investigator is sent to the site; the veracity of the storage statements is checked during normal plant inspections. Information on the uses is needed to ensure that all of the proposed uses are within the limits of the listing regulation for which the person seeking certification proposes that the color be certified. The statement of the fee on the certification request is for accounting purposes so that the person seeking certification can be promptly notified if any discrepancies appear. The information requested on the label of the sample submitted with the certification request is used to identify the sample. The regulations require an accompanying copy of the label or labeling to be used for the batch so that FDA can verify that the batch will be labeled appropriately when it enters commerce.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
80.21	20	152	4,091	0.2	818
80.22	20	152	4,091	0.05	205
Total					1,023

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
80.39	27	152	4,091	0.25	1,023
Total					1,023

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated total annual burden for this information collection is 2,046 hours. Over the period fiscal year (FY) 1995 to FY 1997, FDA processed an average of 4,091 requests for certification of batches of color additives. Approximately 20 different respondents submitted requests for certification each year over the period FY 1995 to FY 1997. The estimates for the length of time necessary to prepare certification requests and accompanying samples, and to comply with recordkeeping requirements were obtained from industry program area personnel.

Dated: August 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23401 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0336]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Premarket Notification Submission 510(k), Subpart E

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 1, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification Submission 510(k), Subpart E—(OMB Control Number 0910–0120—Reinstatement)

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) and the implementing regulation, 21 CFR 807.81, require a person/manufacturer who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use.

Section 510(k) of the act allows for exemptions to the 510(k) submissions, i.e., a premarket notification submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process. Under 21 CFR 807.85, ''Exemption from premarket notification,'' a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling or advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following conditions: (1) It is intended for use by a patient named in order of the physician or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject and will not violate the subject's rights. The respondents to this information collection will primarily be medical device manufacturers and businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.81 and 807.87	5,000	1	5,000	80	400,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.93	2,000	10	20,000	0.5	10,000

[2]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in Tables 1 and 2 of this document. Based on the trend in the past 3 years, an estimated 5,000 submissions are expected each year. FDA's administrative and technical staff, who are familiar with the requirements for submission of premarket notifications, estimate that an average of 80 hours are required to prepare a submission (exclusive of preparing clinical data, research, etc.). FDA, therefore, estimates that a total of 400,000 hours of effort is required for the 5,000 submissions. It is also estimated that the respondents will receive requests for an average of 20,000 documents. At an estimated one-half hour to process these documents, an additional 10,000 recordkeeping hours are expected for this program.

Dated: August 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23402 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0357]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Current Good Manufacturing Practice (CGMP) Quality System (QS)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that a collection of information entitled ''Medical Devices; Current Good Manufacturing Practice (CGMP) Quality System (QS)'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 1998 (63 FR 32667), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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 has now approved the information collection and has assigned OMB control number 0910–0073. The approval expires on July 31, 2001.

Dated: August 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23403 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0385]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 1, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Supplements to Premarket Approval Applications for Medical Devices

The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) added section 515(d)(6) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(6)), modifying FDA's statutory authority regarding premarket approval of medical devices. This new section provides for an alternate form of notice to the agency for certain types of changes to a device for which the manufacturer has an approved premarket approval application (PMA). Under section 515(d)(6) of the act, PMA supplements are required for all changes that affect safety and effectiveness, unless such changes involve modifications to manufacturing procedures or the method of manufacture. For those types of manufacturing changes, the manufacturer may submit to the agency an alternate form of notice in the form of a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement. The 30-day notice must: (1) Describe the change the manufacturer intends to make, (2) summarize the data or information supporting the change, and (3) state that the change has been made in accordance with the requirements of 21 CFR part 820.

The manufacturer may distribute the device 30 days after FDA receives the notice, unless FDA notifies the applicant, within that 30-day period, that the notice is inadequate. If the notice is inadequate, FDA will inform the manufacturer that a 135-day supplement is required and will describe what additional information or action is necessary for FDA to approve the change. The rule would incorporate the provisions for a 30-day notice and 135-day supplements into FDA's regulations in § 814.39 (21 CFR 814.39) to reflect the changes made by FDAMA.

Description of Respondents: Businesses or other for profit organizations.

The information collection for § 814.39 has been approved by OMB until September 30, 1998, under Premarket Approval of Medical Devices (OMB control number 0910–0231) for a total of 36,063 hours. FDA believes that the submission of 30-day notices in lieu of PMA supplements will result in approximately a 10 percent reduction in the total number of hours needed to comply with § 814.39. As a result, FDA estimates that the new total number of hours needed to comply with the information collection requirements in § 814.39 is 32,612 for a reduction of 3,451 hours.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.39	493	1	493	66.15	32,612

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 31, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23404 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0717]

Mitsubishi Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsubishi Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sucrose esters of fatty acids with an average degree of esterification ranging from four to seven, as an emulsifier or stabilizer at a level not to exceed 2 percent, in chocolate and in butter-substitute spreads. The petitioner is also proposing ''SOE'' as the common or usual name for this product.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3103.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4610) has been filed by Mitsubishi Chemical Corp., 5–2, Marunouchi 2-chome, Chiyoda-Ku, Tokyo 100, Japan. The petition proposes that the food additive regulations be amended to provide for the safe use of sucrose esters of fatty acids with an average degree of esterification ranging from four to seven, as an emulsifier or stabilizer at a level not to exceed 2 percent, in chocolate and in butter-substitute spreads. The petitioner is also proposing ''SOE'' as the common or usual name for this product.

The agency has determined under 21 CFR 25.32(k) 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.

Dated: August 12, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–23397 Filed 8–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in September 1998.

A portion of the meeting will be open and include discussion of the Center's policy issues and current administrative, legislative, and program developments. Reports to the Council will include the Managed Care & Criminal Justice Conference, a CSAT/CMHS collaborative initiative on Dual Diagnosis, an ONDCP Update, SAMHSA HIV/AIDS Update and the Physicians Leadership Group. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will also include the review, discussion, and evaluation of individual grant applications, contract proposals and discussion of information about the Center for Substance Abuse Treatment's procurement plans. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: September 16, 1998—8:45 a.m.–5:00 p.m; September 17, 1998—9:00 a.m.–12:00 p.m.

Place: Holiday Inn/Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Type: Closed: September 16, 1998—8:45 a.m.–10:00 a.m; *Open:* September 16, 1998—11:15 a.m.–5:00 p.m; September 17, 1998—9:00 a.m.–12:00 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443–5050, and FAX: (301) 480–6077.

Dated: August 25, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–23396 Filed 8–31–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–08]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 2, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Tony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1871. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399. Fax inquiries may be sent to Mr. Johnston at (202) 708–1789. (Other than the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected

agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recovery Fund.

OMB Control Number, if applicable: 2506–0159.

Description of the need for the information and proposed use: To appropriately determine whether entities that submit applications for assistance under the Loan Guarantee Recovery Fund (Section 4 of the Church Arson Prevention Act of 1996) are eligible applicants and submit applications otherwise in compliance with the regulations, certain information is required. Among other necessary criteria, HUD must determine whether: (1) the financial institution is eligible as defined at 24 CFR Section 573.2 of the regulations; (2) the borrower is eligible as defined under 24 CFR Section 573.2; (3) the loan will assist in addressing damage or destruction caused by acts of arson or terrorism; (4) the activities which will be assisted by the guaranteed loans are eligible activities under § 573.3; (5) the financial institution utilizes sufficient underwriting standards; and (6) the assisted activities will comply with all applicable environmental laws and requirements.

Agency form numbers, if applicable: N/A.

Members of affected public: Financial institutions such as banks, trust companies, savings and loan associations, credit unions, mortgage companies, or other issuers regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency. Certain not-for-profit organizations affected by acts of arson or terrorism.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: A total of 100 respondents are expected and the total estimated burden hours is 9440.

Status of the proposed information collection: The Department does not have a critical mass of respondents to serve as a source of information from which conclusions can be drawn with respect to the accuracy of its current estimates.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 27, 1998.

Saul N. Ramirez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–23488 Filed 8–31–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 941–5700–00; CALA 165220 and CAS 052439]

Public Land Order No. 7361; Partial Revocation of Public Land Order No. 3338 and Public Land Order No. 1817; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two public land orders insofar as they affect 903.27 acres of National Forest System lands withdrawn for the Forest Service's Cozy Del Administrative Site, and the Squaw Valley Olympic Site and Recreation Area. The lands are no longer needed for the purposes for which they were withdrawn, and the revocations are necessary to facilitate consummation of pending land tenure adjustment actions by the Forest Service. This order will open the lands to such forms of disposition as may by law be made of National Forest System lands and/or mining, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825, 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3338 (CALA 165220), which withdrew National Forest System land for the Forest Service's Cozy Del Administrative Site, is hereby revoked insofar as it affects the following described land:

San Bernardino Meridian

Los Padres National Forest

T. 5 N., R. 23 W.,
Sec. 35, SW¼SW¼.

The area described contains 40 acres in Ventura County.

2. Public Land Order No. 1817 (CAS 052439), which withdrew National Forest System lands for the Forest Service's Squaw Valley Olympic Site and Recreation Area, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

Tahoe National Forest

T. 15 N., R. 15 E.,
Sec. 2, lot 7 and SE¼NW¼.
T. 16 N., R. 16 E.,
Sec. 28, unpatented fractional portion of SE¼;
Sec. 30, lots 3 to 8, inclusive, S½NE¼,
Sec. 32, SE¼SW¼;
Sec. 33, E½SE¼NW¼, SW¼SE¼NW¼, and unpatented portions of E½.

The areas described aggregate 863.27 acres in Placer County.

3. At 10 a.m. on September 16, 1998, the land described in paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. At 10 a.m. on September 16, 1998, the lands described in paragraph 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands

described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 26, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–23405 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–62570]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 77.04 acres of public land for a period of 50 years to protect and preserve a series of geothermal springs, water quality, and critical habitat for listed endangered fish species. This notice closes the land for up to 2 years from surface entry and mining while various studies and analyses are made to make a final decision. The land will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before November 30, 1998.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On August 13, 1998, 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, but not the mineral leasing laws, subject to valid existing rights:

Mount Diablo Meridian

T. 5 S., R. 61 E.,
Sec. 31, SW¼SW¼.
T. 6 S., R. 61 E.,
Sec. 6, lot 4.

The area described contains 77.04 acres in Lincoln County.

The purpose of the proposed withdrawal is to protect a series of springs known as Ash Springs. These geothermal springs provide habitat for two species of fish listed as endangered by the Fish and Wildlife Service. The proposed withdrawal is in conformance with the Bureau of Land Management Las Vegas/Caliente Resource Area Management Framework Plan and the Ash Springs Coordinated Resource Management Plan.

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 Nevada State Director of the Bureau of Land Management.

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 Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of 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 Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: August 26, 1998.

William K. Stowers,

Lands Team Lead.

[FR Doc. 98–23426 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting is scheduled to begin at about 1:00 pm, Monday October 19, 1998 and recess at about 5:00 pm. The council will briefly reconvene the following day at about 3:00 pm and adjourn at about 3:30 pm.

ADDRESSES: The meeting will be held in the first floor conference room, the National Education Association Building, 130 S. Capitol, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. David Trueman, Colorado River Salinity Control Program Manager, Bureau of Reclamation, UC–228, Mail Room 6107, 125 South State Street, Salt Lake City, Utah, 84138–1102; Telephone: (801) 524–3753.

SUPPLEMENTARY INFORMATION: Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the content of their report.

The meeting of the Advisory Council is open to the public. Any member of the public may file written statements with the Council before, during, or after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: August 27, 1998.

Stanley L. Ponce,

Director, Research.

[FR Doc. 98–23485 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by members of the AMWG and provide advice and information to the AMWG to act upon. The AMWG uses this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program, and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis.

DATES AND LOCATIONS: The TWG will conduct three (3) public meetings at the following times and locations:

September 14–15, 1998—Phoenix, Arizona: The meeting will begin at 10:00 a.m. and end at 5:00 p.m. on the first day. The second day of the meeting will begin at 8:00 a.m. and end at 4:00 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel at 1515 North 44th Street in Phoenix, Arizona.

November 17–18, 1998—Phoenix, Arizona: The meeting will begin at 10:00 a.m. and end at 5:00 p.m. on the first day. The second day of the meeting will begin at 8:00 a.m. and end at 4:00 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel at 1515 North 44th Street in Phoenix, Arizona.

December 8, 1998—Phoenix, Arizona: The meeting will begin at 10:00 a.m. and end at 4:00 p.m., will be held in the Host Marriot Meeting Room, located on level 2, terminal 3, of the Sky Harbor Airport located at 3400 East Sky Harbor Boulevard in Phoenix, Arizona.

Time will be allowed at each meeting for any individual or organization wishing to make formal oral comments (limited to 10 minutes), but written notice must be provided at least five (5) days prior to the meeting to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, e-mail at: bmoore@uc.usbr.gov.

SUPPLEMENTARY INFORMATION: General topics of discussion for the three meetings will be as follows:

Welcome and other Administrative Business
Reports from Ad Hoc Committees and Other Official Reports
Call for Public Comment
Cultural Research and Monitoring Program Overview
Review the Center's Monitoring and Research Project List and Funding Levels for 1999
Funding Sources for Compliance Projects and Expanded Ecosystem Studies
Conceptual Model Presentation
Report of Workshop Accomplishments
Glen Canyon Dam Power Replacement Report
Committee/Member Progress Reports
Elect Chairperson for 1999
Approve Recommendations for AMWG
Review Resource Criteria Analysis for Fiscal Year 1999
Draft Beach/Habitat-Building Flow Recommendation
Review the Center's Annual and Strategic Plans and Budget
Hydrology Forecast and Report

Final agendas for each of the three public meetings will be available 15 days prior to each meeting on the Bureau of Reclamation's website under the Adaptive Management Program at http://www.uc.usbr.gov.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, telephone (801) 524–3702, faxogram (802) 524–5499, e-mail at: bmoore@uc.usbr.gov.

Dated: August 27, 1998.

Stanley L. Ponce,

Director, Research.

[FR Doc. 98–23486 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Resource Management Plan for the Potholes Reservoir, Grant County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Bureau of Reclamation (Reclamation) proposes to prepare an environmental impact statement (EIS) on the proposed Potholes Reservoir Resource Management Plan (RMP). This EIS will be prepared pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended.

Reclamation is currently assessing the existing resources, issues, and concerns at Potholes Reservoir in order to develop a plan to guide future management of Reclamation lands surrounding the reservoir. The waters and adjacent lands of Potholes Reservoir are currently being managed under a memorandum of agreement that will expire in 2002. The RMP will provide Reclamation and their land management partners, the Washington Department of Fish and Wildlife, Washington State Parks and Recreation Commission, and Grant County, a framework for future management actions at Potholes Reservoir. The RMP will not address water operations at Potholes Reservoir.

DATES: Comments concerning issues or concerns that should be addressed in the proposed RMP and EIS should be received in writing by October 1, 1998.

ADDRESSES: Send written comments concerning the proposal to Mr. James Blanchard, Activity Manager, Bureau of Reclamation, Epharata Field Office, P.O. Box 815, Ephrata, Washington 98823.

FOR FURTHER INFORMATION CONTACT: Mr. James Blanchard, at (509) 754–0226.

SUPPLEMENTARY INFORMATION: The Potholes Reservoir is located in southern Grant County, Washington, approximately 4 miles south and southwest of Moses Lake, Washington. The Potholes Reservoir provides irrigation water to portions of the Columbia Basin Project.

Reclamation initiated preparation of an environmental assessment (EA) on the Potholes RMP in 1996. Based on a preliminary analysis of alternatives that indicates a potential for significant impacts, Reclamation has decided to prepare an EIS. A comprehensive public involvement program has been conducted during the RMP planning process and has provided opportunities for public input. Scoping of issues was accomplished through public meeting and discussions and meetings with Federal state, and local agencies and tribes. These meetings helped in identification of issues and concerns, formulation of goals and objectives, and development of alternatives for analysis. While no additional scoping meetings are planned in connection with the preparation of the draft EIS, this notice solicits additional comments on issues and concerns that should be addressed in the development of an RMP for Potholes Reservoir. To submit comments see the **DATES** and **ADDRESSES** sections. Comments may also be sent by E–Mail to jblanchard@pn.usbr.gov.

The draft EIS is expected to be complete and available for review and comment in early 1999. Public hearings will then be held to receive comments on the adequacy of the EIS an analyzing the effects of the alternative actions.

The following issues, concerns, and problems have been identified to date:

Fisheries: Concern with the decline of fisheries over the last 10 to 15 years.

Wildlife: The need to prevent damage to wildlife and habitat, especially for

priority wildlife such as threatened or endangered species.

Vegetation: The need to protect wildlife habitat and the natural landscape and the concern for weed control.

Water Quality: Concern with the effect of water quality on fisheries and the safety of eating fish from the reservoir.

Recreation: Primary concerns related to over capacity use on holidays, lack of desired facilities and features, seasonal use restrictions, access, off-road vehicle use, and conflicts between recreational uses and natural resources.

Management and Infrastructure: Public and management agencies are concerned with the lack of resources to provide services and enforcement.

Four alternatives are currently being considered. These include an alternative which balances use with resource protection and enhancement, an alternative that stresses enhancement of natural resources (Alternative A), an alternative that stresses enhancement of recreation potential (Alternative B), and the No Action Alternative as required by NEPA. Comments received as a result of this notice may result in changes to current alternatives or development of additional alternatives to be evaluated in the draft EIS.

Dated: August 13, 1998.

Kenneth R. Pedde,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 98–23408 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the Technical Evaluation Series described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 1, 1998, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve the collection of information for a Technical Evaluation Series. OSM is requesting a 3-year term of approval of this information collection activity.

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. The OMB control number for this collection of information will be placed on the forms once approved and the control number assigned.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on June 16, 1998 (63 FR 32895). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–NEW.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 1,600.

Total Annual Burden Hours: 267.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please include the appropriate OMB control number in all correspondence.

Addresses: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: August 26, 1998.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 98–23430 Filed 8–31–98; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–172 (Review)]

Animal Glue From Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on animal glue from Germany.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on animal glue from Germany would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of this review and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202-205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1977, the Department of the Treasury issued an antidumping duty order on imports of animal glue from Germany (42 F.R. 64116). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Germany.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as animal glue.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of animal glue.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 22, 1977.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name,

telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Germany that currently export or have exported Subject Merchandise to the United States or other countries since 1977.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Germany, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Germany accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Germany.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Germany, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Germany accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Germany accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and animal glue from other countries.

(11) (OPTIONAL). A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23471 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 104–TAA–21 (Review)]

Cotton Yarn From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the countervailing duty order on cotton yarn from Brazil.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on cotton yarn from Brazil would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On March 15, 1977, the Department of the Treasury issued a countervailing duty order on imports of cotton yarn from Brazil (42 FR 14089). There was no Commission determination of material injury by reason of subsidized imports prior to issuance of the order because imports from Brazil were not eligible for an injury test unless they were duty free. However, pursuant to section 104 of the Trade Agreements Act of 1979, the Commission made a determination in May 1984 that the domestic industry producing 100 percent cotton carded yarn would be materially injured by reason of subsidized imports of such yarn from Brazil if the portion of the countervailing duty order covering such imports were to be revoked, but that domestic producers of 100 percent cotton combed yarn, blended combed yarn, and blended carded yarn would not be materially injured or threatened with material injury by reason of subsidized imports from Brazil if the part of the order covering such imports were to be revoked. In light of the Commission's 1984 determination, the countervailing duty order was revoked except as it pertained to 100 percent cotton carded yarn. The Commission is now conducting a review to determine whether revocation of the portion of the order that remains effective would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Brazil.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its 1984 determination, the Commission defined the Domestic Like Product on which it made an affirmative determination as 100 percent cotton carded yarn.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its 1984 determination, the Commission defined the pertinent Domestic Industry as producers of 100 percent cotton carded yarn.

(5) The *Order Date* is the date that the countervailing duty order under review became effective. In this review, the Order Date is March 15, 1977.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse

inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil that currently export or have exported Subject Merchandise to the United States or other countries since 1976.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Brazil, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Brazil accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Brazil.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Brazil, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Brazil accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Brazil accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and 100 percent cotton carded yarn from other countries.

(11) (OPTIONAL). A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23467 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–176 (Review)]

Impression Fabric From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on impression fabric of manmade fiber from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on impression fabric of manmade fiber from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1978, the Department of the Treasury issued an antidumping duty order on imports of impression fabric of manmade fiber from Japan (43 F.R. 22344). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as impression fabric of manmade fiber.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as slitters of impression fabric of manmade fiber.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is May 25, 1978.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise,

a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1977.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of square yards and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and (b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of square yards and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Japan accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of square yards and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and impression fabric of manmade fiber from other countries.

(11) (OPTIONAL). A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23469 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–167 (Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on pressure sensitive plastic tape from Italy.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade

Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1977, the Department of the Treasury issued an antidumping duty order on imports of pressure sensitive plastic tape from Italy (42 FR 56110). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Italy.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as pressure sensitive plastic tape of more than 1⅜ inches in width and not exceeding 4 mils in thickness.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of pressure sensitive plastic tape of more than 1⅜ inches in width and not exceeding 4 mils in thickness.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is October 21, 1977.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in

general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Italy that currently export or have exported Subject Merchandise to the United States or other countries since 1977.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of square yards and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and (b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Italy, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of square yards and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Italy accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Italy.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Italy, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of square yards and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Italy accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Italy accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and pressure sensitive plastic tape of more than 1–3/8 inches in width and not exceeding 4 mils in thickness from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23466 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–188 (Review)]

Prestressed Concrete Steel Wire Strand From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on prestressed concrete steel wire strand from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1978, the Department of the Treasury issued an antidumping duty order on imports of prestressed concrete steel wire strand from Japan (43 FR 57599). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all steel wire strand, other than alloy steel, which has been stress-relieved and is suitable for use in prestressing concrete.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of all steel wire strand, other than alloy steel, which has been stress-relieved and is suitable for use in prestressing concrete.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 8, 1978.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in

general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1977.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Japan accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Japan accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and all steel wire strand, other than alloy steel, which has been stress-relieved and is suitable for use in prestressing concrete from other countries.

(11) (OPTIONAL). A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23470 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–173 (Review)]

Railway Track Maintenance Equipment From Austria

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on railway track maintenance equipment from Austria.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on railway track maintenance equipment from Austria would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1978, the Department of the Treasury issued an antidumping duty order on imports of railway track maintenance equipment from Austria (43 FR 6937). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Austria.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as certain railway track maintenance equipment, specifically, tampers and ballast regulators. Certain Commissioners defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of certain railway track maintenance equipment, specifically, tampers and ballast regulators. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is February 17, 1978.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Austria that currently export or have exported Subject Merchandise to the United States or other countries since 1976.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Austria, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Austria accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Austria.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Austria, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Austria accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Austria accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and certain railway track maintenance equipment, specifically, tampers and ballast regulators from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23472 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–191 (Review) and 104–TAA–13 (Review)]

Rayon Staple Fiber From Finland and Sweden

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty order on rayon staple fiber from Finland and the countervailing duty order on rayon staple fiber from Sweden.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on rayon staple fiber from Finland and/or the countervailing duty order on rayon staple fiber from Sweden would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is October 21, 1998. Comments on the adequacy of responses may be filed with the Commission by November 13, 1998.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On March 21, 1979, following an affirmative injury determination by the Commission, the Department of the Treasury issued an antidumping duty order on imports of rayon staple fiber from Finland (44 FR 17156). On May 15, 1979, the Department of the Treasury issued a countervailing duty order on imports of rayon staple fiber from Sweden (44 FR 28319). There was no Commission determination of material injury by reason of subsidized imports prior to issuance of the order because imports from Sweden were not eligible for an injury test unless they were duty free. However, pursuant to section 104 of the Trade Agreements Act of 1979, the Commission made a determination in March 1983 that the domestic industry producing rayon staple fiber would be materially injured by reason of subsidized imports of such fiber from Sweden in the countervailing duty order covering such imports were to be revoked. The Commission is now conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Finland and Sweden.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as rayon staple fiber.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of rayon staple fiber.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews of the antidumping and countervailing duty orders, the Order Dates are March 21, 1979, and May 15, 1979, respectively.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct expedited reviews. The deadline for filing such comments is November 13, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject

Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Finland and Sweden that currently export or have exported Subject Merchandise to the United States or other countries since 1978.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Finland and/or Sweden, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Finland and Sweden accounted for by your firm's(s') imports; and

(b) The quantity and value of U.S. commercial shipments of Subject Merchandise imported from Finland and Sweden.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Finland and/or Sweden, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Finland and Sweden accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Finland and Sweden accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and rayon staple fiber from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23468 Filed 8–31–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Amendments

The Assistant Attorney General of the Antitrust Division has amended the Voluntary Agreement and Plan of Action to Implement the International Energy Program to implement changes recently enacted to Section 252 of the Energy Policy and Conservation, 42 U.S.C. 6272 (''EPCA''). These changes extended the antitrust defense to cover advice given by U.S. oil companies to the International Energy Agency on the coordinated drawdown of government-owned or government-controlled oil stocks. The Agreement was amended pursuant to powers granted to the Attorney General by Section 252 of the EPCA and delegated to the Assistant Attorney General by regulation, 28 CFR 0.41(i). The text of the Voluntary Agreement, the proposed amendments, and notice of our intention to adopt the amendments were published on August

4, 1998 (63 FR 41550). The amendments were effective August 25, 1998.

Joel I. Klein,

Assistant Attorney General, Antitrust Division.

[FR Doc. 98–23395 Filed 8–31–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review (extension of a currently approved collection): Nomination for Young American Medal for Bravery.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 1, 1998. We are requesting written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, 202–616–3558, Office of Budget and Management Services, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531. Additionally, comments may be submitted via facsimile to 202–616–3472. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Further, you may submit comments to Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 2530. Comments also may be submitted to OMB via facsimile to 202–395–7285.

Overview of This Information

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/1, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary.* States.

Other. Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 *et seq.* authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 20, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–23416 Filed 8–31–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection: Comment Request

ACTION: Notice of information collection under review (reinstatement, without change, of a previously approved collection for which approval has expired): Nomination for Young American Medal for Service.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 19, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 1, 1998. This process is conducted in accordance with 5 CFR 1320.10.

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 Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Office, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Service

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/2, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary. Federal Government State, Local or Tribal.

Other. Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. Authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. Territories, and the Mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 26, 1998.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–23417 Filed 8–31–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1196]

RIN 1121–ZB32

Announcement of the Availability of the National Institute of Justice Solicitation for ''Evaluating Task Forces, Toll Free Information Service Lines, and Drug Testing Programs: BJA/NIJ Evaluation Partnership for the Edward Byrne Memorial State and Local Law Enforcement Assistance Program 1998''

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Evaluating Task Forces, Toll Free Information Service Lines, and Drug Testing Programs: BJA/NIJ Evaluation Partnership for the Edward Byrne Memorial State and Local Law Enforcement Assistance Program 1998.''

DATES: Due date for receipt of proposals is close of business October 31, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

This solicitation is part of the BJA/NIJ Evaluation Partnership for 1998 and seeks applications for evaluation of three activities funded under the Byrne Program: (1) multi-jurisdictional task forces (MJTFs), (2) toll-free information service lines, and (3) community-based drug testing programs.

1. MJTFs—The purposes of this research are: to develop methodologies that can be used by State planning agencies and others to evaluation Byrne funded MJTFs, and to implement these methodologies by conducting impact evaluations of selected MJTFs. Applications should describe the project in full with the understanding that one half, up to $462,100, of the project will be funded for the first 18 months with the remainder funded by a subsequent grant of up to $500,000. Applicants should clearly identify a reasonable demarcation line for the two parts of the project.

2. Toll-Free Information Service Lines—The purpose of the evaluation of the toll-free information service lines evaluation research is to provide additional information on the demographics of the callers; the usefulness of the call; and, most importantly, what action callers took as a result of the information provided. One award will be made of up to $312,100.

3. Community-Based Drug Testing Programs—This research should evaluate the development and implementation of innovative and comprehensive drug testing programs in criminal justice agencies, excluding those that operate solely within prisons or drug courts. Programs evaluated must be at least partially funded under the Byrne Program. Drug Court programs are not eligible. Up to six awards will be made for a total of up to $637,600.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Evaluating Task Forces, Toll-Free Information Service Lines, and Drug Testing Programs: BJA/NIJ Evaluation Partnership for the Edward Byrne Memorial State and Local Law Enforcement Assistance Program 1998'' (refer to document no. SL000289). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

John Schwarz,

Deputy Director, National Institute of Justice.

[FR Doc. 98–23509 Filed 8–31–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995

(PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data ca be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Report on Employment, Payroll, and Hours (BLS–790.''

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 2, 1998. BLS is particularly interested in comments which help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Divsion of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massacusetts Avenue N.E., Washington, D.C. 20212. Ms. Kurz can be reached at 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The BLS Current Employment Statistics (CES) Program produces monthly estimates of employment, hours, and earnings of U.S. nonagricultural establishment payrolls. The estimates produced from the date are fundamantal inputs in econonmic decision processes at all levels of private enterprise, government, and organized labor. The estimates are vital to the calculation of the Gross Domestic Product, the Federal Reserve Board's Index of Industrial Production, and the Composit Index of Leading Economic Indicators among others. The earnings data provide a proxy measure of the cost of labor for industry cetail not available from the BLS Employment Cost Index program. The early availability of employment and hours data provides early signals of economic change.

II. Current Actions

The CES program is currently undergoing a sample redesign to transition from a quota-based to a probability-based sample. The new information will be phased-in one industry division at a time over the next five years, beginning with the Wholesale Trade industry. A parallel set of experimental estimates from the new probability-based sample will be produced for a period of time before the estimates are officially published. Information for CES estimates is derived from a sample of 274,400 establishments which, each month, report their employment, payroll, and hours on BLS–790 forms. Reports from an additional 17,350 establishments currently are collected for the probability-based sample design for the Wholesale Trade industry. BLS expects to be collecting reports from 154,300 establishments for the new design by the end of Calendar Year 2001. As industries are converted to the new design, there will be a reduction in the number of reports collected for the current design.

BLS–790 forms for both the current and probability-based sample designs are being submitted for clearance. Letters and other materials sent to establishments are included. Automated data collection methods now are used for most of the sample. Approximately 232,000 reports are collected using Touchtone Data Entry (TDE). In comparison, 48,500 reports are collected by mail. An additional 93,500 reports are collected from the balance of the sample through other automated methods, including Computer Assisted Telephone Interviewing (CATI), Electronic Data Interchange (EDI), facsimile collection, and submission of tapes and diskettes. Research on use of the World Wide Web for data collection is continuing. For the probability-based design, data are collected through CATI for initial enrollment, then by TDE, fax, or EDI for most ongoing collection.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Report on Employment, Payroll, and Hours (BLS–790).

OMB Number: 1220–0011.

Affected Public: Federal Government; State or local governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses or organizations.

Form	Number of respondents	Frequency of response	Total annual responses	Minutes per response	Annual burden hours
Calendar Year 1999—Current Design					
BLS–790 BM	400	Monthly	4,800	15	1,200
BLS 790–G, G–S	39,600	Monthly	475,200	5	39,600
BLS 790–CU	[1] 0	One-time	0	2	0
BLS 790–F1, F2, F3	[2] 30,000	Monthly	360,000	7	42,000
All other BLS–790	[3] 297,200	Monthly	3,566,400	7	416,080
Total	367,200		4,406,400		498,880
Calendar Year 1999—Probability Design					
BLS–790 BM	0	Monthly	0	0	0
BLS 790–G, G–S	0	Monthly	0	0	0
BLS 790–CU	[1] 0	One-time	0	0	0
BLS 790–F1, F2, F3	[2] 10,000	Monthly	120,000	7	14,000
All other BLS–790	[3] 59,300	Monthly	711,600	7	83,020
Total	69,300		831,600		97,020

Form	Number of respondents	Frequency of response	Total annual responses	Minutes per response	Annual burden hours
Calendar Year 1999—Total					
BLS–790 BM	400	Monthly	4,800	15	1,200
BLS 790–G, G–S	39,600	Monthly	475,200	5	39,600
BLS 790–CU	[1] 0	One-time	0	0	0
BLS 790–F1, F2, F3	[2] 40,000	Monthly	480,000	7	56,000
All other BLS–790	[3] 356,500	Monthly	4,278,000	7	499,100
Total	436,500		5,238,000		595,900

[1] A subset of current reporters may receive this ''one-time'' supplemental form. This form is not used for the probability sample.
[2] The current design assumes 3,000 multi-unit firms reporting by fax for approximately 30,000 establishments. The probability-based design assumes 1,000 multi-units firms reporting by fax for approximately 10,000 establishments.
[3] All other BLS–790 forms are used to collect the same informaiton and differ only by industry definitions.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 27th day of August 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98–23537 Filed 8–31–98; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Detroit Edison Company (the licensee) to withdraw its April 3, 1998, application for proposed amendment to Facility Operating License No. NPF–43 for the Fermi 2 facility, located in Monroe County, Michigan.

The proposed amendment would have revised Technical Specification 3.8.1.1 to change the emergency diesel generator allowed outage time from 3 to 7 days. This would have been a one-time amendment, effective from the date of issuance until September 30, 1998.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 13, 1998 (63 FR 18048). However, by letter dated August 7, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 3, 1998, and the licensee's letter dated August 7, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 26th day of August 1998.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–23461 Filed 8–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative, and Duane Arnold Energy Center; Notice of Withdrawal of Applications for Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of IES Utilities Inc. (the licensee) to withdraw its applications dated May 9, 1997 (two letters), and January 9, 1998, for proposed amendments to Facility Operating License No. DPR–49 for the Duane Arnold Energy Center, located in Linn County, Iowa.

The proposed amendments would have modified the facility technical specifications by (1) revising the definitions of Limiting Safety System Setting and Instrument/Channel Calibration; (2) revising the definition of Limiting Conditions for Operation (LCO); and (3) revising the LCO for primary containment isolation valves.

The Commission had previously issued Notices of Consideration of Issuance of Amendment published in the **Federal Register** on June 18, 1997 (62 FR 33124, 62 FR 33125), and February 11, 1998 (63 FR 6987). However, by letter dated July 31, 1998, the licensee withdrew the proposed changes.

For further details with respect to this action, see the applications for amendment dated May 9, 1997 (two letters), and January 9, 1998, and the licensee's letter dated July 31, 1998, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 25th day of August 1998.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorate III–3, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–23459 Filed 8–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In

making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: May 13, 1998, revised August 12, 1998.

Brief description of amendment: The amendment proposes to revise two technical Safety Requirements (TSRs). USEC proposes to revise the quarterly surveillance for the calibration of the Criticality Accident Alarm System (CAAS) equipment in the product withdrawal facility to an annual calibration. This would require a revision to TSR 2.3.4.7. USEC also proposes to correct a cross reference contained in a Feed Facility TSR, TSR 2.2.4.4. The current TSR cross references a TSR for the Toll Transfer and Sampling Facility instead of the one for the Feed Facilities. The two TSRs contain identical requirements.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed changes to revise a calibration frequency and correct a cross reference have no effect on the generation or disposition of effluents. Therefore, the proposed TSR modifications will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes will not significantly increase any exposure to radiation. Therefore, the changes will not result in a significant increase in individual or cumulative radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed change to TSR 2.3.4.7 revises the calibration frequency for the CAAS equipment. This change is consistent with the calibration requirements for the other facility CAASs. This change has no impact on the potential for or occurrence of an accident. TSR 2.2.4.4 is being revised to reflect the appropriate cross reference for the required action associated with this TSR and has no impact upon either the potential for an accident or the resulting consequences. Therefore these changes will not increase the probability of occurrence or consequence of any postulated accident currently identified in the safety analysis report.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed TSR modifications revise a surveillance frequency and correct an editorial error. The proposed changes will not create the possibility of a new or different type of equipment malfunction or a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes to the TSRs revise a calibration frequency for the product withdrawal CAAS and correct a cross reference in a TSR for the feed facilities and have no impact on the margin of safety. Therefore, these changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective 30 days after being

signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise TSR 2.3.4.7 to change the calibration frequency from quarterly to annual and revise TSR 2.2.4.4 to correct a cross reference to another TSR.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 24th day of August 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–23456 Filed 8–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Northern States Power Company; Monticello Nuclear Generating Plant; Environmental Assessment and Final Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Northern States Power Company (NSP), for operation of the Monticello Nuclear Generating Plant (MNGP) located in Wright County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

By letter dated July 26, 1996, as revised December 4, 1997, NSP requested an amendment to License No. DPR–22 for MNGP that would increase the maximum power level from 1670 megawatts-thermal (MWt) to 1775 MWt. This change is approximately 6.3 percent above the current maximum license power level and is considered an extended power rerate.

The Need for the Proposed Action

NSP has projected the need for additional generation resources through a comparison of needs to available resources. NSP has projected a shortfall of generating capacity in the future. The proposed action would provide increased reactor power, thus adding an additional 26 MW of reliable electrical energy generating capacity without major hardware modifications to the plant. Hardware changes are not needed because of improvements in technology, performance, and design. These improvements have resulted in a significant increase in the difference between the calculated safety analysis results and licensing limits established by the original license.

Environmental Impacts of the Proposed Action

The issuance of the operating license for MNGP stated that any activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement (FES), which was issued in November 1972. The license for MNGP allowed a maximum reactor power level of 1670 MWt. NSP submitted an environmental evaluation supporting the proposed power rerate action and provided a summary of its conclusions concerning both the radiological and nonradiological environmental impacts of the proposed action. The evaluations performed by the licensee concluded that the environmental impacts of power rerate are well bounded or encompassed by previously evaluated environmental impacts and criteria established by the staff in the FES. A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendment is provided below.

Nonradiological Impacts

Land Use. Power rerate does not modify land use at the site. No new facilities, access roads, parking facilities, laydown areas, or onsite transmission and distribution equipment, including power line right of way, are needed to support the rerate or operation after rerate. No change to above or below ground storage tanks would occur as a result of power rerate and the rerate does not affect land with historical or archeological sites.

Based on the operating history at the MNGP, the effects of drift, icing, and fog have been negligible. The frequency of fog and drift were provided by the licensee at the time of original licensing and the impacts of that frequency of drift and fog are bounded by the evaluation contained in the FES. The FES assumed cooling tower operation of 7 months, with the total fogging time estimated at 45 hours per year. If the cooling tower fogging rate is assumed to increase proportional to the proposed power increase, the amount of fogging due to power rerate could increase by approximately 6.3 percent above the normal summer operating period of 4 months. Additionally, the licensee determined that power rerate may involve an extra week of cooling tower operation. Taking into account the additional fogging rate and the additional cooling tower operation, the conditions at power rerate are still bounded by the FES.

The increase in power level would cause a current and magnetic field increase on the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, licensee-controlled boundary of the plant, and it is not expected that members of the public or wildlife would be affected. Exposure from magnetic fields from the offsite transmission system is not expected to increase significantly.

Water Use. Power rerate does not involve a significant increase in water use at MNGP. Both ground and surface water appropriation limits are established by the Minnesota Department of Natural Resources. Operating history shows that over the last 5 years MNGP has used less than 13 million gallons of ground water per year. The annual limit established in the permit for groundwater use is 15 million gallons. Power rerate is not expected to change the groundwater usage and, therefore, operation within the allowable limit would continue. Under the surface water appropriation limit, MNGP may withdraw a maximum of 645 cubic feet per second (cfs) from the Mississippi River. There are special restrictions when the river flow is particularly high or low; however, power rerate is not expected to change the surface water requirements of the plant and, therefore, current appropriation limits would be maintained. Power rerate would result in an increase in the evaporation rate of the cooling towers resulting in an increase in evaporative losses from the river. Assuming the evaporation rate of the cooling towers increases linearly in proportion to the power increase, the evaporation rate would increase to 4400 acre-ft/yr [acre-foot per year]. The value assumed in the FES was 5000 acre-ft/yr evaporative losses; therefore, the FES is still bounding.

Discharges to the water are governed by the National Pollutant Discharge Elimination System (NPDES) permit, issued by the State of Minnesota. Temperature and effluent limits at certain points are established in the permits. As a result of power rerate, a slight increase in circulating water discharge temperature is projected to occur. This is due to an increase in heat rejected by the condenser due to the increased power levels and increased steam flow. A conservative estimate by the licensee predicts a maximum 1.7 °F [degrees Fahrenheit] increase in the temperature of the water entering the discharge canal. This increase would

not result in exceeding the limits delineated in the FES or the limits established by the State in the permit. Additionally, temperature monitoring is continuous and this maximum temperature increase would occur only at certain times of the year with certain river flows. In the past, when MNGP has approached the limit designated in the NPDES permit, NSP has reduced power at the plant to maintain compliance; this will continue in the future. The slight increase in temperature does not require any changes to permit requirements and would not result in any significant impacts to the environment that are different from those previously identified or change the previous Clean Water Act Section 316(a) demonstration concerning thermal plume in the Mississippi River.

Power rerate would not introduce any new contaminants or pollutants and would not significantly increase the amount of potential contaminants previously allowed by the State. NSP will continue to adhere to effluent limitation and monitoring requirements as part of compliance with the NPDES permit. As a result of the additional week of cooling tower operation, a slight increase in normal bromine and sodium hypochlorite injection may be required; however, the effluent concentrations would continue to be well below the NPDES permit limits. Continuous flowrate monitoring at designated points will continue.

Over the years of operation, a number of modifications to the intake structure have been implemented to reduce cold shock, impingement, and entrainment of organisms and fish. Because the discharge canal inlet temperature is expected to increase 1.7 °F at power rerate, the overall discharge canal temperature is not significantly increased; therefore, the temperature decrease during cold shock is not significantly changed.

Additionally, impingement and entrainment mortality of drift organisms is not increased above what was previously evaluated by the staff.

Other Impacts

No significant increases or changes to the noise generated by MNGP are expected as a result of power rerate; therefore, the FES remains bounding. A small number of endangered and threatened species exist within the licensee-controlled area at MNGP. Using information from the Minnesota Department of Natural Resources, the licensee performed a biological assessment of the impact of power rerate on these species. The assessment did not identify any impacts. Power rerate would not result in any significant changes to land use or water use, or result in any significant changes to the quantity or quality of effluents; therefore, no effects on the endangered or threatened species or on their habitat are expected as a result of power rerate.

The proposed power rerate would not change the method of generating electricity nor the method of handling any influent from the environment or nonradiological effluents to the environment. Therefore, no changes or different types of nonradiological environmental impacts are expected.

Radiological Impacts

MNGP has a number of radioactive waste systems designed to collect, process, and dispose of solid, liquid, and gaseous radioactive waste. No changes to these systems are required for power rerate conditions. The licensee considered the effect of the higher power level on solid radioactive wastes, liquid radioactive wastes, gaseous radioactive wastes, and radiation levels.

As a result of power rerate, a slight increase in solid waste from the reactor water cleanup (RWCU) system demineralizers and condensate demineralizers would occur. This is due to more frequent filter backwashes. Additional RWCU filter backwashes would result in less than 1 cubic meter of additional resin waste per year; condensate demineralizer filter backwashes are estimated to result in an additional 4 cubic meters of resin waste per year. Therefore, the projected increase in spent resin volume is less than 6 cubic meters per year, which would bring the total generation rate to approximately 55 cubic meters per year.

In addition to the solid process waste, there are solid reactor system wastes generated from the plant. These include irradiated fuel assemblies and control blades. Due to extended burnup and the higher enrichments, the number of irradiated fuel assemblies is not expected to significantly increase the volume of waste; however, the activity of the waste generated from spent control blades and incore ion changers may increase slightly. This is due to the higher flux conditions expected under power rerate. Improvements in technology and longer fuel cycles are expected to offset this slight increase. The increase in waste would be insufficient to impact the amount of waste generated at the site. Further, the licensee believes ongoing efforts at MNGP to reduce radioactive wastes will balance the slight increase in waste that would be generated as a result of power rerate.

The FES and Technical Specifications allow MNGP to discharge a limited amount of liquid radioactive waste. The FES concluded that, based on the allowed amounts, no adverse environmental impact would result from release of the allowable radioactive waste. However, since 1972, an administrative limit of zero radioactive liquid release has been imposed by NSP. MNGP expects to keep the zero release administrative limit and remain well within the bounds of the FES.

A slight increase in input to the liquid radioactive waste system is expected due to the increase in backwash frequency of the RWCU and condensate demineralizer system. However, the liquid radioactive waste input will be recycled instead of discharged and will not result in a significant increase in volume of liquid radioactive waste. Other sources of liquid radioactive waste such as valve packings, pump seal flows, drain waste, etc., are not expected to change or increase as a result of power rerate. Based on the above, it does not appear that power rerate will cause an increase in liquid radioactive waste above the presently allowed limits and will not affect compliance with the limits of 10 CFR Part 20 or Appendix I of 10 CFR Part 50.

Gaseous radioactive waste effluents consist of two pathways: reactor building ventilation system and offgas system pathway. Operational experience at MNGP shows a 4-year average release of 688 Ci/yr [curies per year] noble gas and 0.22 Ci/yr iodine and particulate release. The FES assumed release rates of 110,376 Ci/yr for noble gases and 0.75 Ci/yr for iodine and particulate releases. Assuming power rerate increases the offgas release rate linearly in proportion to the core thermal power increase, the increase in offgas stack release would be well below that assumed in the FES. Assuming the radioactivity of the reactor coolant system increases in a linear fashion proportional to the power increase, the reactor building release rate is well below that assumed in the FES. Based on the above, power rerate has an insignificant effect on the present production and activity of gaseous effluents released through the reactor building ventilation system and the offgas system pathways and the dose from effluent releases is well within the bounds of Appendix I to 10 CFR Part 50 and 10 CFR Part 20. The changes in core flux profile would result in increased consequences of a fuel defect for a bundle in a non-leak location; however, this continues to be bounded by the consequences for the peak bundle and those limits are not changed.

Power rerate does not introduce any new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in a radiological release. Thus, there will be no significant increase in the types or amounts of radiological effluents.

Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively, outline the environmental effects of uranium fuel cycle activities and fuel and radioactive waste transportation. The environmental evaluation supporting Table S–3 assumed a reference reactor with a specific capacity factor that results in an adjusted daily electricity production during a reference year. An average burnup and enrichment are also assumed. MNGP will not exceed the assumption of the reference reactor year, but will exceed the average burnup and fuel enrichment criteria as a result of power rerate. The environmental impacts of the higher burnup and enrichment values were documented in NUREG/CR–5009, ''Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors,'' and discussed in the Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on February 29, 1988 (53 FR 6040). The staff concluded that no significant adverse effects will be generated by increasing the burnup levels as long as the maximum rod average burnup level of any fuel rod is no greater than 60 Gwd/MtU [gigawatt-days per metric ton of uranium]. The staff also stated that the environmental impacts summarized in Tables S–3 and S–4 for a burnup level of 33 Gwd/MtU are conservative and bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and uranium-235 enrichments up to 5 weight percent. These conclusions are applicable to MNGP since the burnup levels and enrichment amounts bound the values that will occur during Monticello rerate. Based on the above, there are no adverse radiological or nonradiological impacts associated with the use of extended fuel burnup and/or increased enrichment and, therefore, power rerate will not significantly affect the quality of the human environment.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (no-action alternative). Denial of the proposed action would result in no change in current environmental impacts of plant operation but would restrict operation to the currently licensed power level. The environmental impact of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the MNGP.

Agencies and Persons Consulted

In accordance with its stated policy, on August 10, 1998, the NRC staff consulted with the Minnesota State official, Mr. Timothy Donakowski, of the Minnesota Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Final Finding of No Significant Impact

The staff has reviewed the proposed power rerate for the MNGP relative to the requirements set forth in 10 CFR Part 51. On January 27, 1998, the staff published a draft Environmental Assessment in the **Federal Register** (63 FR 3929), for public comment. No comments were received.

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's submittals dated July 26, 1996, and December 4, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 27th day of August 1998.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–23460 Filed 8–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–260 AND 50–296]

Tennessee Valley Authority Browns Ferry Nuclear Plant, Units 2 and 3; Environmental Assessment and Finding of no Significant Impact

Introduction

The U.S. Nuclear Regulatory Commission (NRC, or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–52 and DPR–68 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Browns Ferry Nuclear Plant (BFN) Units 2 and 3, located in Limestone County, Alabama.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to increase allowed core power level by 5 percent, from 3293 megawatt thermal (MWt) to the uprated power level of 3458 MWt.

The proposed action is in accordance with the licensee's application for amendment dated October 1, 1997, as supplemented October 14, 1997; and March 16 and 20, April 1 and 28, May 1, 20 and 22, June 12, 17 and 26, and July 17, 24, and 31, 1998.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to increase the licensed core thermal power and the potential electrical output of each BFN Units 2 and 3 by approximately 55 MWt and thus, providing additional electric power to service TVA's grid. The proposed thermal power uprate project is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company and approved by the NRC in a letter dated September 30, 1991. Power uprate has been widely recognized by the industry as a safe and cost-effective method to increase generating capacity. The proposed power uprate will provide the licensee with additional operational flexibility.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that no significant change in the environmental impact can be expected for the proposed increase in power. On September 1, 1972, TVA issued a Final Environmental Statement (FES) which is based on a total electrical

generation name plate rating of 3456 MWt.

Nonradiological Effects

Under normal operation, BFN uses a once-through circulating water system to dissipate heat from the main turbine condensers. Water is drawn from the Tennessee River by the plant intake system and is discharged back to the river. In addition, BFN currently has four mechanical draft cooling towers which can be operated to assist in heat dissipation (helper mode) primarily during summer hot weather periods.

BFN has a National Pollutant Discharge Elimination System (NPDES) permit issued by the State of Alabama that contains specific requirements applicable to the nonradiological effluents released from BFN. The licensee has evaluated the impact of power uprate on NPDES limitations relating to effluent temperatures, cooling tower usages and effects on biological species. The licensee has evaluated and determined that post-accident effluent temperature from emergency equipment cooling water systems and normal operating condition effluent discharges from other plant systems such as yard drainage, station sumps, and sewage treatment will not change as a result of the power uprate. The licensee indicates that the proposed uprated power level may result in approximately a 1 percent temperature increase of the circulating water leaving the main condenser, a 5 percent increase in the heat rejection to the Tennessee River, and may require additional cooling tower usage during summer periods. The licensee states that as a result of power uprate, cooling tower use would increase approximately 12 percent. However, the impacts of the increase would continue to be bounded by the FES. Based on its evaluation, the licensee has concluded that the changes in discharges to the river as a result of the power uprate will remain within the bounding conditions established in the NPDES permit and no changes to the permit requirements are needed as a result of the power uprate.

As part of its NPDES permit application in April 1994, the licensee documented its biological monitoring program and the effect of thermal discharge limitations on selected biological species. In that report, the licensee concluded that operation of BFN has not had a significant impact on the reproductive success of yellow perch and sauger, or the overall indigenous community in Wheeler Reservoir. This conclusion is not affected by the power uprate.

The proposed action would not change the method of generating electricity at BFN Units 2 and 3 nor the methods of handling influents from the environment or effluents to the environment. The licensee indicates that power uprate does not require any plant modifications. Therefore, no changes to land use or impacts to historical areas would result from lay down areas. Therefore, no new or different types of nonradiological environmental impacts are expected. The staff considers that continued compliance with applicable Federal, State, and Local agency requirements relating to environmental protection will preclude any significant increase in nonradiological impacts over those evaluated in the FES.

Radiological Effects

Gaseous and liquid effluents are produced during both normal operation and abnormal operational events. The licensee has evaluated the radiological effects of the proposed power uprate during both normal operation and postulated accident conditions for gaseous and liquid effluent releases.

The licensee evaluated the offsite radiation exposure to the maximally exposed individual member of the general public for the proposed uprate. Section 2.4, Table 2.4.3, of the FES dated September 1, 1972, projected doses due to radioactive materials released to the environment during routine operations of the BFN units. The estimated radiation exposure of the maximally exposed individual from radioactive material in both liquid and gaseous effluents was 2.2 mrem/year total. The estimated dose based on actual liquid and gaseous effluent releases for the period 1994–1996 was 0.054 mrem/year. Although a 5 percent increase in reactor power does not necessarily result in any increase in effluents, the licensee projected the total body dose would increase to 0.056 mrem/year. This projected dose is about 2 percent of the applicable NRC limits in 10 CFR Part 50, Appendix I. Therefore, the staff concludes that the actual releases at the BFN units will still remain within the FES estimates and are not significantly above current levels.

With respect to onsite radiation exposure, the licensee stated that in-plant radiation levels will generally increase by no more than the percentage increase in power level. The licensee stated that individual worker exposures will be maintained within the acceptable limits by the site as-low-as-reasonably-achievable program, by procedural controls that compensate for increased radiation levels. The 5-year (1991–1996) average collective dose at Browns Ferry was 202 person-rem per year per reactor and 0.5 person-rem per MWe-year. (See NUREG–0713 Volume 18, Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities, 1996). This compares favorably with the average collective dose for all BWRs of 306 person-rem per year per reactor and 0.5 person-rem per MWe-year. Considering a potential increase of 5 percent, onsite radiation exposure will not be significantly higher than the current operation and will remain within the acceptable limits of 10 CFR 20. Therefore, the staff concludes that operation at the uprated power level will not significantly impact occupational exposures.

Regarding radioactive waste production, the licensee stated that the total volume of processed waste is not expected to increase appreciably since the only significant increase in processed waste is due to the slightly more frequent backwashes of the condensate demineralizers. Based on this, the licensee concluded that the power uprate would not have an adverse effect on the processing of liquid radwaste. With regard to gaseous waste production, the licensee stated that gaseous effluent releases through building vents are not expected to increase significantly with power uprate, since the releases are maintained within administratively controlled values that are not a function of core power. The noncondensable radioactive gases exhausted from the main condenser and discharged via the off gas system are the major source of radioactive gases. The licensee stated that the operation of the off gas equipment will continue to be within the design parameters for the equipment. The staff concludes that operation at the uprated power will not significantly affect the licensee's ability to process radioactive wastes. Therefore, the staff concludes that operation at the uprated power level will not significantly increase the allowable occupational exposures.

Technical Specification (TS) 4.3 establishes spent fuel storage design features to ensure that the fuel array in fully loaded fuel racks remains subcritical and to prevent inadvertent draining of the spent fuel pool. No changes to TS 4.3 were necessary for the uprate condition. The design basis for the SFP system remains unchanged during power uprate conditions. Therefore, the proposed action will not significantly increase the probability or consequences of spent fuel storage criticality accidents.

As discussed above, the projected dose due to power uprate is about 2 percent of the applicable NRC limits in 10 CFR Part 50, Appendix I for offsite exposures, and will remain within the acceptable limits of 10 CFR 20 for occupational exposures. The actual releases at the BFN units will also remain within the FES estimates. Thus, the amendment does not significantly effect the amount or type of radiological plant effluents, and has no other environmental impact. Therefore, the staff concludes that continued compliance with applicable Federal, State, and Local agency requirements relating to environmental protection will preclude any significant radiological environmental impacts associated with the proposed uprate. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action (no action alternative). Denial of the application would result in no change in current environmental impacts and would reduce operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES dated September 1, 1972 for BFN Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on August 26, 1998, the NRC staff consulted with the Alabama State official, Mr. Kirk Whatley of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for amendment dated October 1, 1997, as supplemented October 14, 1997; and March 16 and 20, April 1 and 28, May 1, 20 and 22, June 12, 17 and 26, and July 17, 24, and 31, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 26th day of August 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–23458 Filed 8–31–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Wednesday, September 2, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Wednesday, September 2

10:00 a.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5828)

11:30 a.m.—Affirmation Session (Public Meeting)

*(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)

a. Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors (Contact: Ken Hart, 301–415–1659)

*The Schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–23633 Filed 8–28–98; 11:31 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 31, September 7, 14, and 21, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of August 31

Wednesday, September 2

10:00 a.m.—Briefing on PRA Implementation Plan (PUBLIC MEETING) (Contact: Tom King, 301–415–5828)

11:30 a.m.—Affirmation session (PUBLIC MEETING)

*(PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.)

a: Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors (Contact: Ken Hart, 301–415–1659)

Thursday, September 3

10:30 a.m. and 1:30 p.m.—All Employees Meetings (PUBLIC MEETINGS) on ''The Green'' Plaza Area between buildings at White Flint (Contact: Cynthia Marcy—301–415–3133)

Week of September 7—Tentative

Thursday, September 10

3:30 p.m.—Affirmation Session (PUBLIC MEETING) (if needed)

Week of September 14—Tentative

Tuesday, September 15

2:00 p.m.—Briefing by Reactor Vendors Owners Groups (PUBLIC MEETING) (Contact: Bryan Sheron, 301–415–1274)

3:30 p.m.—Affirmation Session (PUBLIC MEETING) (if needed)

Thursday, September 17

9:00 a.m.—Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Week of September 21—Tentative

There are no meetings the week of September 21.

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION. By a vote of 3–0 on August 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2). Docket Nos. 50–317–LR, 50–318–LR, Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board Panel, CLI–98–14'' (PUBLIC MEETING) be held on August 26, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–23667 Filed 8–28–98; 2:29 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration, Dated July 1998

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1556, Vol. 3, ''Consolidated Guidance about Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration,'' dated July 1998.

ADDRESSES: Copies of NUREG–1556, Vol. 3 may be obtained by writing to the Superintendent of Documents, U. S. Government Printing Office, P. O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7874.

SUPPLEMENTARY INFORMATION: On November 6, 1997, (62 FR 60112), NRC announced the availability of draft NUREG–1556, Volume 3, ''Consolidated Guidance about Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration,'' dated September 1997, and requested comments on it. This draft NUREG report was the third program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all of the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 3, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in NUREG–1550, ''Standard Review Plan for Applications for Sealed Source and Device Evaluations and Registrations,'' Regulatory Guide 10.10, ''Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Devices Containing Byproduct Material,'' Regulatory Guide 10.11, ''Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Sealed Sources Containing Byproduct Material,'' and the Office of Nuclear Material Safety and Safeguards Policy and Guidance Directives 22, ''What Source and Device Designs Require an Evaluation,'' and 84–5, ''Source and Device Evaluation Technical Assistance Request.'' This final report should be used in preparing sealed source and device applications. NRC staff will use this final report in reviewing these applications.

Electronic Access

NUREG–1556, Volume 3, is also available electronically by visiting NRC's Home Page (http://www.nrc.gov) and choosing ''Nuclear Materials,''and then ''NUREG–1556, Volume 3.''

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 14 day of August, 1998.

For the Nuclear Regulatory Commission,

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–23457 Filed 8–31–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1998, 28.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 71.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 24, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–23498 Filed 8–31–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 31, 1998.

A closed meeting will be held on Thursday, September 3, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session

The subject matter of the closed meeting scheduled for Thursday, September 3, 1998, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: August 27, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–23566 Filed 8–27–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3124]

State of Indiana

Grant County and the contiguous counties of Blackford, Delaware, Howard, Huntington, Madison, Miami, Tipton, Wabash, and Wells in the State of Indiana constitute a disaster area as a result of damages caused by severe thunderstorms, high winds, and torrential rain that occurred on August 4, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 19, 1998 and for loans for economic injury until the close of business on May 19, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere—6.875%

Homeowners without credit available elsewhere—3.437%

Businesses with credit available elsewhere—8.000%

Businesses and non-profit organizations without credit available elsewhere—4.000%

Others (including non-profit organizations) with credit available elsewhere—7.125%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%

The numbers assigned to this disaster are 312406 for physical damage and 997800 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 19, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–23525 Filed 8–31–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3103]

State of Iowa; (Amendment #4)

In accordance with a notice from the Federal Emergency Management Agency dated August 17, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Iowa as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on June 13, 1998 and continuing through July 15, 1998: Cedar, Clayton, Franklin, Greene, Henry, Humboldt, Lucas, and Wright.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Grant in the State of Wisconsin may be filed until the specified date at the previously designated location. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 31, 1998 and for economic injury the termination date is April 2, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 21, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–23527 Filed 8–31–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3123]

State of Wisconsin

As a result of the President's major disaster declaration on August 12, 1998, I find that Milwaukee, Rock, Sheboygan, and Waukesha Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms and flooding beginning on August 5, 1998 and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on October 11, 1998, and for loans for economic injury until the close of business on May 12, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Calumet, Dane, Dodge, Fond Du Lac, Green, Jefferson, Manitowoc, Ozaukee, Racine, Walworth, and Washington Counties in Wisconsin, and Boone and Winnebago Counties in Illinois.

The interest rates are:

Physical Damage:

Homeowners with credit available elsewhere—*6.875%*

Homeowners without credit available elsewhere—*3.437%*

Businesses with credit available elsewhere—*8.000%*

Businesses and non-profit organizations without credit available elsewhere—*4.000%*

Others (including non-profit organizations) with credit available elsewhere—*7.125%*

For Economic Injury:

Businesses and small agricultural cooperatives without credit available elsewhere—*4.000%*

The number assigned to this disaster for physical damage is 312306. For economic injury the numbers are 997600 for Wisconsin and 997700 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 21, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–23526 Filed 8–31–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Exemption of Israeli Products From Certain Customs User Fees; Addition of Israel to the List of Eligible Countries Under the Rural Electrification Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In return for reciprocal concessions, the United States Trade Representative is exempting products of Israel from certain Customs user fees, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of publication of this notice. In addition, the United States Trade Representative is adding Israel to the list of eligible countries under Section 401 of the Rural Electrification Act, as amended.

FOR FURTHER INFORMATION CONTACT: Madelyn Spirnak, Director for the Middle East and Mediterranean, (202) 395–3320, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Pursuant to section 112 of the Customs and Trade Act of 1990, Pub. L. 101–382, the U.S. Trade Representative upon determining that the Government of Israel has provided reciprocal concessions, may exempt products of Israel from the fees imposed under 13031(a) (9) and (10) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (19 U.S.C. 58c(a)(9) and (10)). The U.S. Trade Representative has determined that the Government of Israel has provided reciprocal concessions, which include the following:

The Government of Israel published on July 21, 1998 a notice in its official gazette Rashumot eliminating metric packaging requirements and adopting unit pricing procedures for domestic retail sales, thereby eliminating a significant non-tariff barrier on the import of U.S. goods.

The government of Israel increased the tariff rate quota for U.S. in-shell almonds from 180 to 380 metric tons per annum, and has agreed to reduce substantially the in-quota import fee on U.S. shelled and in-shell almonds.

The Government of Israel has taken or is taking a number of steps to facilitate the importation of U.S.-manufactured automobiles. Those steps include the following: since January 1996, automobile registration fees have been imposed according to the price of the automobile, rather than the volume of the engine; as of April 1996, the basis of valuation for income tax purposes was changed from engine size to automobile value; the limitation on maximum engine size was deleted from government procurement tenders; differentiation of purchase tax rates according to automobile engine size was eliminated; and Israel is in the process of reviewing the system of compulsory insurance fees, with a view toward decreasing differentials based on engine size.

Accordingly, pursuant to section 112 of the Customs and Trade Act of 1990 and 19 U.S.C. 58c(b)(11), any product of Israel that is entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of publication of this notice will not be charged the fees imposed under 19 U.S.C. 58c(a) (9) and (10).

The United States Trade Representative has also determined that, for purposes of Section 401 of the Rural Electrification Act, as amended by Section 342(g) of the Uruguay Round Agreements Act, Pub. L. 103–465 (7 U.S.C. 903 note), the U.S.-Israel Free Trade Area Agreement ensures reciprocal access for United States products and services and United States suppliers to the markets of Israel in the area of telecommunications products and services. Accordingly, under Section 401 of the Rural Electrification Act, as amended (7 U.S.C. 903 note), Israel is hereby added to the list of eligible countries for purchases made by borrowers of funds lent for telecommunications products and services, effective September 1, 1998.

Richard W. Fisher,

Acting United States Trade Representative.

[FR Doc. 98–23387 Filed 8–31–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4365]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittee on Prevention Through People (PTP) and Proper Cargo Names (PCN) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings will be open to the public.

DATES: CTAC will meet on Friday, September 25, 1998, from 9:30 a.m. to 3 p.m. The Subcommittees will meet on Thursday, September 24, 1998, from 9:30 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 18, 1998. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 11, 1998.

ADDRESSES: CTAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee on PTP will meet in room 6303 and the Subcommittee on PCN will meet in room 5303 at the same address. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Chemical Transportation Advisory Committee (CTAC). The agenda includes the following:

(1) Introduction and swearing-in of the new Executive Director and new members.

(2) Progress report from the Subcommittee on PTP.

(3) Progress report from the Subcommittee on PCN.

(4) Status report on the International Safety Management (ISM) Code enforcement.

(5) Status report on the Hazardous Substance Response Plan (HSRP) rulemaking project.

(6) Status report on the 46 CFR 151 rulemaking project.

(7) Status report on the Chemical Hazards Response Information System (CHRIS) revision.

(8) Presentation on the American Waterways Operators (AWO) Responsible Carrier Program.

(9) Presentation on the alternative compliance program, an American Bureau of Shipping (ABS) prospective.

Subcommitte on PTP. The agenda includes the following:

(1) Review of work to date, program intent, and definitions of issues such as fatigue and fitness for duty.

(2) Review of long term tasks assignments and preparation for presentation to CTAC.

Subcommittee on PCN. The agenda includes the following:

(1) Review of the status of the subcommittee's previous meetings' work efforts.

(2) Finalization of recommendations to CTAC and preparation for presentation to CTAC.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than September 18, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than September 18, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 11, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 24, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–23445 Filed 8–31–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee on Training and Qualifications; Meeting Cancellation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the September 10, 1998, meeting of the Aviation Rulemaking Advisory Committee (ARAC) scheduled to discuss Training and Qualifications Issues (63 FR 42094, August 6, 1998) has been cancelled. The meeting will be rescheduled in a later **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Regina L. Jones, (202) 267–9822, Office of Rulemaking (ARM–104) Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591.

Issued in Washington, DC, on August 27, 1998.

Jan Demuth,

Acting Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–23613 Filed 8–31–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4034; Notice 14]

Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Natural Gas Pipe Line Company of America Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of intent to approve project and environmental assessment.

SUMMARY: As part of its Congressional mandate to conduct a Risk Management Demonstration Program, the Office of Pipeline Safety (OPS) has been authorized to conduct demonstration projects with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. This is a notice that OPS intends to approve Natural Gas Pipe Line Company of America (NGPL) as a participant in the Pipeline Risk Management Demonstration Program. This also provides an environmental assessment of NGPL's demonstration project. Based on this environmental assessment, OPS has preliminarily concluded that this proposed project will not have significant environmental impacts.

This notice explains OPS's rationale for approving this project, and summarizes the demonstration project provisions that would go into effect once OPS issues an order approving NGPL as a Demonstration Program participant. OPS seeks public comment on the proposed demonstration project so that it may consider and address these comments before approving the project. The NGPL demonstration project is one of several projects OPS plans to approve and monitor in assessing risk management as a component of the Federal pipeline safety regulatory program.

ADDRESSES: OPS requests that comments to this notice or about this environmental assessment be submitted on or before October 1, 1998 so they can be considered before project approval. However, comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–4034. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Pipeline Safety (OPS) is the federal regulatory body overseeing pipeline safety. As a critical component of its federal mandate, OPS administers and enforces a broad range of regulations governing safety and environmental protection of pipelines. These regulations have contributed to a good pipeline industry safety record by assuring that risks associated with pipeline design, construction, operations, and maintenance are understood, managed, and reduced. Preserving and improving this safety record is OPS's top priority. On the basis of extensive research, and the experience of both government and industry, OPS believes that a risk management approach, properly implemented and monitored, offers opportunities to achieve:

(1) Superior safety, environmental protection, and service reliability;

(2) Increased efficiency and reliability of pipeline operations; and

(3) Improved communication and dialogue among industry, the government, and other stakeholders.

A key benefit of this approach is the opportunity for greater levels of public participation.

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation will be performed under strictly controlled conditions through a set of Demonstration Projects to be conducted with interstate pipeline operators. A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that in implementing the Pipeline Risk Management Demonstration Program: ''The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply.'' Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. OPS may exempt a participating operator from particular regulations if the operator needs such flexibility in implementing a comprehensive risk management program; however, regulatory exemption is neither a goal nor requirement of the Demonstration Program. This document summarizes the key points of this review for NGPL's demonstration project, and evaluates the safety and environmental impacts of this proposed project.

2. OPS Evaluation of NGPL's Demonstration Project Proposal

Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS has reached agreement with NGPL on the provisions for a demonstration project covering NGPL's entire transmission pipeline system.

After addressing any public comment on this notice, OPS will consider issuing an order approving NGPL as a Demonstration Program participant. Although NGPL expects to request regulatory exemption as its demonstration project matures, the focus in the first year would be working with OPS to fully develop and document a formal risk management program and set of implementing procedures that correspond to the Risk Management Program Standard. Putting NGPL under a risk management order at this time would give OPS the best opportunity to influence the comprehensive development and uses of risk management in the company and to better understand and address system unique risk issues. Working closely with NGPL, OPS can observe quantitative risk assessment models unique to this project, and review and expedite technical justifications for risk control measures related to improved internal inspection, repair procedures, and damage prevention. Once the Project Review Team (PRT) is assured of the validity of NGPL's analyses, OPS would consider approving activities likely to result in superior safety. Section 5 of this notice describes some specific risk control actions which NGPL is considering as regulatory alternatives and the locations where they would be applied.

Company History and Record: NGPL is a subsidiary of MidCon Corporation. It serves natural gas customers located primarily in the Midwest. The company transports natural gas through about 13,000 miles of pipeline and pipeline facilities, and provides approximately 68% of the natural gas in the Northern Illinois, Chicago, Eastern Iowa and Northwest Indiana market from supply regions in and around Texas, Louisiana and Wyoming. NGPL also has pipelines in Arkansas, Kansas, Nebraska, New Mexico, Oklahoma, Missouri, Colorado, and Wisconsin.

In January 1998, KN Energy, Inc. acquired MidCon Corporation. Before the acquisition of MidCon, KN Energy operated over 4000 miles of pipeline. It now controls the additional 13,000 miles of NGPL pipelines. However, only the NGPL pipelines would comprise the demonstration project.

Before entering into consultations with NGPL, OPS determined that NGPL was a good demonstration program candidate based on an examination of the company's safety and environmental compliance record, its accident history, and its commitment to working with OPS to develop a project meeting the Demonstration Program goals. KN Energy has expressed the same management support for the project as demonstrated by NGPL in the past, and realizes continued participation in the Program depends on continued management commitment.

OPS records show that since 1984, NGPL has filed 49 reportable incidents, which is typical for a company of its size. Causes include corrosion (24), construction or material defects (8), outside forces (8), and other miscellaneous or unknown causes (9). The most significant accident, causing eleven deaths and three injuries, occurred October 3, 1989, when a fishing boat in the Gulf of Mexico near High Island, Texas, struck a sixteen inch diameter line about one half mile offshore at a water depth of approximately ten feet. OPS determined that NGPL violated no regulations in connection with this incident, and no enforcement actions resulted. Following the incident, OPS promulgated regulations to protect against future incidents involving submerged pipelines. NGPL complied by instituting a regular inspection program to assess the integrity of the pipelines in Gulf of Mexico shallow waters, exceeding the inspection frequency required by the regulations. The NGPL offshore damage protection program determines the available soil backfill protection, identifies potential or actual damage to the facilities, and makes repairs where needed. In addition, NGPL co-chaired a task force that has resulted in several offshore damage prevention/public awareness aids and initiatives, such as an educational video, an annual luncheon and program for mariners, development and installation of pictograph warning signs, and a developing offshore one-call system.

On March 29, 1998, NGPL experienced a corrosion failure of a thirty-six inch diameter pipeline approximately five miles south of Corrigan, Texas, in a forested and relatively isolated part of Polk County,

Texas. This failure resulted in some fire damage, but no harm to people. In September 1998, NGPL will pressure test approximately 40 miles of pipeline in the area where the failure occurred to specifically address the cause of this incident. Also in September, NGPL will perform in-line inspections to provide integrity information on pipe sections 55 miles upstream and 27 miles downstream from the rupture site. Finally, NGPL will examine approximately 600 miles of pipeline in the area to determine if the coatings and cathodic protection are providing adequate protection to reduce the future chance of this type of failure. OPS is monitoring NGPL's response to this incident and is presently conducting an accident investigation in conjunction with a standard audit of the affected pipeline.

At this time, OPS believes that the actions NGPL will take to address the specific causes of the incident, together with the system-wide application of NGPL's proposed Risk Management Program, are an adequate response to the incident and demonstrate a continued commitment to safety.

NGPL will incorporate information from all incidents into its proposed Risk Management Program to further reduce the likelihood of future incidents. NGPL's Program will also include frequent feedback from field personnel on the condition of the pipeline, risk modeling of the pipeline to provide faster and more thorough assessment of threats to pipeline integrity, and application of new technology from recent research to further reduce risk.

Consultative Evaluation: During the consultations, a Project Review Team (PRT) consisting of representatives from OPS headquarters, Central Region, Southwest Region, and Southern Region; pipeline safety officials from Illinois and Ohio; and risk management experts met with NGPL to discuss NGPL's existing Risk Management Program and the expected development of this program during the course of the demonstration project. These discussions included the current risk assessment and risk control processes NGPL uses, planned expansion, improvement, and integration of these processes during the demonstration program, potential regulatory alternatives that will be examined during the demonstration project, and proposed performance measures to ensure superior performance is being achieved. The discussions addressed the adequacy of NGPL's management systems and technical processes, communications with outside stakeholders, and the effect of NGPL's recent merger with KN Energy. The consultation process also included an environmental assessment, which is described in Appendix B of this notice.

The consultation process focused on three major review criteria:

1. Whether NGPL's proposed risk management demonstration program is consistent with the Risk Management Program Standard and compatible with the Guiding Principles set forth in that Standard;

2. Whether any risk control activities that will be examined under NGPL's proposed risk management program are expected to produce superior safety, environmental protection, and reliability of service compared to that achieved from compliance with the current regulations;

3. Whether NGPL's proposed risk management demonstration program includes a company work plan and a performance monitoring plan that will provide adequate assurance that the expectations for superior safety, environmental protection, and service reliability are actually being achieved during implementation.

The demonstration project provisions described in this notice evolved from these consultations, as well as any public comments received to date. Once OPS and NGPL consider comments received on this notice, OPS may issue an order approving the NGPL demonstration project.

3. Statement of Project Goals

The NGPL System transports pressurized natural gas which, if released in sufficient quantities in the presence of an ignition source, can cause fires and explosions resulting in property damage, injuries, and fatalities. Therefore, ensuring that pipeline leaks and ruptures do not occur is the highest priority for OPS, state agencies, and NGPL. Through risk management, NGPL intends to continuously improve the level of safety associated with operating this line.

NGPL is in the early stages of integrating specific risk assessment and prioritization processes required by the Risk Management Program Standard with a variety of existing company programs and procedures to identify the sources and causes of pipeline risks, to identify effective risk control activities to address these risks, and to monitor the effectiveness of these activities on system performance.

OPS believes that accepting NGPL into the risk management demonstration program at this time gives OPS the best opportunity to influence the continued comprehensive development and uses of risk management in the company and to better understand and address system unique risk issues. Through assessing the pipeline-specific risks and determining the risk reduction potential of risk control alternatives at specific locations, NGPL, OPS, and state agencies will improve their understanding of the risks affecting pipeline safety and have a better opportunity to evaluate the most effective risk control activities to manage these risks.

A distinctive feature of the NGPL proposal is NGPL's commitment to using quantitative models, where appropriate, to examine the relative risks associated with alternative risk control practices. NGPL is also willing to provide OPS access to company risk information, audit findings, and project scheduling. NGPL will provide a means of sharing company risk information directly with OPS and allowing immediate performance monitoring of the project. All of these milestones and commitments will be included in the OPS order authorizing the project.

NGPL has also identified several situations where it believes certain alternatives to current regulation may allow a reallocation of resources that would result in superior safety. (See Section 5 of this notice.) OPS will not be allowing these alternatives in the initial order. Once NGPL performs the necessary risk analyses to identify and justify the superiority of these risk control alternatives, as enhancing safety and environmental protection, OPS will consider amending the order to allow them. Although NGPL plans to present OPS with the final results of analyses supporting these alternatives in the fourth quarter of 1999, OPS and affected states will be working with NGPL to complete the risk analyses and begin implementing the alternatives at the earliest possible time.

NGPL will not be exempted from any current pipeline safety regulation until the company demonstrates to OPS and the affected states that the proposed alternatives provide superior protection than the current regulatory requirements. OPS will provide public notice of any proposed exemptions and opportunity to comment.

4. Demonstration Project Locations

NGPL will include its entire gas transmission pipeline system in the risk management demonstration project. However, later risk control alternatives will focus on specific locations.

While the project is underway, NGPL will investigate the relative risk-reduction of specific alternatives to the current regulations that require the operator to make certain changes to the

design or operation of the pipeline when the population increases around the pipeline. NGPL will investigate whether these proposed alternatives can provide superior risk reduction at four specific locations in which population around the pipeline is increasing. Two of the locations are in Liberty County, Texas; one location is in Lamar County, Texas; and one location is in Will County, Illinois.

As experience is gained from the initial set of population class change locations, and as risks are assessed for other portions of the NGPL gas transmission system, additional class change locations may be included in the demonstration project. OPS and NGPL will work together to establish criteria and a process for demonstrating when regulatory alternatives can provide superior protection at additional class change locations. (See Section 6 of this notice for a description of how OPS will oversee this project.)

5. Project Description

NGPL is in the early stages of integrating specific components of the OPS Demonstration Program with a variety of company programs, practices, and procedures to identify the sources and causes of pipeline risks, to identify effective risk control activities to address these risks, and to monitor the effectiveness of these activities on system performance. Senior level managers are responsible for administering and refining the processes that form the foundation of NGPL's risk assessment, risk control and decision-making, and performance monitoring functions. Appendix A is the company's work plan describing tasks to more fully develop its Risk Management Program.

Current risk control activities build on full compliance with current pipeline safety regulations and company and industry knowledge, experience, and research. Since 1990, NGPL has made extensive improvements to its risk management processes to better manage risks. These processes consist of four major components: a Pipeline Integrity Process, Management of Change Process, Modification of Standards Procedure, and Compliance Assessment Procedures. Currently, the NGPL Risk Management Program is reflected in operating and maintenance procedures; environment, safety, and health practices; engineering and design standards; and internal and external communications. During the demonstration project, the company will refine, enhance, further integrate, and document these processes in a Risk Management Program Manual. NGPL is committed to building on its current risk management system, and will continue to improve the ways in which the company:

- Actively investigates potential sources of risk in its operations;
- Integrates information from the various components of its system to produce a comprehensive understanding of the risk associated with NGPL operations;
- Identifies and allocates resources to effectively and efficiently manage these risks;
- Institutionalizes the Risk Management Program company-wide, with explicit identification of roles, responsibilities, and accountabilities; and
- Seeks input from and provides information to company employees, OPS, and other stakeholders.

NGPL's work plan, submitted as part of its application, includes these activities as specific milestones. These activities will be included in the Order authorizing the project. OPS and the states who participated in the consultative evaluation of the NGPL project will closely observe and interact with NGPL throughout these program development activities.

NGPL has also identified several situations where it believes certain alternatives to current regulations may allow a reallocation of resources that would result in superior performance. OPS will not be allowing these alternatives in the initial order. However, once NGPL performs the necessary risk analyses to identify and justify the superiority of these risk control alternatives, as enhancing safety and environmental protection, OPS will consider amending the order to allow them. Although the work plan in Appendix A shows that NGPL will present OPS with the final results of analyses supporting these alternatives in the fourth quarter of 1999, OPS and the affected states will be working with NGPL to complete the risk analyses and begin implementing the alternatives at the earliest possible time.

Alternatives to Regulations Covering Class Location Changes (192.609/611)

OPS categorizes all locations along the pipeline according to the size of the population near the pipeline. Locations with the smallest population (fewer than 10 buildings intended for human occupancy within 220 yards on either side of the pipeline) are designated Class 1. As the population along the pipeline increases, the class location changes. For example, Class 2 locations have more than 10, but fewer than 46 buildings intended for human occupancy; Class 3 locations have 46 or more buildings. The highest class, Class 4, involves locations in which buildings with four or more stories above ground (*e.g.,* large apartment buildings) are prevalent. Ninety-two percent of NGPL's system is Class 1; three percent is Class 2; five percent is Class 3. NGPL does not operate any facilities within Class 4 areas.

When the population surrounding the pipeline increases sufficiently, the class location of the pipeline may change. When the class location of a pipeline segment changes, the current regulations require an operator to confirm or revise the maximum allowable operating pressure. This could require such actions as replacing the pipe, lowering the operating pressure, or performing additional pressure tests of the line. NGPL will examine the potential risk reduction of an alternative set of risk control activities when a pipeline segment changes class. NGPL recognizes that a population increase along the pipeline increases risk due to the potentially larger consequences associated with a pipeline leak or rupture, and the possible increase in third-party excavations. NGPL will examine a set of risk control activities that includes but is not limited to:

- Internally inspecting class change segments which they would not otherwise be required to perform under current regulations;
- Internally inspecting an extended length of pipe on either side of each class change segment will further extend the benefits of better integrity analysis;
- Repairing anomalies in accordance with an NGPL-specified procedure;
- Performing enhanced third party damage prevention activities along the extended segment of pipeline;
- Performing enhanced third party damage prevention activities at other locations identified by NGPL to be the most susceptible to third party damage due to increasing population or construction; and
- Performing in-line inspections and repair of other pipeline segments identified by NGPL as having high relative risk, beyond those where population has increased.

NGPL will determine if performing these alternative risk control activities will reduce risk and produce superior performance than complying with the regulations. NGPL will design the internal inspection and associated repair activities to verify the condition of the pipe, and reduce the likelihood of pipe failure due to loss of wall thickness resulting from corrosion or other damage to the pipe. It will design the

enhanced third-party damage prevention activities to directly address the source of increased risk due to the population expansion, and to address one of the largest contributors to risk on the pipeline. NGPL believes that pipe replacement alternatives may reduce risks to the public, to workers removing and replacing pipe, and to the environment. Other relatively higher risk segments of the pipeline could benefit from resources that would otherwise be allocated to pipe replacement. NGPL will consider the risks and risk reduction associated with all possible approaches before proposing the best approach at any given location.

NGPL will work with OPS, the states, and other stakeholders during the demonstration project to confirm that these alternative activities will achieve superior protection beyond what is achievable through compliance with the current regulations.

Alternatives to Currently Allowed Options for In-Service Repair of Pipes (192.711/713/715/717/719)

The current regulations define a set of acceptable ways of repairing defects in pipelines. Considerable research has been performed over the last decade to investigate, test, and demonstrate other means of repair.

NGPL will investigate an alternative in-service repair technique based on the most recent research in this area. This technique, referred to as direct weld deposition repair, directly deposits weld metal on the pipeline damage or corrosion. This technique can be used on sections of the pipe (*e.g.* bends in the pipe) and on pipeline components (*e.g.* pipe fittings), where other current in-service repair techniques cannot be used. NGPL will work with OPS, the states, and other stakeholders to define the specific conditions and procedures under which this alternative repair technique can produce superior performance.

Monitoring Demonstration Project Effectiveness

The NGPL Demonstration Project includes a comprehensive approach to performance monitoring that OPS believes will provide superior protection of public safety and the environment, and achieve other project objectives. A key element of this monitoring plan is a set of programmatic performance measures to track the growth and institutionalization of risk management within the company, measure the effectiveness of the NGPL Risk Management Program and Process in achieving stated expectations, and measure the effectiveness of specific risk control activities. NGPL will report performance measurement data and project progress regularly to OPS throughout the demonstration period. This information, as well as periodic OPS audits, will assure accountability for improved performance.

NGPL has provided a work plan for completing the steps of this project. This work plan includes scheduled interaction between NGPL and OPS, such as NGPL's sharing with OPS appropriate project information through Intranet/Internet access on its risk management program, and OPS and affected states observing internal company assessment activities. OPS will audit NGPL's progress throughout the project to verify that key milestones are completed.

OPS believes this interaction will help confirm the continuing improvement in NGPL's Risk Management Program, and help OPS review and confirm NGPL's analysis of the expected risk-reduction from the proposed risk control alternatives. OPS will also be able to verify the technical basis for concluding that these alternatives will provide superior safety.

6. Regulatory Perspective

Why is OPS Considering This Project?

OPS has carefully and extensively reviewed NGPL's proposed Risk Management Demonstration Project. OPS believes that NGPL is committed to building on its current risk management system to develop and document a formal risk management program and set of implementing procedures corresponding to the requirements of the Risk Management Program Standard. NGPL senior management has demonstrated its commitment to improved safety and environmental protection through risk management. OPS believes that the technical and managerial processes included in the NGPL Risk Management Program will allow risk control alternatives to be defined that can provide superior performance.

OPS also believes that the NGPL demonstration project will help OPS achieve the overall goals of the Risk Management Demonstration Program. In particular, this project will provide OPS with increased and better quality data about potential pipeline risks and activities to address those risks. These previously unavailable data will increase OPS's knowledge and awareness about potential pipeline threats, provide earlier opportunity to consider appropriate risk control options, and thereby support a more effective regulatory role in improving safety and environmental protection. Further, OPS believes that NGPL's proposal indicates the potential of developing and demonstrating systematic processes to both quantitatively and qualitatively determine the relative risk-reduction benefits of alternative safety practices so that the effect of one set of risk control activities can be compared with another.

NGPL has demonstrated a strong commitment to the use of quantitative models, where appropriate, to examine the relative risks associated with alternative risk control practices. Including NGPL in the risk management demonstration program will allow OPS to gain further insights on using such models in developing the technical justification for risk control alternatives that achieve superior risk reduction. Use of these models will help to evaluate the results of other company risk management projects and solidify the demonstration of superior safety results from company risk management programs.

NGPL will develop and use company Intranet-based systems to promote communication within the company about its risk management program and the results of its risk analysis and risk-based decision making. NGPL is willing to provide OPS access to a company-operated intranet site containing risk information, audit findings, and project scheduling. This provides a means of sharing NGPL risk information directly with OPS and allowing immediate performance monitoring of the project. This is an innovative feature of the NGPL risk management project that may contribute to the success of the entire pipeline risk management program through developing enhanced systems and methods to report and share risk information and monitor performance.

NGPL has also included in its work plan, development of an External Communications Plan that defines planned information exchange with contractors, land owners, local safety officials, local emergency planning groups, and other stakeholders.

How Will OPS Oversee This Project?

After NGPL's Risk Management Demonstration Project is approved, the PRT consisting of OPS headquarters and regional staff and state pipeline safety officials who have been reviewing the proposal, will monitor the project. The PRT is designed to be a more comprehensive oversight process that draws maximum technical experience and perspective from all affected OPS regional and headquarters offices, and from any affected state agencies that

would not normally provide oversight on interstate transmission projects.

The PRT will conduct periodic risk management audits to observe company performance of the specific terms and conditions of the OPS Order authorizing this Demonstration Project. OPS is developing a detailed audit plan, tailored to the unique requirements of the NGPL Demonstration Project. This plan will describe the audit process (*e.g.*, types of inspections, methods, observation of company review of risks and risk control options, frequency of audit), as well as the specific requirements for reporting information and performance measurement data to OPS.

OPS retains its full authority to administer and enforce all regulations governing pipeline safety. As previously discussed, NGPL may later be exempted from particular regulations if it demonstrates that specific risk control alternatives provide superior levels of safety to regulatory compliance. (Such alternatives would become part of the Order and would be monitored.) Should Demonstration Project performance or other subsequent information indicate that superior levels of safety have not been achieved or are unlikely to continue to be achieved, then OPS may require NGPL to modify the alternative or return to complying with the previously exempted regulation.

Information Provided to the Public

OPS has previously provided information to the public about the NGPL project, and has requested public comment, using many different sources.

1. OPS aired several electronic ''town meetings'' enabling viewers of the two-way live broadcasts to pose questions and voice concerns about candidate companies (including NGPL).

2. An earlier **Federal Register** notice (62 FR 53052; October 10, 1997) informed the public that NGPL was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

3. Since August 1997, OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS), available via the OPS Home Page at http://ops.dot.gov, to collect, update, and exchange information about all demonstration candidates, including NGPL.

4. At a November 19, 1997, public meeting OPS hosted in Houston, TX, NGPL officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997, and March 26, 1998.)

5. OPS will provide a prospectus, which includes a map of the demonstration sites, to State officials and community representatives who may be interested in reviewing project information, providing input, or monitoring the progress of the project.

At this point, OPS has received no public comment on NGPL's proposal. This notice is OPS's final request for public comment before OPS intends to approve NGPL's participation in the Demonstration Program under the terms of the work plan.

Issued in Washington, DC on August 26, 1998.

Richard B. Felder,

Associate Administrator, Office of Pipeline Safety.

Appendix A: NGPL Work Plan

IMPLEMENTATION SCHEDULE WITH KEY MILESTONES

#	Milestone description	Date
1	Program Development.	
1.1	Complete development and description of investigative risk identification and assessment processes	4th Quarter 1998.
1.2	Complete development and description of processes for integrating risk information from various sources into linked risk database.	4th Quarter 1998.
1.3	Complete development and description of processes for identifying and selecting risk control activities	4th Quarter 1998.
1.4	Complete development of NGPL Risk Management Program Manual which describes processes and assigns responsibilities.	1st Quarter 1999.
2	Assurance of Superior Performance for Phase 1 Projects.	
2.1	Describe the technical approach (including a description of the models, algorithms, data sources, and expert processes) that will be used to assess and compare the risk reduction expected from the proposed class location change alternatives and compliance with current regulations.	4th Quarter 1998.
2.2	Describe the technical approach (including a description of the models, algorithms, data sources, and expert processes) that will be used to assess and compare the risk reduction expected from the proposed welding repair alternatives and compliance with current regulations.	4th Quarter 1998.
2.3	Present the preliminary results of the analyses that lead to the conclusion that superior performance will result from the proposed class location risk control alternatives.	2nd Quarter 1999.
2.4	Present the preliminary results of the analyses that lead to the conclusion that superior performance will result from the proposed welding repair alternatives.	2nd Quarter 1999.
2.5	Complete initial enhancements to Risk and Environmental Management (REM) database	2nd Quarter 1999.
2.6	Present the final results of the analyses that lead to the conclusion that superior performance will result from the proposed class location risk control alternatives.	4th Quarter 1999.
2.7	Present the final results of the analyses that lead to the conclusion that superior performance will result from the proposed welding repair alternatives.	4th Quarter 1999.
3	Performance Measures.	
3.1	Develop performance measures to monitor the effectiveness of the overall NGPL Risk Management Program.	4th Quarter 1998.
3.2	Develop performance measures to monitor the effectiveness of proposed risk control activities to produce superior performance (including baseline levels, and expected levels).	4th Quarter 1998.
3.3	Produce a Performance Monitoring Plan that incorporates the selected performance measures, and defines the processes and responsibilities for collecting, analyzing, and reporting performance data.	1st quarter 1999.
3.4	Produce and provide OPS and other stakeholders a Performance Monitoring report that documents the status and progress of the program.	1st Quarter 2000 and as needed thereafter, but not to exceed 18 months through demo phase.
4	Communication & Information Exchange.	

IMPLEMENTATION SCHEDULE WITH KEY MILESTONES—Continued

#	Milestone description	Date
4.1	Complete External Communications Plan that defines planned information exchange with contractors, land owners, the public, local safety officials, local emergency planning groups, and other stakeholders.	4th Quarter 1998.
4.2	Conduct Risk Management information meetings with affected local emergency planning committees, local officials, and land owners.	1st Quarter 1999 and as needed thereafter, but not to exceed 18 months through demo phase.
4.3	Meet with OPS to discuss program progress and status	1st Quarter 1999 and as needed thereafter, but not to exceed 18 months through demo phase.
4.4	Provide OPS summary of consolidated risk information indicating the major sources of risk on the NGPL pipelines and actions being taken or planned by NGPL to address these risks.	4th Quarter 1999.
4.5	Develop internal electronic information and communication system that will provide all employees easy access to key risk management information (including information in NGPL's Computer Action Tracking and Trending System, the Risk and Environmental Management database, and other risk-related databases).	4th Quarter 1999.
4.6	Provide OPS controlled Internet access to relevant portions of the NGPL electronic information system to facilitate reporting and information exchange.	1st Quarter 2000.
5	Selection of Phase 2 Projects.	
5.1	Develop and present to OPS an analysis/review/approval process for expanding Phase 1 projects to other portions of the NGPL system.	2nd Quarter 1999.
5.2	Submit list of additional Phase 2 projects to OPS, including the anticipated technical approach for establishing superior performance.	3rd Quarter 1999.
6	Assurance of Superior Performance for Phase 2 Projects.	
6.1	Present results of analyses to expand Phase 1 alternatives to other portions of the NGPL system	3rd Quarter 1999.
6.2	Present results of analyses demonstrating superior performance for other selected Phase 2 alternatives.	1st Quarter 2000.

Appendix B: Environmental Assessment

A. Background and Purpose

A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that in implementing the Pipeline Risk Management Demonstration Program: ''The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply.'' Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. This document summarizes the key points of this review for Natural Gas Pipe Line Company's (NGPL) demonstration project, and evaluates the safety and environmental impacts of this proposed project.

This document was prepared in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts.

B. Description of Proposed Action

NGPL will conduct a demonstration project encompassing its entire pipeline system. Specific risk control activities will be investigated for four locations in the NGPL system: two locations in Liberty County, Texas; one location in Lamar County, Texas; and one location in Will County, Illinois. NGPL has adopted a Risk Management Program and Process to institutionalize risk management throughout the company. The proposed project's primary objective is to demonstrate that implementation of NGPL's Risk Management Program and Process will lead to superior performance, improved safety and environmental protection.

NGPL's Risk Management Program integrates four major components: the company Pipeline Integrity Process, Management of Change Process, Modification of Standards Procedure, and Compliance Assessment Procedures. The formalized NGPL Risk Management Program will be documented in the course of the demonstration project and will fully conform to the Risk Management Program Standard. During the demonstration project, NGPL will continue to:

- actively investigate potential risk sources in pipeline operations;
- integrate information from the four components listed above to form a comprehensive understanding of risk associated with operation of the NGPL system and allocate resources to determine effective and efficient risk control alternatives;
- institutionalize NGPL's Risk Management Program company-wide with specific roles, responsibilities, accountabilities, and effective documentation; and
- seek input from and provide information to company employees, OPS, and stakeholders to continually improve NGPL's Risk Management Program and the understanding of the risk management/ engineering process.

As a result of a comprehensive review of NGPL's risk management demonstration project, the Office of Pipeline Safety (OPS) proposes to approve this project for participation in the Demonstration Program.

The activities below would be included in an Order formally approving the NGPL demonstration project:

- Share information with OPS concerning the specific risks identified for NGPL pipeline segments;
- Share information with OPS concerning the preventive and risk control activities NGPL has identified and analyzed to address these risks and their relative priority;
- Share information with OPS concerning the technical basis for establishing alternative risk control

activities that achieve superior safety and environmental protection;

- Share information with OPS concerning the lessons learned on institutionalizing risk management programs to help OPS in evaluating the effectiveness of risk management programs, including information on the use of quantitative risk assessment and prioritization models where appropriate;
- Track, monitor, and report performance measures selected to determine the effectiveness of the NGPL risk management program; and
- Provide OPS access to risk management information through the NGPL company intranet-based information systems.

Monitoring Demonstration Project Effectiveness

The NGPL Demonstration Project includes a comprehensive approach to performance monitoring that assures the superior protection of public safety and the environment, and achieves other project objectives. A key element of this monitoring plan is a set of programmatic performance measures to track the growth and institutionalization of risk management within the company, and measure the effectiveness of the NGPL Risk Management Program and Process in achieving stated expectations.

NGPL will report performance measurement data and project progress regularly to OPS throughout the demonstration period. This information, as well as periodic OPS audits, will assure accountability for improved performance. More detailed descriptions of all aspects of the NGPL proposal and OPS rationale for approving the project are provided in the Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS), available to the public via the OPS Home Page, at http://ops.dot.gov.

C. Purpose and Need for Action

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation is being performed under strictly controlled conditions through a set of demonstration projects being conducted with interstate pipeline operators. Through the Demonstration Program, OPS will determine whether a risk management approach, properly implemented and monitored through a formal risk management regulatory framework, achieves:

(1) Superior safety and environmental protection; and

(2) Increased efficiency and service reliability of pipeline operations.

In June, 1997, NGPL submitted a Letter of Intent to OPS, asking to be considered as a Demonstration Program candidate. Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS is satisfied that NGPL's proposal will provide superior safety and environmental protection, and is prepared to finalize the agreement with NGPL on the provisions for the demonstration project.

D. Alternatives Considered

OPS has considered three alternatives: approval of the NGPL risk management demonstration project as proposed in NGPL's application; denial of the NGPL demonstration project; or approval of the project with certain modifications to NGPL's application.

OPS's preferred alternative is to approve the NGPL demonstration project. OPS is satisfied that the proposal will not significantly affect the surrounding environment. By approving the NGPL demonstration program, OPS is not approving the implementation of any risk control alternatives or exemptions from regulations at this time. However, later during the demonstration project, NGPL may propose, and OPS may approve, alternatives to the current regulations. NGPL will need to demonstrate that any alternatives provide superior safety and environmental protection to the current regulations. We will amend this environmental assessment to consider the impact of any such alternatives on the environment.

With approval of this project, NGPL will provide OPS with risk assessment information on the pipeline system exceeding that available through the current regulatory process. OPS's access to NGPL's company Intranet-based risk information system provides a high level of information sharing and provides OPS an opportunity to investigate new, efficient tools for obtaining information and communicating with pipeline companies.

The project is expected to lead to superior levels of safety and environmental protection than provided under current regulatory requirements, because of the identification and analysis of effective risk control alternatives that may be approved for future implementation. In the meantime, increased sharing between OPS and NGPL about potential pipeline risks will increase OPS's knowledge and awareness about potential pipeline threats, provide earlier opportunity to consider appropriate risk control options, and thereby support a more effective regulatory role in improving safety and environmental protection.

NGPL's use of quantitative models in its analysis of alternatives will also provide OPS practical insights concerning the usefulness of quantitative tools and methods that are applicable to the entire risk management demonstration program.

OPS and NGPL will carefully monitor and, if necessary, improve the effectiveness of the risk control program and processes throughout the demonstration period.

If OPS denied the project, it would lose valuable information concerning the sources of risks to NGPL's pipeline system and the most effective means of managing these risks. Denial would also significantly diminish OPS's ability to evaluate the effectiveness of an institutionalized, integrated, and comprehensive risk management program in producing superior performance, and would hinder OPS's ability to satisfy the objectives of the Risk Management Demonstration Program, and the requirements of the previously mentioned Presidential Directive. Denial would also result in the loss of insights regarding the use of quantitative models and the loss of opportunities to investigate new methods of obtaining information from pipeline companies through Intranet-based information systems.

All of the issues raised by OPS, state regulators, and other stakeholders about NGPL's proposed project have been discussed within the consultative process, resolved to OPS's satisfaction, and reflected in NGPL's application. Thus, we do not see any need to modify NGPL's proposal.

E. Affected Environment and Environmental Consequences

The NGPL gas transmission pipeline system covers approximately 13,000 miles in 14 states. The product transported in the NGPL system is pressurized natural gas, a flammable gas. If a pipeline leaks or ruptures, the product could be released to the surrounding area and, in the presence of an ignition source, could be ignited, causing fire or explosion. The likelihood of such occurrences leading to environmental damage is currently very low, as evidenced by NGPL-specific and industry-wide operating history.

OPS, at this time, is not approving any exemptions to the current regulations. During the course of the project, NGPL will examine the risk-reduction benefits of specific risk control activities that may improve safety and environmental protection. NGPL is focusing on two locations in Liberty County, Texas; one location in Lamar County, Texas; and one location in Will County, Illinois. If and when NGPL demonstrates to OPS's satisfaction that such activities can be expected to result in improved safety and environmental protection compared to the current regulations, then OPS will amend the risk management Order to allow NGPL to implement these alternatives. OPS will also make an environmental assessment of any proposed alternatives, to determine their environmental impact.

Before entering into consultations with NGPL, OPS determined that NGPL was a good demonstration program candidate based on an examination of the company's safety and environmental compliance record, its accident history, and its commitment to working with OPS to develop a project meeting the Demonstration Program goals.

OPS records show that since 1984, NGPL has filed 49 reportable incidents, which is typical for a company of its size. Causes include corrosion (24), construction or material defects (8), outside forces (8), and other miscellaneous or unknown causes (9). The most significant accident, causing eleven deaths and three injuries, occurred October 3, 1989, when a fishing boat in the Gulf of Mexico near High Island, Texas, struck a sixteen inch diameter line about one half mile offshore at a water depth of approximately ten feet. OPS determined that NGPL violated no regulations in connection with this incident, and no enforcement actions resulted. Following the incident, OPS promulgated regulations to protect against future incidents involving submerged pipelines. NGPL complied by instituting a regular inspection program to assess the integrity of the pipelines in Gulf of Mexico shallow waters, exceeding the inspection frequency required by the regulations. The NGPL offshore damage protection program determines the available soil backfill protection, identifies potential or actual damage to the facilities, and makes repairs where needed. In addition, NGPL co-chaired a task force that has resulted in several offshore damage prevention/public awareness aids and initiatives, such as an educational video, an annual luncheon and program for mariners, development and installation of pictograph warning signs, and a developing offshore one-call system.

On March 29, 1998, NGPL experienced a corrosion failure of a thirty-six inch diameter pipeline approximately five miles south of Corrigan, Texas, in a forested and relatively isolated part of Polk County, Texas. This failure resulted in some fire damage, but no harm to people. NGPL will pressure test approximately 36 miles of pipeline in the area where the failure occurred to specifically address the cause of this incident. NGPL also will examine approximately 600 miles of pipeline in the area to determine if the coatings and cathodic protection are providing adequate protection to reduce the future chance of this type of failure. OPS is monitoring NGPL's response to this incident and is presently conducting an accident investigation in conjunction with a standard audit of the affected pipeline.

At this time, OPS believes that the actions NGPL will take to address the specific causes of the incident, together with the system-wide application of their proposed Risk Management Program, are an adequate response to the incident and demonstrate a continued commitment to safety.

NGPL will incorporate information from all incidents into its proposed Risk Management Program to further reduce the likelihood of future incidents. NGPL's Program will also include frequent feedback from field personnel on the condition of the pipeline, risk modeling of the pipeline to provide faster and more thorough assessment of threats to pipeline integrity, and application of new technology from recent research to further reduce risk.

F. Environmental Justice Considerations

In accordance with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), OPS has considered the effects of the demonstration project on minority and low-income populations. As explained above, this project, initially, will not result in any significant environmental impacts, because NGPL will be complying with current applicable pipeline safety regulations. Residents near the facility will have the same level of protection that they presently have, regardless of the residents' income level or minority status. Therefore, the proposed project does not have any disproportionately high or adverse health or environmental effects on any minority or low-income populations near the demonstration facility. OPS will only approve any proposed alternative risk control activities if NGPL can demonstrate that these alternatives provide greater safety and environmental protection than compliance with existing regulations.

G. Information Made Available to States, Local Governments, and Individuals

OPS has made the following documents publicly available, and incorporates them by reference into this environmental assessment:

(1) ''Demonstration Project Prospectus: Natural Gas Pipe Line Corporation'', August 1998, available by contacting Elizabeth M. Callsen at 202–366–4572. Purpose is to reach the public, local officials, and other stakeholders, and to solicit their input about the proposed project. Will be mailed to over 300 individuals, including Local Emergency Planning Committees (LEPC) and other local safety officials, Regional Response Teams (RRT) representing other federal agencies, state pipeline safety officials, conference attendees, and members of public interest groups.

(2) NGPL ''Application and Work Plan for DOT-OPS Risk Management Demonstration Program'', available in Docket No. RSPA–98–3893 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202)366–5046.

(3) ''OPS Project Review Team Evaluation of the NGPL Demonstration Project''.

(4) Notice of intent to approve the NGPL Demonstration Project (published concurrently with this environmental assessment).

OPS has previously provided information to the public about the NGPL project, and has requested public comment, using many different sources. OPS aired four electronic broadcasts (June 5, 1997; September 17, 1997; and December 4, 1997; and March 1998) reporting on demonstration project proposals (the last three of which provided specific information on NGPL's proposal). An earlier **Federal Register** notice (62 FR 53052; October 10, 1997) informed the public that NGPL was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August, 1997 OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS), available

via the OPS Home Page at http://ops.dot.gov, to collect, update, and exchange information about all demonstration candidates, including NGPL.

At a November 19, 1997, public meeting OPS hosted in Houston, TX, NGPL officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997 and March 26, 1998.) No issues or concerns about NGPL's proposal have been raised.

H. Listing of the Agencies and Persons Consulted, Including Any Consultants

Persons/Agencies Directly Involved in Project Evaluation

Stacey Gerard, OPS/U.S. Department of Transportation
Tom Fortner, OPS/U.S. Department of Transportation
Ivan Huntoon, OPS/U.S. Department of Transportation
Donald Moore, OPS/U.S. Department of Transportation
Rodrick Seeley, OPS/U.S. Department of Transportation
Dallas Rea, OPS/U.S. Department of Transportation
Bruce Hansen, OPS/U.S. Department of Transportation
Elizabeth Callsen, OPS/U.S. Department of Transportation
Steve Smock, Illinois Commerce Commission
Edward Steele, Ohio Public Utilities Commission
Mary McDaniel, Railroad Commission of Texas
Jim vonHerrmann, Cycla Corporation (consultant)
Andrew McClymont, Cycla Corporation (consultant)

Persons/Agencies Receiving Briefings/Project Prospectus/Requests for Comment

Regional Response Team (RRT), Regions 5 and 6, representing the Environmental Protection Agency; the Coast Guard; the U.S. Departments of Interior, Commerce, Justice, Transportation, Agriculture, Defense, State, Energy, Labor; Health and Human Services; the Nuclear Regulatory Commission; the General Services Administration; and the Federal Emergency Management Agency (RRT Co-Chairs: Richard Karl and Charles Gazda, EPA, and Capt. Christopher Desmond and Capt. Gregory Cope, Coast Guard).

I. Conclusion

Based on the above-described analysis of the proposed demonstration project, OPS has determined that there are no significant impacts associated with this action.

[FR Doc. 98–23442 Filed 8–31–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3891; Notice 14]

Pipeline Safety: Mobil Pipe Line Company Approved for Pipeline Risk Management Demonstration Program; Correction

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; correction.

SUMMARY: RSPA published a document in the **Federal Register** of August 14, 1998, regarding approval of Mobil Pipeline Line Company for the Pipeline Risk Management Demonstration Program. The document contained errors in reference to the pipeline company's name.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 355–4572.

Correction

In the **Federal Register** issue of August 14, 1998, in FR Doc. 98–21840, on page 43742, in the first column, second full paragraph, correct the second sentence to read: OPS conducted an Environmental Assessment of Mobil's project (63 FR 36018, ''Pipeline Safety: Intent to Approve Project and Environmental Assessment for the Mobil Pipe Line Company Pipeline Risk Management Demonstration Program'', July l, 1998).

Issued in Washington, DC on August 26, 1998.

Richard B. Felder,

Associate Administrator.

[FR Doc. 98–23443 Filed 8–31–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33639]

Dakota, Missouri Valley & Western Railroad, Inc.—Acquisition and Operation Exemption—A Line of The Burlington Northern and Santa Fe Railway Company

Dakota, Missouri Valley & Western Railroad, Inc. (DMVW), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) ownership rights in (a permanent and exclusive rail service easement) and to operate over approximately 45.3 miles of rail line, owned by The Burlington Northern and Santa Fe Railway Company (BNSF), known as the McKenzie-Linton Line, between milepost 0.0 at McKenzie, Burleigh County, ND, and milepost 45.3 in Linton, Emmons County, ND.[1]

The transaction is scheduled to be consummated on or before September 1, 1998.[2]

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33639, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street N.W., Suite 200, Washington, DC 20005–3324.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 25, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–23451 Filed 8–31–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33647]

Georgia Southwestern Railroad, Inc.—Lease Exemption—The Georgia Department of Transportation

Georgia Southwestern Railroad, Inc. (GSWR), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from the Georgia Department of Transportation (GDOT)

[1] DMVW will also acquire BNSF's interest in all railroad tracks, track materials and related track structures and facilities located between milepost 0.0 at McKenzie and milepost 28.7 at Hazelton, ND. BNSF will convey to DMVW the exclusive right to conduct rail freight transportation business on the entire McKenzie-Linton Line.

[2] The transaction could not be consummated no sooner than the August 10, 1998, effective date of the exemption.

and operate approximately 67.63 miles of rail lines as follows: (i) the rail line between milepost 577.85, at Vidalia, GA, and milepost 645.00, at Rochelle, GA, a distance of 67.15 miles; and (ii) the Abbeville Wye Track between Main Line Valuation Station 3429+40 and Wye Track Valuation Station 25+10, at Abbeville, GA, a distance of .48 miles.

The transaction is expected to be consummated on or after October 6, 1998. Because the projected revenues of the rail lines to be operated will exceed $5 million, GSWR certified to the Board, on August 7, 1998, that the required notice of its rail line acquisition was posted at the workplace of the employees on the affected lines on August 6, 1998. *See* 49 CFR 1150.42(e).[1]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33647, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Decided: August 25, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–23452 Filed 8–31–98; 8:45 am]

BILLING CODE 4915–00–P

[1] GSWR notes that there are currently no employees on the lines it seeks to lease but that it has complied with the technical requirements of section 1150.42(e) by posting notice at the workplace of GDOT. Notice was also posted at the workplace of Georgia Central Railway, L.P., a former owner and operator of a segment of the line GSWR seeks to lease. GSWR further notes that there are no labor unions with employees on the affected lines.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33646]

Twin Cities & Western Railroad Co.—Relocation Exemption—Hennepin County Regional Railroad Authority and The Burlington Northern and Santa Fe Railway Company

On August 3, 1998, Twin Cities & Western Railroad Co. (TCW), filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain overhead trackage rights in Hennepin County, MN. The transaction was expected to be consummated on or after August 10, 1998.

In 1991, as part of the purchase of its lines from Soo Line Railroad Company, doing business as Canadian Pacific Railway (CPR), TCW was granted incidental trackage rights over the Merriam Park Line, extending from the eastern terminus of TCW's line at Tower E–14 near Hopkins, MN (milepost 435.06), to milepost 416.43, and operating rights beyond to the St. Paul Yard, where it interchanges with CPR pursuant to an interchange agreement. The Merriam Park Line was purchased by the Hennepin County Regional Railroad Authority (HCRRA) pursuant to a Purchase Agreement dated December 23, 1992. As part of the Purchase Agreement, CPR and TCW were given a grant-back easement on the Merriam Park Line for continued rail operations.

The Merriam Park Line includes a portion of the Hiawatha/Cedar Avenue Wye, from milepost 423.59±, near the eastern edge of Cedar Avenue, to milepost 421.21±, near the eastern edge of Hiawatha Avenue (State Highway 55); the remainder of the wye is from milepost 423.59± to milepost 423.26±. Included in the Purchase Agreement is the condition that CPR will ultimately relocate those operations currently moving through the wye track to enable the Minnesota Department of Transportation to rehabilitate and upgrade Highway 55 and avoid restoration of two railroad crossings over a main highway artery to and from downtown Minneapolis. In *Soo Line Railroad Company, d/b/a Canadian Pacific Railway—Abandonment Exemption—In Hennepin County, MN,* STB Docket No. AB–57 (Sub-No. 40X) (STB served June 26, 1998), CPR was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over but not abandon the 1-mile wye until after TCW obtains approval or an exemption to discontinue its trackage rights and CPR informs any party requesting a public use condition or a NITU if and when those trackage rights are discontinued.

In TCW's Trackage Rights Agreement with CPR, dated July 26, 1991, there is a stipulation that if operations over the Merriam Park Line are interrupted, CPR will provide an alternate route over the Kenilworth Route, which is a line that extends between Hopkins and Cedar Lake/Minneapolis, MN. The Kenilworth Route is also owned by the HCRRA. CPR and TCW have existing trackage rights over the Kenilworth Route, which had been out-of-service and in disrepair. HCRRA has rehabilitated the Kenilworth Route and by this notice of exemption, CPR and TCW are relocating their overhead operations using the Kenilworth Route and their existing trackage rights over a line of The Burlington Northern and Santa Fe Railroad Company, between Minneapolis and St. Paul, MN, to reach the St. Paul Yard.

Incidental to the relocation, TCW is also discontinuing its trackage rights over the portion of the Merriam Park Line extending from milepost 428.0 to milepost 416.43. The transaction will simplify rail operations. TCW states that, because it operates only overhead trackage rights over the Merriam Park Line, no shippers will be affected by the relocation, and, thus, separate approval or an exemption is not required for the discontinuance of trackage rights.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit v. Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority v. ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 33646, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–

0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Ave., N.W., Suite 800, Washington, DC 20005–4797.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 25, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–23455 Filed 8–31–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Schedule of Workshops in Connection With the Notice of Funds Availability Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Scheduled Workshops.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to provide incentives to insured depository institutions for the purposes of promoting investments in or other support to Community Development Financial Institutions (''CDFIs'') and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in an interim rule (12 CFR part 1806) published in the December 5, 1997 issue of the **Federal Register**, implementing and governing the Bank Enterprise Award (''BEA'') Program. Elsewhere in this issue of the **Federal Register**, the Fund has published a Notice of Funds Availability (''NOFA'') inviting applications for the BEA Program. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Tuesday, November 24, 1998. In connecton with the NOFA, the Fund is conducting workshops to disseminate information to organizations contemplating applying and other organizations interested in learning about the BEA Program.

DATES: Anyone wishing to attend a workshop should call or fax the Fund with their request for the workshop registration form or an Application package. Application packages will include the workshop schedule and registration form. Please fax the workshop registration form to the Fund ten business days prior to the workshop date. The Fund will be holding workshops on the following dates:

September 22, 1998 in Los Angeles, CA;
September 23, 1998 in Pheonix, AZ;
September 29, 1998 in New York City, NY;
October 8, 1998 in Louisville, KY;
October 13, 1998 in Dallas, TX;
October 16, 1998 in Atlanta, GA;
October 19, 1998 in Boston, MA;
October 20, 1998 in Chicago, IL;
October 21, 1998 in Sioux Falls, SD;
October 22, 1998 in Baltimore, MD; and
October 26, 1998 in Seattle, WA

ADDRESSES: Requests shall be sent to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC, 20005 by telephone at (202) 622–8662 or by facsimile at (202) 622–7754. These are not toll free numbers.

FOR FURTHER INFORMATION CONTACT: All questions regarding the times and locations of the workshops, NOFA, Application package, or program requirements should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Washington, DC, 20005 by telephone at (202) 622–8662 or by facsimile at (202) 622–7754. These are not toll free numbers. If you are requesting an application package, please allow at least two weeks for delivery.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Catalog of Federal Domestic Assistance: 21.021

Dated: August 27, 1998.

Paul R. Gentille,

Deputy Director for Management/Chief Financial Officer, Community Development Financial Institutions Fund.

[FR Doc. 98–23558 Filed 8–31–98; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of the Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning October 1, 1998, and ending September 30, 1999. Each PRB will be composed of at least three of the Senior Executive Service members listed below:

Name and Title

Bruce J. Bowen—Deputy Director, U.S. Secret Service
Brian L. Stafford—Assistant Director, Protective Operations (USSS)
Gordon S. Heddell—Assistant Director, Inspection (USSS)
Jane E. Vezeris—Assistant Director, Administration (USSS)
H. Terrence Samway—Assistant Director, Government Liaison and Public Affairs (USSS)
Barbara S. Riggs—Assistant Director, Protective Research (USSS)
Kevin T. Foley—Assistant Director, Investigations (USSS)
Charles N. DeVita—Assistant Director, Training (USSS)
John J. Kelleher—Chief Counsel (USSS)

FOR ADDITIONAL INFORMATION CONTACT: Joyce I. Sowa, Chief, Personnel Division, 1800 G Street, NW, Room 901, Washington, DC, 20223, Telephone No. (202) 435–5635.

Lewis C. Merletti,

Director.

[FR Doc. 98–23386 Filed 8–31–98; 8:45 am]

BILLING CODE 4810–42–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information, Collection Activities

AGENCY: Office of Thrift Supervision, 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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Thrift Financial Report.

DATES: Submit comments on or before November 2, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0023. Hand deliver comments to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days.

Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Trudy Reeves, Financial Reporting Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7317. Interested persons may also obtain information on the internet at www.ots.treas.gov/tfrpage.html, by requesting Document Number 73041 on OTS's Publifax line at (202) 906–5660, or by calling (202) 906–6078.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550–0023.

Form Numbers: OTS 1313, OTS 1568.

Abstract: All OTS-regulated savings associations must comply with the information collections described in this notice. The OTS collects this information each calendar quarter. The OTS needs this information to monitor and supervise the thrift industry.

Current Actions: After reviewing its current supervisory and examination needs, the OTS proposes to revise the Thrift Financial Report (TFR), effective with the March 31, 1999 report. The OTS has limited the proposed changes for 1999 to minimize the burden to the savings and loan industry to allow it to focus on year 2000 compliance.

High Loan-to-Value Loans

The OTS has considerable supervisory concerns regarding high loan-to-value (LTV) lending, particularly LTV ratios in excess of 100% of the market value of the collateral. Currently, the OTS requires associations to report loans with LTV ratios in excess of 90% monthly to their board of directors (OTS Regulation 560.100–101). However, the OTS does not require associations to report LTV data on the Thrift Financial Report (TFR). Due to increased concern regarding high LTV lending, coupled with the OTS's current inability to effectively monitor off-site potential high risk lending, the OTS proposes to collect eight additional data items. With this change, the TFR will be more useful in promptly identifying a changing risk profile of regulated institutions. This change should impact only a small number of savings associations.

Comprehensive Income (SFAS No. 130)

Under Statement of Financial Accounting Standards No. 130, entities must report accumulated other comprehensive income separately from retained earnings in the equity section of the balance sheet. Accumulated other comprehensive income includes: unrealized gains and losses on available-for-sale securities; minimum pension liability adjustments; foreign currency translation gains and losses; and, upon the adoption of SFAS No. 133, gains and losses associated with cash flow hedges. Under the current TFR format, savings associations report foreign currency translation adjustments, gains and losses associated with cash flow hedges, and minimum pension liability adjustments on line SC890, Other Components of Equity Capital. Savings associations report unrealized gains and losses on available-for-sale securities separately on line SC860. The OTS proposes to delete SC860 and replace this item with SC865, Accumulated Other Comprehensive Income.

Asset Maturity Data

The OTS also proposes to delete five lines that collect data on asset maturities on Schedule SI. Currently, only savings associations that meet the Schedule CMR exemption criteria (assets less than $300 million and risk-based capital in excess of 12%) and that opt not to file Schedule CMR (Asset Maturity and Interest Rates) must provide these data. OTS no longer needs to collect these data.

A detailed description of the proposed changes follows:

Schedule SC

Delete SC860, Unrealized Gains and Losses on Available-for-Sale Securities, and replace it with SC865, Accumulated Other Comprehensive Income.

Schedule SI

Delete five lines as follows:

Asset Repricing/Maturing Data

SI700: Will the reporting association file Schedule CMR for this quarter?

Assets Repricing/Maturing in Three Years or Less:

SI710: Mortgage Loans and Securities
SI720: Nonmortgage Loans, Interest-earning Deposits and Investment Securities

Assets Repricing/Maturing in More Than Three Years:

SI730: Mortgage Loans and Securities
SI740: Nonmortgage Loans, Interest-earning Deposits and Investment Securities

Add the following 4 lines:

High Loan-to-Value Loans (Outstanding Balances)

Loans Without PMI or Government Guarantee

Permanent Mortgages On 1–4 Dwelling Units:
SI412: >90 to 100 LTV
SI415: Over 100 LTV
Consumer Loans Secured (in whole or in part) by Real Estate, Reported on SC316 and SC340:
SI422: >90 to 100 LTV
SI425: Over 100 LTV

Schedule CF

Add the following 4 lines:

High Loan-to-Value Loans

Permanent Mortgages On 1–4 Dwelling Units and Consumer Loans Secured (in whole or in part) by Real Estate Without PMI or Government Guarantee:
Originated or Purchased During the Quarter:
CF405: >90 to 100 LTV
CF407: Over 100 LTV
Sold During the Quarter:
CF409: >90 to 100 LTV
CF410: Over 100 LTV

Note: Savings Associations should determine Loan-to-Value ratios at origination in accordance with the definition in the interagency guidelines attached to 560.101.

Type of Review: Revision.

Affected Public: Business or For Profit.

Estimated Number of Respondents and Recordkeepers: 1182.

Estimated Time Per Respondent: 33 hours average.

Estimated Total Annual Burden Hours: 156,024 hours.

Request for Comments: The OTS will summarize or include comments submitted in response to this notice with the request for OMB approval, and will include these comments in the public record. The OTS invites comments 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; (d) ways to minimize the burden of the collection of information on respondents, including 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.

Dated: August 27, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–23484 Filed 8–31–98; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition Determination: ''Nineteenth-Century Dutch Watercolors and Drawings From the Museum Boijmans-van Beuningen, Rotterdam''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359,March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''*NINETEENTH-CENTURY DUTCH WATERCOLORS AND DRAWINGS from the Museum Boijmans-van Beuningen, Rotterdam*'' see list), imported from various foreign lenders for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Frick Art Museum, Pittsburgh, Pennsylvania from on or about September 15, 1998, to on or about November 1, 1998, Columbia Museum of Art, Columbia, South Carolina from on or about January 16, 1999, to on or about March 21, 1999, and Grand Rapids Art Museum, Grand Rapids, Michigan, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, 4th Street, SW. Washington, DC 20547–0001.

Dated: August 27, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–23538 Filed 8–31–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the 1999 Solicited Grant Competition and Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Deadline for the 1999 Solicited Grant competition, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution on specific themes and topics. The 1999 Solicited Grant Topics are:

Solicitation A: Bosnia and the Balkan Region

Solicitation B: The Middle East

Solicitation C: Training in Conflict Management

Solicitation D: The Changing Nature of Diplomacy

Deadline: January 4, 1999

DATES: Application material available upon request.

Receipt date for return of application: January 4, 1999

Notification of Awards: April 1999.

ADDRESSES: For Application Package: United States Institute of Peace Grant Program • Solicited Grants, 1550 M Street, NW • Suite 700, Washington, DC 20005–1708, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: grant __program@usip.org

Applications also available on-line at our web site: www.usip.org

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202)–429–3842.

Dated: August 25, 1998.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 98–23341 Filed 8–31–98; 8:45 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 63, No. 169
Tuesday, September 1, 1998

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 104

[INS No. 1902-98; AG Order No. 2170-98]

RIN 1115-AE99

Verification of Eligibility for Public Benefits

Correction

In proposed rule document 98–20457 beginning on page 41662 in the issue of Tuesday, August 4, 1998, make the following corrections:

1. On page 41662, in the second column, in the first paragraph, eleven lines from the bottom ''8 U.S.C. 11001'' should read ''8 U.S.C. 1101''.

2. On page 41664, in the second column, in the second full paragraph, in the eleventh line ''§104.1(i)'' should read ''§104.1''.

3. On page 41665, in the first column, in the first paragraph, in the tenth line ''of the definition (b).'' should read ''of the definition.''.

4. On page 41667, in the first column, under ''Section 104.8 Enforcement'', in the ninth line ''appropriate'' was misspelled.

5. On page 41668, in the first column, in the first paragraph, six lines from the bottom ''(*see* §104.276)'' should read ''(*see §104.27)''.

6. On page 41670, in the second column, in the first paragraph, in the 11th line from the bottom ''or'' should read ''of''.

§104.1 [Corrected]

7. On page 41676, in the first column, in §104.1, under *Applicant*, in the third line ''or and any'' should read ''or any''.

8. On the same page, in §104.1, in the second column, in the second line ''the eligibility of applicants for'' should be deleted.

9. On page 41677, in §104.1, under *Federal public benefit*, in the second column, in the second full paragraph, in the seventh line, remove ''and''.

§104.2 [Corrected]

10. On page 41678, in the first column, in §104.2, in the last line, remove ''104.10''.

§104.9 [Corrected]

11. On page 41679, in the third column, in §104.9(c), in the ninth line, remove ''state''.

§104.23 [Corrected]

12. On page 41680, in the third column, in §104.23(b)(1), four lines from the bottom, remove ''three''.

§104.28 [Corrected]

13. On page 41682, in the second column, in §104.28, seven lines from the bottom ''benefits'' should read ''benefit''.

§104.40 [Corrected]

14. On page 41682, in the third column, in §104.40, in the last line , after ''104.4'' add a period.

§104.45 [Corrected]

15. On page 41683, in the second column, in §104.45, fifteen lines from the bottom ''As'' should read ''An''.

§104.60 [Corrected]

16. On page 41684, in the third column, in §104.60(d)(1), in the 12th line ''acceptable'' and ''qualify'' were misspelled.

17. On page 41685, in the first column, in §104.60(d)(2), five lines from the bottom ''current'' was misspelled.

18. On the same page, in the same column, in §104.60(d)(3), in the ninth line ''on'' should read ''or''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–27]

Amendment to Class E Airspace; Ottumwa, IA

Correction

In rule document 98–22172, beginning on page 44127, in the issue of Tuesday, August 18, 1998, make the following correction.

§ 71.1 [Corrected]

On page 44128, in the first column, under **ACE IA E2 Ottumwa, IA [Revised]**, in the fourth line, ''(lat. 41°01′45″N., long 92°14′33″W.)'' should read ''(lat. 41°01′45″N., long 92°19′33″W.)''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–34]

Amendment to Class E Airspace; Kearney, NE

Correction

In rule document 98–22174, beginning on page 44124, in the issue of Tuesday, August 18, 1998, make the folloing correction.

§ 71.1 [Corrected]

On page 44125, in the second column, under **ACE NE E5 Kearney, NE [Revised]**, in the second line, ''(lat. 40°843′37″ N., long. 99°00′24″ W.)'' should read ''(lat. 40°43′37″ N., long. 99°00′24″ W.)''.

BILLING CODE 1505-01-D

federal register

Tuesday
September 1, 1998

Part II

Department of the Treasury

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award (BEA) Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award (BEA) Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE: 21.021.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to provide incentives to insured depository institutions for the purposes of promoting investments in or other support to Community Development Financial Institutions (''CDFIs'') and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in an interim rule (12 CFR part 1806) published in the December 5, 1997 issue of the **Federal Register**, implementing and governing the Bank Enterprise Award (BEA) Program. The Fund reserves the right to award funds under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA, the Fund intends to make available up to $25 million in BEA Program funds, subject to the availability of appropriated funds. The Fund reserves the right to award in excess of $25 million if it deems it appropriate, subject to the availability of appropriated funds. In connection with this NOFA the Fund is conducting workshops to disseminate information to organizations contemplating applying and other organizations interested in learning about the BEA Program. The schedule for the workshops is published elsewhere in this issue of the **Federal Register**.

DATES: Applications may be submitted at any time after September 1, 1998. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Tuesday, November 24, 1998. Applications received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a CDFI (as described in 12 CFR 1805.200) for the purposes of 12 CFR part 1806 is strongly encouraged to submit the Application Form for Certification, the contents of which are described in 12 CFR 1805.701(b)(1) through (8), by Tuesday, November 24, 1998. If an entity fails to submit such Application by this deadline, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.701(b)(1) through (8). If the entity seeking certification does not respond to such requests in a timely manner, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Applications sent by fax or electronic transfer will not be accepted.

FOR FURTHER INFORMATION CONTACT: All questions regarding this NOFA, the Application package, or program requirements should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Washington, DC 20005, by telephone at (202) 622–8662, or by facsimile at (202) 622–7754. These are not toll free numbers. If you are requesting an application package, please allow at least two weeks for delivery.

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increase the availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 (Act) authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991 although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This NOFA invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible applicants must be insured depository institutions as defined in 12 U.S.C. 1813(c)(2).

III. Designation of Distressed Community

In accordance with 12 CFR 1806.200(d), in the case of applicants carrying out Qualified Activities requiring the designation of a Distressed Community (as defined in 12 CFR 1806.103(r)), the Fund will provide prospective Applicants with data and other information to help identify areas eligible to be Distressed Communities. The Fund requires all applicants to contact the BEA Help Desk at (202) 622–8662 to obtain such necessary data and information.

IV. Designation Factors

The interim rule published in the December 5, 1997, issue of the **Federal Register** (12 CFR part 1806) describes the process for selecting applicants to receive assistance and for determining award amounts. The rating and selection process will give priority to applicants in the following priority of categories: Equity Investments in CDFIs serving Distressed Communities, Equity Investments in CDFIs not serving Distressed Communities, CDFI Support Activities, and Development and Services Activities (as such activities are defined in the interim rule). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for applicants making Equity Investments in CDFIs will be equal to 15 percent of the projected increase in such activities. An applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI applicants for carrying out CDFI Support Activities will be equal to 33 percent of the projected increase in such activities. Estimated award amounts for non-CDFI applicants for carrying out CDFI Support Activities will be equal to 11 percent of the projected increase in such activities.

The interim rule establishes the ranking and selection process. For an

applicant pursuing Development and Service Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. In ranking and funding such applicants within each category, the Fund will apply criteria contained in the interim rule. The Fund, in its sole discretion, may adjust the estimated award amount that an applicant may receive prior to the end of the Assessment Period. The Fund may, in its sole discretion, establish any limitations on the maximum amount that may be awarded to an applicant. The Fund reserves the right to limit the amount of an award to any Awardee if the Fund deems appropriate.

V. Baseline Period and Assessment Period Dates

As part of its application, an applicant shall report the Qualified Activities that it actually carried out during a 6-month Baseline Period. Such Baseline Period will begin on January 1, 1998, and end on June 30, 1998. An applicant shall also project the Qualified Activities that it expects to carry out during a 6-month Assessment Period. Such Assessment Period will begin on January 1, 1999, and end on June 30, 1999. Applicants selected to participate in the Program during the Assessment Period will be required to submit to the Fund a Final Report (Part II of the Application) of Qualified Activities actually carried out during the Assessment Period. The deadline for receipt of the Final Report is 6 p.m. Eastern Daylight Time on July 27, 1999. Final Reports received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. The Fund will evaluate the performance of applicants in carrying out projected activities to determine actual award amounts.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: August 20, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–22865 Filed 8–31–98; 8:45 am]

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federal register

Tuesday
September 1, 1998

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 567

Risk-Based Capital Standards: Unrealized Holding Gains on Certain Equity Securities; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 98–12]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0982]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC11

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 98–75]

RIN 1550–AB11

Risk-Based Capital Standards: Unrealized Holding Gains on Certain Equity Securities

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are amending their respective risk-based capital standards for banks, bank holding companies, and thrifts (institutions) with regard to the regulatory capital treatment of unrealized holding gains on certain equity securities. These gains are reported as a component of equity capital under U.S. generally accepted accounting principles (GAAP), but have not been included in regulatory capital under the Agencies' capital standards. This final rule permits institutions to include in supplementary (Tier 2) capital up to 45 percent of the pretax net unrealized holding gains on certain available-for-sale (AFS) equity securities. The final rule is intended to make the regulatory capital treatment of these unrealized gains consistent with the international standards of the Basle Accord.

DATES: This final rule is effective October 1, 1998. The Agencies will not object if an institution wishes to apply the provisions of this final rule beginning on September 1, 1998.

FOR FURTHER INFORMATION CONTACT: *OCC:* Roger Tufts, Senior Economic Advisor (202/874–5070), Amrit Sekhon, Examiner (202/874–5070), Capital Policy Division; or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Manager (202/452–3072), John F. Connolly, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Staff Attorney (202/452–2263), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist (202/898–8904) or Carol L. Liquori, Examination Specialist (202/898–7289), Accounting Section, Division of Supervision; for legal issues, Jamey Basham, Counsel, Legal Division (202/898–7265), Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy (202/906–5654), Supervision Policy; or Vern McKinley, Senior Attorney (202/906–6241), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Agencies' risk-based capital standards implementing the International Convergence of Capital Measurement and Capital Standards (the Basle Accord)[1] include definitions for core (Tier 1) capital and supplementary (Tier 2) capital.[2] Under the Agencies' capital standards, Tier 1 capital generally includes common stockholders' equity, noncumulative perpetual preferred stock, and minority interests in the equity accounts of consolidated subsidiaries.[3] The common stockholders' equity component is defined to include common stock; related surplus; and retained earnings (including capital reserves and adjustments for the cumulative effect of foreign currency translation); less net unrealized holding losses on AFS equity securities with readily determinable fair values. Net unrealized holding gains on such equity securities and net unrealized holding gains and losses on AFS debt securities are not included in the Agencies' regulatory capital definition of common stockholders' equity.[4] Tier 2 capital includes, subject to certain limitations and conditions, the allowance for loan and lease losses; cumulative perpetual preferred stock and related surplus; and certain other maturing or redeemable capital instruments.

The Basle Accord also permits institutions to include up to 45 percent of the pretax net unrealized gains on equity securities in supplementary capital. As explained in the Basle Accord, the 55 percent discount is applied to the unrealized gains to reflect the potential volatility of this form of unrealized capital, as well as the tax liability charges that generally would be incurred if the unrealized gain were realized or otherwise taxed currently. When the Agencies implemented the Basle Accord by issuing their respective risk-based capital standards in 1989, they decided not to include unrealized gains on AFS equity securities in Tier 2 capital.

[1] The Basle Accord is a risk-based capital framework developed by the Basle Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Committee is comprised of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] Each Agency's risk-based capital standards contain more detailed descriptions of core and supplementary capital. *See* 12 CFR Part 3, Appendix A, for national banks; 12 CFR Part 208, Appendix A, for state member banks; 12 CFR Part 225, Appendix A, for bank holding

[3] Bank holding companies may also include limited amounts of cumulative perpetual preferred stock in Tier 1 capital.

[4] For regulatory reporting purposes, institutions record net unrealized gains and losses on AFS securities (debt and equity) in accordance with Statement of Financial Accounting Standards (SFAS) No. 115, ''Accounting for Certain Investments in Debt and Equity Securities.'' AFS securities are all debt securities not held for trading that an institution does not have the positive intent and ability to hold to maturity and equity securities with readily determinable fair values not held for trading. AFS securities must be reported at fair value with unrealized holding gains or losses (i.e., the amount by which fair value exceeds or falls below cost) reported, net of tax, directly in a separate component of common stockholders' equity.

Proposed Rule

The Agencies believe that it is appropriate to continue the existing regulatory capital treatment of net unrealized holding gains and losses on AFS debt securities and net unrealized holding losses on AFS equity securities. However, for institutions that have net unrealized holding gains on AFS equity securities, the Agencies decided to consider whether to include at least a portion of the unrealized gains on such securities in regulatory capital. Accordingly, on October 27, 1997, the Agencies published a joint proposal to amend their respective risk-based capital standards for institutions (62 FR 55682).

Specifically, the Agencies proposed, consistent with the Basle Accord, to permit institutions that legally hold equity securities to include up to 45 percent of the pretax net unrealized holding gains (that is, the excess amount, if any, of fair value over historical cost) on AFS equity securities in Tier 2 capital. The proposed rule required that equity securities be valued in accordance with GAAP and have readily determinable fair values,[5] and institutions should be able to substantiate those values. In the event that an Agency determines that an institution's AFS equity securities are not prudently valued in accordance with GAAP, the institution may be precluded from including all or a portion of the 45 percent of pretax net unrealized holding gains on those securities in Tier 2 capital.

Comments Received

The Agencies received eleven comments on the proposal, six from financial institutions and five from banking trade associations. Seven commenters expressed support for the proposal; the remaining four respondents were opposed.

Respondents supporting the proposal included three institutions and four trade associations. These commenters generally believe that convergence with the Basle Accord will result in greater uniformity with foreign capital standards, and will mitigate a source of competitive inequality arising from continuing differences in supervisory capital requirements across countries. Three commenters representing trade associations further emphasized that the proposed rule would treat net unrealized holding gains on AFS equity securities more consistently with the current treatment of net unrealized holding losses since the latter are already deducted from Tier 1 capital. Another commenter observed that including net unrealized holding gains in Tier 2 capital is more comparable to the GAAP treatment of such gains as a component of equity capital.

Opponents of the proposal, three financial institutions and one banking trade association, expressed varying concerns. The financial institution representatives generally stated that the proposed rule would place an additional burden on small community banks. The remaining opponent of the proposed rule expressed opposition to the fair value treatment of debt and equity securities for regulatory capital calculations (an opinion expressed by two other trade associations, despite their support for the proposal). This commenter noted that market fluctuations could have a significant impact on capital levels if the unrealized equity gains are included and the proposed discount may be insufficient to absorb the potential volatility in the value of these assets. This commenter also disagreed with the timing of the proposal, indicating that the currently strong market could create equity holding gains that may not be sustained if the economy weakens. In such an event, the commenter was concerned that institutions unduly relying on unrealized holding gains in their portfolios may find their capital levels falling below regulatory minimums due to an adverse change in market conditions.

Several commenters made suggestions for improvements or requests for clarification. Two supporters of the proposal recommended that the Agencies further amend the risk-based capital guidelines to eliminate the Tier 1 capital deduction for net unrealized losses on AFS equity securities in favor of a deduction from Tier 2 capital, thereby providing parallel treatment of both unrealized gains and losses on AFS equity securities. Others, claiming that AFS debt securities are as liquid and marketable as AFS equity holdings, recommended that the Agencies work with the Basle Committee to allow unrealized holding gains on debt securities to be treated as supplementary capital.

Two commenters, each with a different overall opinion of the proposed rule, questioned the proposed 55 percent discount applied to the amount permitted to be recognized for regulatory capital purposes. One stated that the discount was excessive and suggested the Agencies consider eliminating or reducing the discount. While generally in favor of the proposal, this commenter noted that a comparable discount was not required by GAAP and pointed out that unrealized losses were not similarly discounted. The other commenter believed unrealized equity gains should either be fully recognized in capital or be entirely disallowed. Since the commenter expected a discount to be included in the final rule, the commenter voiced overall opposition to the proposal.

The Agencies were also asked to clarify that the proposal applies to equity securities held in subsidiaries of financial institutions. Finally, two commenters supported a reexamination of the whole risk-based capital framework, contending that the framework is too complex for small, traditional institutions and the current risk weight categories are too broad.

Response to Comments

After carefully considering the comments received, the Agencies are adopting the final rule substantially as proposed. The Agencies agree that adopting this rule will result in more consistency with the capital standards applied to financial institutions in other countries that have adopted the treatment permitted in the Basle Accord. Although limited to a supplementary capital item, recognizing unrealized gains on AFS equity securities in Tier 2 capital is more consistent with the treatment of unrealized losses on such equity securities and is also more comparable to the GAAP treatment of such gains as a component of equity capital.

Under the final rule an institution is permitted, but not required, to recognize up to 45 percent of pretax net unrealized holding gains on AFS equity securities in Tier 2 capital. The information the institution must assemble in support of such treatment is the same as that already used by the institution when it prepares its

[5] The Agencies intend to rely on the guidance set forth in SFAS 115 for purposes of determining whether equity securities have fair values that are ''readily determinable.'' Under SFAS 115, the fair value of an equity security is readily determinable if sales prices or bid-and-ask quotations are currently available on a securities exchange registered with the Securities and Exchange Commission or in the over-the-counter market, provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations System or by the National Quotations Bureau. Restricted stock does not meet this definition. The fair value of an equity security traded only in a foreign market is readily determinable if that foreign market is of a breadth and scope comparable to one of the U.S. markets referred to previously. The fair value of an investment in a mutual fund is readily determinable if the fair value per share (unit) is determined and published and is the basis for current transactions.

regulatory reports[6] in accordance with GAAP and there are no new capital restrictions or limitations imposed. Consequently, the Agencies find no reason to believe that this final rule places an additional burden on institutions of any size, including small community banks.

Unrealized gains and losses on many financial assets, including AFS debt securities and most loans, are ignored for purposes of calculating capital under the Agencies' leverage and risk-based capital standards. However, the Agencies do not agree with the argument raised in some of the comment letters that, for regulatory capital purposes, historical cost (rather than fair value) should be used for equity securities. To the contrary, the Agencies believe that the fair value of equity securities is relevant when evaluating regulatory capital.

At the time the risk-based capital guidelines were promulgated in 1989, GAAP and the regulatory reporting rules generally required equity investments to be valued at the lower of cost or market (LOCOM) with any net unrealized losses on these investments deducted from equity capital.[7] Consistent with this LOCOM accounting approach, the Agencies did not include net unrealized gains on equity securities in Tier 2 capital. However, in 1993, SFAS 115 was adopted. This accounting standard, which applies fair value accounting to many equity securities and requires institutions to reflect changes in the fair value of their AFS equity securities as a component of equity capital, was also adopted by the Agencies for regulatory reporting purposes. Although SFAS 115 further requires AFS debt securities to be carried at fair value, the unrealized holding gains and losses on these securities generally are more temporary in nature because the fair values of these debt instruments, over time, tend to approach their respective face values. Thus, any unrealized gains and losses on these debt instruments generally diminish as the instruments draw closer to their maturity dates. As a result, the Agencies continue to believe that unrealized gains and losses on AFS debt instruments are appropriately excluded from regulatory capital. However, the Agencies now believe it is appropriate, subject to prudential supervisory limitations, to include in Tier 2 capital at least a portion of an institution's net unrealized holding gains on AFS equity securities. Consistent with current supervisory policy, to the extent that unrealized gains and losses on AFS debt securities and other assets are not formally recognized for regulatory capital purposes, the Agencies will continue to consider the impact of any appreciation or depreciation on these assets when evaluating an institution's capital adequacy.

This final rule does not revise the treatment of net unrealized losses on AFS equity securities. The Agencies believe any measure of potential loss must be reflected in Tier 1 capital so as to provide an adequate cushion against risk. Therefore, in accordance with the Agencies' existing capital standards, these net unrealized losses will continue to be deducted in determining Tier 1 capital.

The Agencies agree with the concerns of the commenter that market fluctuations could have a significant impact on capital levels if net unrealized holding gains on equity securities are included in Tier 2 capital. Thus, as a prudent supervisory constraint, and consistent with the Basle Accord, it appears appropriate to limit the amount of net appreciation on AFS equity securities that may be included in Tier 2 capital to no more than 45 percent of the pretax net unrealized holding gains on these securities. Although not required by GAAP, this discount will help minimize supervisory concerns about market volatility, forced sale risk, and possible tax charges.

Furthermore, to prevent undue reliance on such gains to meet minimum capital requirements, unrealized gains on AFS equity securities are not included in the calculation of Tier 1 capital under the Agencies' leverage and risk-based capital ratios. Although up to 45 percent of these net unrealized holding gains may be included in calculating total risk-based capital, the allowable portion of these gains is only included in Tier 2 capital, which, in turn, is limited under the Agencies' risk-based capital standards to no more than 100 percent of Tier 1 capital.

The proposed rulemaking did not address how unrealized gains on equity securities that are held by an institution's subsidiaries should be treated in those cases where the institution's investment in the subsidiary itself is required to be deducted from regulatory capital. If an institution's investment in a subsidiary is deducted for regulatory capital purposes, any unrealized gains on equity securities held by the subsidiary will not be included in the institution's Tier 2 capital. On September 12, 1997, the FDIC published a request for comments regarding proposed changes to the rules regarding the activities of insured state banks and insured state savings associations (62 FR 47969). If this rule is adopted as proposed by the FDIC, a state institution's investment in a subsidiary which, in turn, invests in listed equity securities or shares of investment companies of a type not permitted for a national bank or federal savings association, as authorized by the proposed rule in the case of well-capitalized institutions, would be deducted from Tier 1 capital for regulatory capital purposes.

Finally, the Agencies have considered the commenters' concern that the current risk-based capital rules are too complex for small traditional institutions and that the current risk weight categories are too broad. Although the Agencies are sympathetic to this concern and will continue to seek ways to reduce burden on banks wherever appropriate, a broad-based reexamination of the risk-based capital framework is outside the scope of this rulemaking.

Final Rule

After careful consideration of all the comments received, the Agencies have decided to adopt the final rule with only minor technical modifications. Under the final rule, institutions that legally hold equity securities are permitted to include up to 45 percent of the pretax net unrealized holding gains on AFS equity securities in Tier 2 capital. Revisions from the original proposal have been limited to minor changes in the regulatory text to ensure consistency among the rules issued by each Agency.

Institutions need to be aware that, although including a portion of unrealized gains on AFS equity securities in Tier 2 capital may increase their total risk-based capital ratio, it may reduce their Tier 1 risk-based capital ratio.[8] Such decreases could occur because an institution's total risk-weighted assets (the denominator for both the Tier 1 and total risk-based capital ratios) would increase by the amount of pretax net unrealized holding gains on AFS equity securities included in Tier 2 capital. However, none of these gains would be included in Tier 1

[6] These reports are the Consolidated Reports of Condition and Income for banks supervised by the OCC, the Board, or the FDIC; the Thrift Financial Report for thrift institutions supervised by the OTS; and the FR Y–9C Report for bank holding companies supervised by the Board.

[7] This LOCOM accounting approach for equity securities was required by SFAS No. 12, ''Accounting for Certain Marketable Securities.''

[8] The leverage ratio will not be affected because the unrealized gains on AFS equity securities are not included in the numerator (Tier 1 capital) nor the denominator (total assets as defined in the agencies' capital standards) when computing the leverage ratio.

capital, thereby potentially decreasing an institution's Tier 1 risk-based capital ratio. For this reason, institutions should weigh the effects on both their total risk-based capital ratio and Tier 1 risk-based capital ratio when determining the amount of unrealized gains on AFS equity securities, if any, to include in Tier 2 capital.

Early Compliance

Subject to certain exceptions, 12 U.S.C. 4802(b) provides that new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on an insured depository institution shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. However, section 4802(b) also permits persons who are subject to such regulations to comply with the regulation before its effective date. Accordingly, the Agencies will not object if an institution wishes to apply the provisions of this final rule beginning with the date it is published in the **Federal Register**.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this final rule will not have a significant economic impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule will permit, but not obligate, institutions to include up to 45 percent of the pretax net unrealized holding gains on AFS equity securities in Tier 2 capital. The information which an institution must assemble in support of such treatment is the same as that already created when it prepares its regulatory reports in accordance with GAAP. For those institutions choosing to utilize the final rule, the effect would be to increase immediately the amount of Tier 2 capital held by institutions, including small institutions, by the amount of their qualifying pretax net unrealized holding gains on such securities subject to the existing limit on Tier 2 capital. Thereafter, the amount of Tier 2 capital will increase or decrease as the fair value of the institution's holdings of AFS equity securities changes. The Agencies have concluded that the increase and changes in Tier 2 capital will not have a significant impact on the amount of total capital held by institutions, regardless of size.

Paperwork Reduction Act

The Agencies have determined that the final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 1004–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the Agencies will file the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have determined that the final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this rule will permit institutions to include up to 45 percent of pretax net unrealized holding gains on AFS equity securities in Tier 2 capital under the Agencies' risk-based capital rules. The final rule will reduce regulatory burden by increasing the amount of supplementary capital held by certain institutions. The OCC and the OTS have therefore determined that the overall effect of the rule on national banks and thrifts will not result in aggregate expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 2. is amended by adding a new paragraph (b)(5) including footnote 5 to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 2. *Components of Capital.*

* * * * *

(b) * * *

(5) Up to 45 percent of the pretax net unrealized holding gains (that is, the excess, if any, of the fair value over historical cost) on available-for-sale equity securities with

readily determinable fair values.[5] Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in Tier 2 capital, but the OCC may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

* * * * *

Dated: August 12, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, the introductory paragraphs in section *II*.A.2. are revised and footnote 8 is removed and reserved to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

2. *Supplementary capital elements (Tier 2 capital).* The Tier 2 component of a bank's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below);

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below);

(iii) Hybrid capital instruments (as defined below) and mandatory convertible debt securities;

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below);

(v) Unrealized holding gains on equity securities (subject to limitations discussed in section *II*.A.2.e. of this appendix).

The maximum amount of Tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section *II*.B.1.b. of this appendix).

The elements of supplementary capital are discussed in greater detail below.

* * * * *

3. In appendix A to part 208, section *II*.A.2., paragraphs d. and e. are revised to read as follows:

* * * * *

II. * * *

A. * * *

2. * * *

d. *Subordinated debt and intermediate term preferred stock.* (i) The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section *II*.B.1.b. of this appendix). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of a bank's funding and financial condition.

(ii) Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplementary capital. (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing bank.)[12] In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. To qualify as capital in banks, debt must be subordinated to general creditors and claims of depositors. Consistent with current regulatory requirements, if a state member bank wishes to redeem subordinated debt before the stated maturity, it must receive prior approval of the Federal Reserve.

e. *Unrealized gains on equity securities and unrealized gains (losses) on other assets.* Up to 45 percent of pretax net unrealized holding gains (that is, the excess, if any, of the fair value over historical cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the Federal Reserve may exclude all or a portion of these unrealized gains from Tier 2 capital if the Federal Reserve determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the Federal Reserve may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225, the introductory paragraphs of section II.*A*.2. are revised and footnote 8 is removed and reserved to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

2. *Supplementary capital elements (Tier 2 capital).* The Tier 2 component of an institution's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below);

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below);

(iii) Hybrid capital instruments (as defined below), perpetual debt and mandatory convertible debt securities;

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below);

(v) Unrealized holding gains on equity securities (subject to limitations discussed in section II.A.2.e. of this appendix).

The maximum amount of Tier 2 capital that may be included in an organization's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix).

The elements of supplementary capital are discussed in greater detail below.

* * * * *

3. In appendix A to part 225, section II.*A*.2., paragraphs d and e are revised to read as follows:

* * * * *

II. * * *

A. * * *

2. * * *

d. *Subordinated debt and intermediate-term preferred stock.* (i) The aggregate

[5] The OCC reserves the authority to exclude all or a portion of unrealized gains from Tier 2 capital if the OCC determines that the equity securities are not prudently valued.

[12] As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount (less redemptions) is excluded each year during the instrument's last five years before maturity. When the remaining maturity is less than one year, the instrument is excluded from Tier 2 capital.

amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

(ii) Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplementary capital.[12] (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.)[13] In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. Bank holding company debt must be subordinated in the right of payment to all senior indebtedness of the company.

e. *Unrealized gains on equity securities and unrealized gains (losses) on other assets.* Up to 45 percent of pretax net unrealized holding gains (that is, the excess, if any, of the fair value over historical cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the Federal Reserve may exclude all or a portion of these unrealized gains from Tier 2 capital if the Federal Reserve determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the Federal Reserve may take these unrealized gains (losses) into account as additional factors when assessing an institution's overall capital adequacy.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 25, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In appendix A to part 325, the introductory paragraphs of section I.*A*.2. are revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

2. *Supplementary capital elements (Tier 2)* consist of:

i. Allowance for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets;

ii. Cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least 20 years), and any related surplus;

iii. Perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative;

iv. Hybrid capital instruments, including mandatory convertible debt securities;

v. Term subordinated debt and intermediate-term preferred stock (original average maturity of five years or more) and any related surplus; and

vi. Net unrealized holding gains on equity securities (subject to the limitations discussed in paragraph I.*A*.2.(f) of this section).

The maximum amount of Tier 2 capital that may be recognized for risk-based capital purposes is limited to 100 percent of Tier 1 capital (after any deductions for disallowed intangibles and disallowed deferred tax assets). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

* * * * *

3. In appendix A to part 325, the last undesignated paragraph of section I.*A*.2., entitled ''Discount of limited-life supplementary capital instruments,'' is designated as paragraph (e) and a new paragraph (f) is added to section I.*A*.2. to read as follows:

* * * * *

I. * * *

A. * * *

2. * * *

(f) *Unrealized gains on equity securities and unrealized gains (losses) on other assets.* Up to 45 percent of pretax net unrealized holding gains (that is, the excess, if any, of the fair value over historical cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the FDIC may exclude all or a portion of these unrealized gains from Tier 2 capital if the FDIC determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the FDIC may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

* * * * *

4. In appendix A to part 325, Table I is revised to read as follows:

TABLE I.— DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations
(1) Core Capital (Tier 1)	Must equal or exceed 4% of risk-weighted assets.
(2) Common stockholders' equity capital	No limit.[1]
(3) Noncumulative perpetual preferred stock and any related surplus	No limit.[1]
(4) Minority interests in equity capital accounts of consolidated subsidiaries.	No limit.[1]
(5) Less: All intangible assets other than mortgage servicing rights and purchased credit card relationships.	([2])
(6) Less: Certain deferred tax assets	([3])

[12] Unsecured term debt issued by bank holding companies prior to March 12, 1988, and qualifying as secondary capital at the time of issuance continues to qualify as an element of supplementary capital under the risk-based framework, subject to the 50 percent of Tier 1 capital limitation. Bank holding company term debt issued on or after March 12, 1988, must be subordinated in order to qualify as capital.

[13] As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount (less redemptions) is excluded each year during the instrument's last five years before maturity. When the remaining maturity is less than one year, the instrument is excluded from Tier 2 capital.

TABLE I.— DEFINITION OF QUALIFYING CAPITAL—Continued

Components	Minimum requirements and limitations
(7) Supplementary Capital (Tier 2)	Total of Tier 2 is limited to 100% of Tier 1.[4]
(8) Allowance for loan and lease losses	Limited to 1.25% of risk-weighted assets.[4]
(9) Unrealized gains on certain equity securities[5]	Limited to 45% of pretax net unrealized gains.[5]
(10) Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus.	No limit within Tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
(11) Auction rate and similar preferred stock (both cumulative and noncumulative).	No limit within Tier 2.
(12) Hybrid capital instruments (including mandatory convertible debt securities).	No limit within Tier 2.
(13) Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).	Term subordinated debt and intermediate term preferred stock are limited to 50% of Tier 1[4] and amortized for capital purposes as they approach maturity.
(14) Deductions (from the sum of Tier 1 plus Tier 2).	
(15) Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes.	
(16) Intentional, reciprocal cross-holdings of capital securities issued by banks.	
(17) Other deductions (such as investments in other subsidiaries or in joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after formal consideration of relevant issues.
(18) Total Capital (Tier 1 + Tier 2—Deductions)	Must equal or exceed 8% of risk-weighted assets.

[1] No express limits are placed on the amounts of nonvoting common, noncumulative perpetual preferred stock, and minority interests that may be recognized as part of Tier 1 capital. However, voting common stockholders' equity capital generally will be expected to be the dominant form of Tier 1 capital and banks should avoid undue reliance on other Tier 1 capital elements.

[2] The amounts of mortgage servicing rights and purchased credit card relationships that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). All deductions are for capital purposes only; deductions would not affect accounting treatment.

[3] Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

[4] Amounts in excess of limitations are permitted but do not qualify as capital.

[5] Unrealized gains on equity securities are subject to the capital limitations set forth in paragraph I.*A*.2.(f) of Appendix A to part 325.

By order of the Board of Directors.

Dated at Washington, DC, this 25th day of August, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the joint preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.5 is amended by adding a new paragraph (b)(5) to read as follows:

§ 567.5 Components of capital.

* * * * *

(b) * * *

(5) *Unrealized gains on equity securities.* Up to 45 percent of unrealized gains on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. Unrealized gains are unrealized holding gains, net of unrealized holding losses, before income taxes, calculated as the amount, if any, by which fair value exceeds historical cost. The OTS may disallow such inclusion in the calculation of supplementary capital if the Office determines that the equity securities are not prudently valued.

* * * * *

Dated: August 6, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–23379 Filed 8–31–98; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P, 6714–01–P; 6720–01–P

federal register

Tuesday
September 1, 1998

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Aerospace Manufacturing and Rework Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6154–1]

RIN 2060–AE02

National Emission Standards for Hazardous Air Pollutants Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes amendments to the national emission standards for hazardous air pollutants (NESHAP) for aerospace manufacturing and rework facilities proposed in the **Federal Register** on March 27, 1998. Today's final changes involve new definitions for general aviation and general aviation rework facility, separate coating limits for primers and topcoats used at general aviation rework facilities, and additional changes resulting from public comments on previously proposed (October 29, 1996) amendments to the final rule.

EFFECTIVE DATE: September 1, 1998.

ADDRESSES: *Docket.* The docket for this rulemaking containing the information considered by the EPA in development of the final rule is Docket No. A–92–20. This docket is available for public inspection between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

An electronic version of documents from the Office of Air and Radiation (OAR) is available through EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web at the following address, ''http:/www.epa.gov/ttn''. Electronic versions of this preamble and these amendments are located under the OAR Policy and Guidance Information Website, ''http://www.epa.gov/ttn/oarpg/'', under the Recently Signed Rules section. There is also an aerospace site on the Unified Air Toxics Website at, ''http://www.epa.gov/ttn/uatw/aerosp/aeropg.html''. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For information concerning the changes to the standards, contact Ms. Barbara Driscoll, Policy Planning and Standards Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0164. For implementation issues (guidance documents), contact Ms. Ingrid Ward, Program Review Group, Information Transfer and Program Integration Division (MD–12), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0300. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA regional representative.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of facilities that are engaged, either in part or in whole, in the manufacturing or rework of commercial, civil, or military aerospace vehicles or components and that are major sources as defined in § 63.2. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities which are major sources of hazardous air pollutants and manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles.
Federal Government	Federal facilities which are major sources of hazardous air pollutants and manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.741 of the NESHAP for aerospace manufacturing and rework facilities promulgated in the **Federal Register** on September 1, 1995 (60 FR 45948) and amended on March 27, 1998 (63 FR 15005). If you have questions regarding the applicability of this action to a particular entity, contact your State or local representative or the appropriate EPA regional representative.

The information presented below is organized as follows:

I. Background
A. Public Comment on the March 27, 1998 Proposal
B. Judicial Review
II. Summary of Major Comments and Changes to the Proposed Amendments to the Rule
A. Definitions
B. Standards for Primers and Topcoats
C. Clarification of Relationship Between NESHAP and Federal Aviation Administration (FAA) Regulations
D. Hand-Wipe Cleaning: Removal of References to Section 112(l) and Equivalent Volume Reduction Demonstration
E. Exemption for Cleaning of Automated Spray Equipment Nozzle Tips
F. Monitoring Parameters for Pumpless Waterwash Systems
G. Exclusion of Charged Media Certification Using Test Method 319
H. Technical and Miscellaneous Corrections
III. Control Techniques Guidelines
IV. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Executive Order 12875
E. Executive Order 13084
F. Executive Order 13045
G. Regulatory Flexibility Act
H. Unfunded Mandates Reform Act
I. Submission to Congress and the General Accounting Office
J. National Technology Transfer and Advancement Act

I. Background

National emission standards for hazardous air pollutants for aerospace manufacturing and rework facilities were proposed in the **Federal Register** on June 6, 1994 (59 FR 29216). Public comments were received regarding the standards and the final NESHAP was promulgated in the **Federal Register** on September 1, 1995 (60 FR 45948). Amendments to the final rule were promulgated on March 27, 1998 (63 FR 15005). These additional amendments were proposed on that same date (63 FR

15034). This action finalizes these additional amendments to §§ 63.741, 63.742, 63.744, 63.745, 63.746, 63.750, 63.751, 63.752 and 63.753 of subpart GG of 40 CFR part 63 and Method 319 of appendix A to part 63—TEST METHODS. These sections deal with applicability, definitions, cleaning operations, topcoat and primer application operations, depainting operations, monitoring requirements, recordkeeping requirements, and reporting requirements.

The Agency set these standards for aerospace manufacturing and rework facilities to address organic and inorganic HAP emissions. As stated in the preamble to the rule as originally promulgated (60 FR 45952, September 1995), nationwide emissions of HAP from at least 2,869 major source aerospace manufacturing and rework facilities will be reduced by approximately 112,600 Mg (123,700 tons). These changes to the NESHAP will not result in any significant changes to the emission reductions or cost impacts because (1) only a small number of general aviation (GA) rework facilities will be considered major sources and therefore subject to the NESHAP requirements and (2) only one or two known aerospace facilities utilize pumpless waterwash systems for controlling particulate emissions.

A. Public Comment on the March 27, 1998 Proposal

Eighteen comment letters were received on the March 27, 1998 **Federal Register** document that proposed changes to the rule. The proposed changes covered a variety of issues and many of the comment letters were supportive of the amendments. The significant issues raised by the commenters and the changes to the proposed amendments are summarized in the following sections of this preamble. More detailed responses are provided in an addendum to the background information document (BID) volume II which can be found in Docket A–92–20, document No. EPA 453/R–97–003b.

B. Judicial Review

Under section 307(b)(1) of the Act, judicial review of today's amendments to the NESHAP for aerospace manufacturing and rework facilities is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Summary of Major Comments and Changes to the Proposed Rule

A. Definitions

Based on the proposed and final alternative coating limits for general aviation rework facilities (see paragraph II. B.), the EPA proposed adding definitions for ''general aviation'' and ''general aviation rework facility'' to § 63.742. Two commenters supported the proposed definition for ''general aviation'' and there were no comments on the proposed definition of ''general aviation rework facility.'' However, a group of eight commenters recommended the following revised definition for ''general aviation'' based on another EPA document (Reference: EPA Air Transportation Industry Sector Notebook; EPA/310–R–97–001):

> *General aviation (GA)* means that segment of civil aviation that encompasses all facets of aviation except air carriers, commuters, and military. General aviation includes charter and corporate-executive transportation, instruction, rental, aerial application, aerial observation, business, pleasure, and other special uses.

The Agency decided to change the definition of ''general aviation'' as suggested by the commenters and has included the revised definition in today's final amendments. The revised definition still accurately describes the segment of the aerospace industry involving smaller aircraft for which the alternative primer and topcoat standards are intended. The revised definition also has the advantage (as noted by the commenters) of being consistent with another recent EPA document addressing and describing this same segment of the aerospace industry. The Agency is promulgating the definition of ''general aviation rework facility'' as proposed (with the addition of the words ''general aviation'' in the definition to describe the types of aerospace vehicles or components.)

B. Standards for Primers and Topcoats

The Agency proposed alternative emission limits for topcoat and primer applications on general aviation aircraft based on previous comments made by GA aerospace rework industry representatives. Seven commenters supported the alternative limits claiming that the alternative limits will ''lift the restraints of the existing coating limitations.'' Furthermore, the commenters stated that the higher HAP/VOC limits are acceptable and encourage paint manufacturers to provide quality primers and topcoats that give a quality finish acceptable to the owners and operators of the GA aircraft. One commenter noted that the higher HAP/VOC limits will have a minimal effect on the total emissions from a GA facility, but will have a dramatic effect on the final aircraft topcoat finish.

As noted by the Agency in the preamble to the proposed amendments of March 27, 1998, many GA rework facilities would be area sources emitting less than 10 tons per year (tons/yr) of any single HAP, and less than 25 tons/yr of combined HAP. Nevertheless, GA rework facilities do exist which are major sources. The Agency finds that the coating (primer and topcoat) application operations are different for GA rework facilities than those for commercial and military facilities due to the variability in the types of coatings used and types of aircraft serviced. Accordingly, the Agency decided to subcategorize GA rework facilities and determined a separate MACT floor for primer and topcoat application conducted at such facilities. The data from the GA rework facilities in the Agency's data base resulted in the MACT floor represented by the best five facilities having an overall facility weighted average HAP and VOC content of 540 grams per liter (g/L) [4.5 pounds per gallon (lb/gal)] for both primers and topcoats.

Most, if not all, of the GA rework facilities that will have to comply with the NESHAP limits are competing for business with facilities that are nonmajor (area) sources. The NESHAP does not impact area sources and allows them to continue their current painting and depainting operations to meet customer requirements and expectations. The Agency developed a separate MACT floor for GA rework facility painting operations because of the differences between GA and commercial/military facilities involving the number and variety of coatings used, and customer requirements. Rework operations for commercial and military aircraft are primarily a captive market within their own market segments. These operations are more likely to involve ''standardized'' coating schemes (e.g., military specifications or individual airline colors/design) and are conducted on a ''routine'' basis compared to the GA rework operations. Commercial paint systems are designed to last 5 to 7 years and because of the additional weight/cost impacts are intentionally made as thin (e.g., 3 to 5 mils) as possible while still meeting the quality requirements. The GA industry is typically more concerned with the final finish of the coating system and

with corporate aircraft, a typical coating thickness of 6 to 18 mils may be needed to obtain the required gloss and texture. The Agency decided to set MACT at the floor because of the potential business impacts that could put the major source GA facilities at a competitive disadvantage with nonmajor and foreign GA facilities. The Agency is therefore finalizing the MACT floor limits for primer and topcoat application for GA rework facilities in § 63.745(c)(1) through (c)(4). The HAP limits for both primers and topcoats (including self-priming topcoats) are equivalent: less than or equal to 540 g/L (4.5 lb/gal) of coating (less water) as applied. The VOC limits for both primers and topcoats are also equivalent: less than or equal to 540 g/L (4.5 lb/gal) of coating (less water and exempt solvents) as applied.

Another group of commenters agreed with the increased HAP/VOC limits for GA rework facilities but also suggested that these limits be extended to GA manufacturers as well. The commenters argued that manufacturers have the same need for high quality finish and may be put at a competitive disadvantage without the benefit of the higher limits. In reviewing these comments, the Agency was not compelled by any technical arguments or justifications to extend the alternative primer and topcoat limits beyond what was proposed for GA rework facilities.

In comparing GA manufacturing and GA rework painting operations, the Agency found that manufacturing facilities typically deal with fewer types of coatings and fewer types of aircraft. One of the commenters stated there are less than 10 GA manufacturers in total and some of those will qualify as area sources. Each manufacturer produces a limited subset of the planes on the market. The GA manufacturers generally perform rework only on planes that they manufacture; GA rework facilities, in contrast, may work on planes from a variety of manufacturers. Thus, unlike GA rework facilities, GA manufacturing facilities have fairly predictable coating needs. This allows them to be more proficient in coating application and minimizes the variability of coating-related issues in their day-to-day operations. Because of these factors, GA manufacturers are better able than GA rework facilities to comply with the coating limits in the NESHAP as originally promulgated. Therefore, the Agency does not agree that the alternative coating limits for GA rework facilities will create an unfair business advantage/climate between GA rework and manufacturing operations. In fact, the data collected from the GA manufacturers during the past 2 years indicated that some sources that will be subject to the NESHAP coating limits are already using compliant coatings exclusively as part of their coating operations.

C. Clarification of Relationship Between NESHAP and Federal Aviation Administration (FAA) Regulations

Several commenters raised the issue of potentially conflicting requirements between EPA and FAA regulations. The commenters suggested that chemicals containing HAP that are required to be used by an FAA Airworthiness Directive (AD) should be exempted from the NESHAP requirements. Some of the commenters stated that the long-term impact of alternative chemical usage on various aircraft structures is not consistent across various products and manufacturers. The EPA has continued to work closely with the FAA during the development of the final NESHAP and the amendments to the NESHAP for the aerospace manufacturing and rework source category. Both agencies recognize the importance of continuing airworthiness and the safety of the flying public as repair facilities modify their procedures to comply with the NESHAP. The EPA is committed to minimizing the impact on airworthiness while maximizing the reduction of HAP emissions under the NESHAP.

Since promulgation of the NESHAP on September 1, 1995, many of the aircraft manufacturers (principally those manufacturing transport category aircraft) have made the necessary revisions to their maintenance manuals to provide for non-HAP materials (chemical strippers) to be used for depainting. Those revisions have been FAA approved or will be submitted for FAA approval, when required. For the other manufacturers (principally General Aviation manufacturers), once the necessary information (revised/updated maintenance manuals, service bulletins, and/or advisory circulars) is approved by the FAA and is distributed to the regulated community, the potential regulatory conflict should be at a minimum, and aerospace rework facilities will be able to use various products to comply with most EPA and FAA requirements. The EPA and FAA have determined that the potential problems and issues raised by the commenters can be and, in many cases already have been, resolved through the procedures established in the existing regulations, and no further changes are needed to the NESHAP.

Because of the small numbers of aircraft affected and the considerable expense of testing alternative materials for use on antique aircraft (those over 30 years old), the March 27, 1998 amendments to the final rule (NESHAP) contain an exemption for the rework of these aircraft. For the same reason, these final amendments to the NESHAP extend that exemption to rework of aircraft and aircraft components whose manufacturers are out of business. There were no comments on this specific issue. Therefore, the EPA is exempting rework of aircraft whose manufacturers are out of business by adding the following to § 63.741(f):

> These requirements do not apply to the rework of aircraft or aircraft components if the holder of the Federal Aviation Administration (FAA) design approval, or that holder's licensee, is not actively manufacturing the aircraft or aircraft components.

The FAA certifies that an aircraft, engine, propeller, or part design meets certain airworthiness requirements, and issues to the designer of that product a type certificate (TC), supplemental type certificate (STC), Technical Standard Order Authorization (TSOA), or Parts Manufacturer Approval (PMA). The procedures for issuing TC's, STC's, TSOA's, and PMA's are contained in FAA regulations at 14 CFR, part 21. The holder of one of these is a ''design approval holder.''

Should any manufacturers still in business not revise their maintenance instructions to allow use of NESHAP-compliant materials, the FAA has committed to issue an advisory circular publicizing the process by which repair facilities can request approval for alternatives. In addition, many existing Airworthiness Directives (AD's), issued under part 39 of Title 14 of the CFR, specify the use of HAP. (AD's are regulations addressing safety of flight, and compliance with them is mandatory.) However, most AD's contain a provision for requesting an alternative means of compliance. The FAA Notice N8100.13, ''Alternative Means of Compliance (AMOC) for Airworthiness Directives that Require the Use of Volatile Organic Compounds and/or Hazardous Air Pollutants,'' (dated January 26, 1998), addresses the process by which repair stations, mechanics and operators can obtain alternative means of compliance for other AD's for the purpose of approving substitution of non-HAP materials.

D. Hand-Wipe Cleaning: Removal of References to Section 112(l) and Equivalent Volume Reduction Demonstration

Section 63.744(b)(3) of the amended NESHAP (requirements for hand-wipe cleaning) refers to requirements of section 112(l) of the Clean Air Act.

Based on comments received on the October 29, 1996 proposed amendments to the final rule, the Agency proposed to remove the references to section 112(l) of the Clean Air Act. Requiring submittal and approval of each individual alternative plan under section 112(l) is unwarranted and contrary to the intent of section 112(l). Since there were no comments on this issue, the final (amended) requirements of § 63.744(b)(3) no longer include the reference to ''section 112(l) of the Act.''

Similarly, there were no comments regarding § 63.744(b)(3) and the proposed new language on calculating the baseline volume (levels) of hand-wipe cleaning solvents used in cleaning operations. The requirement for demonstrating that the 60 percent volume reduction provides emission reductions equivalent to the solvent composition or vapor pressure compliance options was deleted. The Agency is finalizing the new language in § 63.744(b)(3) regarding approval of baseline levels.

E. Exemption for Cleaning of Automated Spray Equipment Nozzle Tips

The Agency proposed an exemption for cleaning of automated spray equipment nozzle tips because floor sources included in the development of the applicable requirements do not use any of the techniques in § 63.744(c) for cleaning of these devices. This exemption was based on similar language included in other State rules covering the aerospace industry (e.g., California Rule 1124) and was referenced by the original commenters.

One commenter agreed with the proposed exemption for owners or operators of aerospace cleaning operations from requirements for a closed container when cleaning the nozzle tips of automated spray equipment systems. The commenter states that, under the present NESHAP language, owners or operators are forced to disassemble the equipment for cleaning, which is economically unreasonable. The Agency decided to finalize the amendment to § 63.744(c) as follows:

(5) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from the requirements of paragraph (c) of this section.

F. Monitoring Parameters for Pumpless Waterwash Systems

The Agency proposed several amendatory revisions to the NESHAP (definitions, primer and topcoat application operations, monitoring requirements, recordkeeping requirements, and reporting requirements) involving pumpless waterwash systems. Based on earlier comments, the Agency learned that there are at least two types of pumpless waterwash systems currently being used by aerospace facilities. While a conventional waterwash system uses a pump to transfer the water to the top of the water curtain, a pumpless waterwash system uses a centrifugal fan to lift the mixture of water and paint laden air (from the exhaust stream) up through a series of entrainment ducts (baffles) separating air from the paint particles and from water droplets. There is no readily identifiable operating parameter that is common to both types of systems. Therefore, the Agency decided to use the ''generic'' approach as suggested by one of the commenters to include language such as ''monitor or measure and record a booth parameter recommended by the booth manufacturer.''

In the proposed amendments, changes to several sections of the final rule were proposed to allow pumpless waterwash systems to be used for controlling particulate emissions from painting and depainting operations. The Agency also specified that the parameter(s) to be monitored on such systems are to be recommended by the booth operator (i.e., manometer or air gap). Since waterwash systems were included as part of the MACT floor requirements for controlling inorganic HAP emissions in the promulgated rule, this is not a technical change to the standard, but a clarification of the discussion of pumpless systems and the associated monitoring requirements.

The only commenter that commented on this issue supported the proposed amendments involving the monitoring requirements for pumpless waterwash particulate control systems. The commenter stated that it would be impossible for pumpless waterwash systems to comply with the monitoring requirements as originally promulgated. The commenter fully supported EPA's efforts to address the unique challenges presented by pumpless waterwash systems. The Agency is therefore finalizing the changes associated with pumpless waterwash systems in: §§ 63.742 (definition of ''waterwash system''); 63.745(g)(2)(v); 63.751(c)(2); 63.751(d); 63.752(d)(2) and (3); 63.752(e)(7); 63.753(c)(1)(vi); and 63.753(d)(1)(vii).

G. Exclusion of Charged Media Certification Using Test Method 319

In regard to the proposed exclusion of charged media from certification under Test Method 319, two commenters concurred with the proposed exclusion, two commenters opposed the exclusion, and one commenter suggested the Agency re-visit the issue and consider adding a new mechanism within Method 319 to evaluate paint arrestor performance after loading (and over a given time period).

The Agency has decided that the proposed amendment to exclude electrostatically-charged filter media from Method 319 testing (based on the possibility that their efficiency in use will drop below that measured in Method 319 testing) will not be promulgated based on the fact that there are insufficient data at this time to warrant this exclusion. No data were submitted illustrating that electrostatically charged filter media will actually drop in efficiency during use in aerospace painting and depainting facilities. Furthermore, no data were submitted showing that, even if such drops in efficiency do occur, similar drops would not also occur in uncharged media (i.e., the drop in efficiency may not be solely due to a loss of electrostatic enhancement but may also be due to other physical changes in the media, which occur over time). The Agency recognizes that this is an area of current, active, and ongoing research. The Agency is also aware of studies conducted on electrostatically-charged filters used in general ventilation that do, for some charged-fiber filters under certain operating/exposure conditions, show drops in efficiency for electrostatically-charged media. However, the relevance of these findings to arrestors used in aerospace painting and depainting facilities is uncertain and is, therefore, insufficient to exclude, as a category of arrestors, electrostatically-charged media from Method 319 testing.

Two commenters suggested expanding Method 319 to include not only the initial efficiency, but also one or more steps of paint loading followed by a repeated filtration efficiency measurement after each step; by doing so, changes in electrostatically charged filtration efficiencies, if present, would be measured. One of the commenters recommended that Method 319 be expanded to include standard dust loading efficiency tests, or an additional fractional efficiency test using actual paint. These type of tests would need to account for the replacement frequency of the various stages in a multi-stage system, and load the filter with representative paint oversprays, as well as depainting-generated aerosols and ambient aerosols which may be drawn into a spray booth, perhaps with some

level of prefiltration. There are no standardized methods that adequately address these issues relative to conditioning or aerosol-loading of multi-staged arrestors for the purposes of quantifying potential changes in fractional efficiency with use. In light of the Aerospace NESHAP compliance date of September 1, 1998, it is beyond the scope of this project at this time to continue modifications to Method 319. Thus, use of Method 319, as stated in the final amendments to the aerospace rule published in the **Federal Register** on March 27, 1998 is retained.

H. Technical and Miscellaneous Corrections

The following amendments are corrections that were not part of the March 27, 1998 proposal. These changes are being made as part of today's action as a matter of efficiency in rulemaking. Furthermore, these changes are noncontroversial and correct errors in the rule or clarify the Agency's intention. By promulgating these corrections directly as a final rule, the EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title V of the United States Code and section 307(d) of the CAA permit an agency to forego notice and comment when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The EPA finds that notice and comment regarding these corrections are unnecessary due to their noncontroversial nature. The EPA finds that this constitutes good cause under 5 U.S.C. § 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

1. Correction of § 63.741(i)

The listing of exempted requirements in § 63.741(i) for compliant waterborne coatings should read ''* * * 63.750(k)–(n), * * *'' instead of ''* * * 63.750(k)–(m), * * *'' as published in the March 27, 1998 final amendments.

2. Clarification of Antique Aerospace Vehicle Exemption

The final amendments published in the **Federal Register** on March 27, 1998 included new language in § 63.741(j) exempting antique aerospace vehicles or components from the requirements of the rule. Clarifying language is being added stating that regulated activities associated with antique aerospace vehicles or components are exempt from the NESHAP requirements.

3. Clarification of the Composition Requirements for Approved Cleaning Solvents in Table 1 of § 63.744

The composition requirements for hydrocarbon-based cleaning solvents in Table 1 of § 63.744 were clarified to state ''* * * composed of photochemically reactive hydrocarbons and/or oxygenated hydrocarbons * * *'' instead of ''* * * composed of photochemically reactive hydrocarbons and oxygenated hydrocarbons * * *''. Table 1 was not properly designated in the final amendments published in the **Federal Register** on March 27. 1998. Today's final amendments also include proper designation of Table 1 of § 63.744.

4. Clarification of Inorganic HAP Requirements in § 63.746

Several questions have been raised regarding the applicability of the alternative inorganic HAP emission requirements (added to § 63.745(g)(2)(iii) in the March 27, 1998 final amendments) to the depainting requirements in § 63.746. As noted in the preamble discussion of the October 29, 1996 proposed amendments (61 FR 55842), the Agency intended to make the alternative inorganic HAP requirements applicable to both painting and depainting operations because both types of operations are often conducted in the same spray booth or controlled area.

The preamble language was very specific (see 61 FR 55850) to address this unique situation and stated ''* * * the Agency has provided these owners and operators of aerospace manufacturing or rework operations who have commenced construction or reconstruction of new spray booth or hanger for depainting operations, primer or topcoat operations, in which any of the coatings contain inorganic HAP's, prior to October 29, 1996 the flexibility to meet either the requirements of the promulgated regulation or the proposed amendments to the final regulation * * *'' [61 FR 55850 (October 29, 1996)]. When those amendments were finalized [63 FR 15006 (March 27, 1998)], only the language in § 63.745 (primer and topcoat application operations) was changed. As part of today's final amendments, language was added in § 63.746(b)(4)(ii)(C) to clarify that owners or operators of new sources that commenced construction or reconstruction after June 6, 1994 but prior to October 29, 1996 may comply with the particulate (e.g., inorganic HAP) control requirements that were proposed on June 6, 1994.

5. Correction of Equation To Determine the Composite Vapor Pressure in § 63.750(b)(2)

In the March 27, 1998 final amendments, a summation sign was added in front of the second term of the denominator (involving ''W_e'') of the equation used to determine the composite vapor pressure of hand-wipe cleaning solvents. The summation sign should be in front of the second term, instead of being placed with the numerator of the second term as published in the **Federal Register**.

6. Correction of Emission Reduction Equation in § 63.750(I)(2)(iv)

The term ''E_3'' should be ''E_a.''

7. Clarification of Monitoring Requirements in § 63.751(b)(6)(iii)(D)

Additional language was added to the alternative monitoring requirements for nonregenerative carbon adsorbers in § 63.751(b)(6)(iii)(D) to resolve the alternative/overlapping monitoring requirements. As a result, § 63.751(b)(6)(iv) is being redesignated (e.g., renumbered) as § 63.751(b)(6)(v). The new language states that the owner or operator may monitor the VOC or HAP concentration of the adsorber exhaust daily, or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater, or at a frequency determined by the owner or operator and approved by the Administrator. Clarifying language was also added in the new § 63.751(b)(6)(iv) involving a site-specific operating parameter for the carbon replacement time interval.

8. Correction of Equation to Determine the 100 Percent Penetration Value (P_{100}) in Method 319 of Appendix A to Part 63—Test Methods

The symbol for sigma ''ρ'' was incorrectly printed as ''ó'' in the explanation of the terms used in the P_{100} equation in Method 319. The language should read:

ρ = sample standard deviation
CV = coefficient of variation = ρ/mean.

III. Control Techniques Guidelines

Notice of final issuance of the control techniques guidelines (CTG) for coating operations at aerospace manufacturing and rework operations was published in the **Federal Register** on March 27, 1998. There was no mention of the relevant ''effective dates'' for States to use in developing their VOC rules. The following language is provided to clarify the adoption and implementation dates for the coating category VOC limits, application techniques, and equipment

requirements identified as reasonably available control technology (RACT) in the CTG.

The CTG for control of VOC emissions from coating operations in the aerospace industry is available to assist States in analyzing and determining RACT for aerospace manufacturing and rework operations located within ozone national ambient air quality standards nonattainment areas. Any State with a moderate or above nonattainment area that has not adopted a RACT regulation for the source category addressed by the aerospace CTG must submit a RACT regulation for these sources not later than March 27, 1999. For any State with a moderate or above nonattainment area that has adopted a RACT regulation for the source category addressed by the aerospace CTG, Section 182(b)(2) of the Clean Air Act (CAA) requires these States to submit a revision to the applicable implementation plan, to include provisions consistent with the CTG. This revision shall be submitted to the EPA not later than March 27, 1999. Furthermore, as specified in the CTG, the RACT regulations must require sources to implement the required limitations and work practices not later than September 1, 1999.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and the industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the content of the docket will serve as the record in case of judicial review (except for interagency review materials) (§ 307(d)(7)(A) of the Act).

B. Paperwork Reduction Act

The amendments do not impose any new information collection requirements and result in no change to the currently approved collection. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the NESHAP for aerospace manufacturing and rework facilities under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0314. (EPA ICR No. 1687.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the 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 OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Today's amendments should have no impact on the information collection burden estimates made previously. Today's action does not impose any additional information collection requirements. Consequently, the ICR has not been revised for purposes of today's action.

C. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735 [October 4, 1993]), the EPA is required to determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of this E.O. The E.O. 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 governments 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 E.O.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a ''significant regulatory action'' within the meaning of the E.O.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines: (1) ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant impact on a substantial number of small entities. These final rule amendments will not have a significant impact on a substantial number of small entities because the overall impact of these amendments is a net decrease in requirements on all entities including small entities.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by a proposed intergovernmental mandate. Section 204 requires the Agency to develop a process to allow elected State, local, and Tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law. The EPA has determined that these amendments do not include a Federal mandate that may result in expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Small governments will not be uniquely impacted by these amendments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit 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 United States prior to the publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 1, 1998.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 25, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—[Amended]

2. In § 63.741 paragraph (f) is amended by adding a new sentence after the second sentence and revising the first sentence of paragraph (i) and paragraph (j) to read as follows:

§ 63.741 Applicability and designation of affected sources.

* * * * *

(f) * * * These requirements do not apply to the rework of aircraft or aircraft components if the holder of the Federal Aviation Administration (FAA) design approval, or the holder's licensee, is not actively manufacturing the aircraft or aircraft components. * * *

* * * * *

(i) Any waterborne coating for which the manufacturer's supplied data demonstrate that organic HAP and VOC contents are less than or equal to the organic HAP and VOC content limits for its coating type, as specified in §§ 63.745(c) and 63.747(c), is exempt from the following requirements of this subpart: §§ 63.745(d) and (e), 63.747(d) and (e), 63.749(d) and (h), 63.750(c) through (h) and (k) through (n), 63.752(c) and (f), and 63.753(c) and (e).* * *

* * * * *

(j) Regulated activities associated with the rework of antique aerospace vehicles or components are exempt from the requirements of this subpart.

3. Section 63.742 is amended by revising the definition for ''waterwash system'' and adding in alphabetical order definitions for ''general aviation''

and ''general aviation rework facility'' to read as follows:

§ 63.742 Definitions.

* * * * *

General aviation (GA) means that segment of civil aviation that encompasses all facets of aviation except air carriers, commuters, and military. General aviation includes charter and corporate-executive transportation, instruction, rental, aerial application, aerial observation, business, pleasure, and other special uses.

General aviation rework facility means any aerospace facility with the majority of its revenues resulting from the reconstruction, repair, maintenance, repainting, conversion, or alteration of general aviation aerospace vehicles or components.

* * * * *

Waterwash system means a control system that utilizes flowing water (i.e., a conventional waterwash system) or a pumpless system to remove particulate emissions from the exhaust air stream in spray coating application or dry media blast depainting operations.

* * * * *

4. Section 63.744 is amended by removing the last sentence in paragraph (b)(3) and adding three sentences in its place, adding paragraph (c)(5), and revising Table 1 to read as follows:

§ 63.744 Standards: Cleaning operations.

* * * * *

(b) * * *

(3) * * * Demonstrate that the volume of hand-wipe cleaning solvents used in cleaning operations has been reduced by at least 60 percent from a baseline adjusted for production. The baseline shall be calculated using data from 1996 and 1997, or as otherwise agreed upon by the Administrator or delegated State Authority. The baseline shall be approved by the Administrator or delegated State Authority and shall be included as part of the facility's title V or part 70 permit.

(c) * * *

(5) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from the requirements of paragraph (c) of this section.

* * * * *

TABLE 1.—COMPOSITION REQUIREMENTS FOR APPROVED CLEANING SOLVENTS

Cleaning solvent type	Composition requirements
Aqueous	Cleaning solvents in which water is the primary ingredient (≥80 percent of cleaning solvent solution as applied must be water). Detergents, surfactants, and bioenzyme mixtures and nutrients may be combined with the water along with a variety of additives, such as organic solvents (e.g., high boiling point alcohols), builders, saponifiers, inhibitors, emulsifiers, pH buffers, and antifoaming agents. Aqueous solutions must have a flash point greater than 93° C (200° F) (as reported by the manufacturer), and the solution must be miscible with water.
Hydrocarbon-based	Cleaners that are composed of photochemically reactive hydrocarbons and/or oxygenated hydrocarbons and have a maximum vapor pressure of 7 mm Hg at 20° C (3.75 in. H_2O and 68° F). These cleaners also contain no HAP.

5. Section 63.745 is amended by revising paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (g)(2)(v) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than: 350 g/L (2.9 lb/gal) of primer (less water) as applied or 540 g/L (4.5 lb/gal) of primer (less water) as applied for general aviation rework facilities.

(2) VOC emissions from primers shall be limited to a VOC content level of no more than: 350 g/L (2.9 lb/gal) of primer (less water and exempt solvents) as applied or 540 g/L (4.5 lb/gal) of primer (less water and exempt solvents) as applied for general aviation rework facilities.

(3) Organic HAP emissions from topcoats shall be limited to an organic HAP content level of no more than: 420 g/L (3.5 lb/gal) of coating (less water) as applied or 540 g/L (4.5 lb/gal) of coating (less water) as applied for general aviation rework facilities. Organic HAP emissions from self-priming topcoats shall be limited to an organic HAP content level of no more than: 420 g/L (3.5 lb/gal) of self-priming topcoat (less water) as applied or 540 g/L (4.5 lb/gal) of self-priming topcoat (less water) as applied for general aviation rework facilities.

(4) VOC emissions from topcoats shall be limited to a VOC content level of no more than: 420 g/L (3.5 lb/gal) of coating (less water and exempt solvents) as applied or 540 g/L (4.5 lb/gal) of coating (less water and exempt solvents) as applied for general aviation rework facilities. VOC emissions from self-priming topcoats shall be limited to a VOC content level of no more than: 420 g/L (3.5 lb/gal) of self-priming topcoat (less water and exempt solvents) as applied or 540 g/L (4.5 lb/gal) of self-priming topcoat (less water) as applied for general aviation rework facilities.

* * * * *

(g) * * *

(2) * * *

(v) If a conventional waterwash system is used, continuously monitor the water flow rate and read and record the water flow rate once per shift. If a pumpless system is used, continuously monitor the booth parameter(s) that indicate performance of the booth per the manufacturer's recommendations to maintain the booth within the acceptable operating efficiency range and read and record the parameters once per shift.

* * * * *

6. Section 63.746 is amended by adding paragraph (b)(4)(ii)(C) to read as follows:

§ 63.746 Standards: Depainting operations.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(c) Owners or operators of new sources that have commenced construction or reconstruction after June 6, 1994 but prior to October 29, 1996 may comply with the following requirements in lieu of the requirements in paragraph (b)(4)(ii)(B) of this section:

(*1*) Pass the air stream through either a two-stage dry particulate filter system or a waterwash system before exhausting it to the atmosphere.

(*2*) If the coating being removed contains chromium or cadmium, control shall consist of a HEPA filter system, three-stage filter system, or other control system equivalent to the three-stage

filter system as approved by the permitting agency.

* * * * *

* * * * *

(i) * * *

(2) * * *

7. Section 63.750 is amended by revising the equation in paragraph (b)(2) and equation 19 in paragraph (i)(2)(iv) to read as follows:

§ 63.750 Test methods and procedures.

* * * * *

(b) * * *

(2) * * *

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \sum_{e=1}^{n} \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

(iv) * * *

$$P = \frac{E_b - E_a}{E_b} \times 100 \qquad \text{Eq. 19}$$

* * * * *

8. Section 63.751 is amended by redesignating paragraph (b)(6)(iv) as (b)(6)(v) and revising paragraphs (b)(6)(iii)(D), (c)(2), (d), and adding a new paragraph (b)(6)(iv) to read as follows:

§ 63.751 Monitoring requirements.

* * * * *

(b) * * *

(6) * * *

(iii) * * *

(D) If complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a nonregenerative carbon adsorber, in lieu of the requirements of paragraph (b)(6)(iii) (B) or (C) of this section, the owner or operator may monitor the VOC or HAP concentration of the adsorber exhaust daily, at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater, or at a frequency as determined by the owner or operator and approved by the Administrator.

(iv) Owners or operators complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a nonregenerative carbon adsorber and establishing a site-specific operating parameter for the carbon replacement time interval in accordance with paragraph (b)(2) shall replace the carbon in the carbon adsorber system with fresh carbon at the predetermined time interval as determined in the design evaluation.

* * * * *

(c) * * *

(2) Each owner or operator using a conventional waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat application operations are occurring, continuously monitor the water flow rate through the system and read and record the water flow rate once per shift following the recordkeeping requirements of § 63.752(d). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer and topcoat application operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer that indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(d).

(d) *Particulate filters and waterwash booths—depainting operations.* Each owner or operator using a dry particulate filter or a conventional waterwash system in accordance with the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, continuously monitor the pressure drop across the particulate filters or the water flow rate through the conventional waterwash system and read and record the pressure drop or the water flow rate once per shift following the recordkeeping requirements of § 63.752(e). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer that indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(e).

* * * * *

9. Section 63.752 is amended by revising paragraphs (c)(2) introductory text, (d)(2), (d)(3), and (e)(7) to read as follows:

§ 63.752 Recordkeeping requirements.

* * * * *

(c) * * *

(2) For uncontrolled primers and topcoats that meet the organic HAP and VOC content limits in § 63.745(c)(1) through (c)(4) without averaging:

* * * * *

(d) * * *

(2) Each owner or operator complying with § 63.745(g) through the use of a conventional waterwash system shall record the water flow rate through the operating system once each shift during which coating operations occur. Each owner or operator complying with § 63.745(g) through the use of a pumpless waterwash system shall record the parameter(s) recommended by the booth manufacturer that indicate the performance of the booth once each shift during which coating operations occur.

(3) This log shall include the acceptable limit(s) of pressure drop, water flow rate, or for the pumpless waterwash booth, the booth manufacturer recommended parameter(s) that indicate the booth performance, as applicable, as specified by the filter or booth manufacturer or in locally prepared operating procedures.

* * * * *

(e) * * *

(7) *Inorganic HAP emissions.* Each owner or operator shall record the actual pressure drop across the particulate filters or the visual continuity of the water curtain and water flow rate for conventional waterwash systems once each shift in which the depainting process is in operation. For pumpless waterwash systems, the owner or operator shall record the parameter(s) recommended by the booth manufacturer that indicate the performance of the booth once per shift in which the depainting process is in operation. This log shall include the acceptable limit(s) of the pressure drop

as specified by the filter manufacturer, the visual continuity of the water curtain and the water flow rate for conventional waterwash systems, or the recommended parameter(s) that indicate the booth performance for pumpless systems as specified by the booth manufacturer or in locally prepared operating procedures.

* * * * *

10. Section 63.753 is amended by revising paragraphs (c)(1)(vi) and (d)(1)(vii) to read as follows:

§ 63.753 Reporting requirements.

* * * * *

(c) * * *

(1) * * *

(vi) All times when a primer or topcoat application operation was not immediately shut down when the pressure drop across a dry particulate filter or HEPA filter system, the water flow rate through a conventional waterwash system, or the recommended parameter(s) that indicate the booth performance for pumpless systems, as appropriate, was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operating procedures;

* * * * *

(d) * * *

(1) * * *

(vii) All periods where a nonchemical depainting operation subject to § 63.746(b)(2) and (b)(4) for the control of inorganic HAP emissions was not immediately shut down when the pressure drop, water flow rate, or recommended booth parameter(s) was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operational procedures;

* * * * *

11. In appendix A to part 63, Method 319 is amended by revising the equation terms ''ρ'' and ''CV'' in section 12.2.1 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 319: DETERMINATION OF FILTRATION EFFICIENCY FOR PAINT OVERSPRAY ARRESTORS

* * * * *

12.0 * * *

12.2 * * *

12.2.1 * * *

ρ= sample standard deviation

CV = coefficient of variation = ρ/mean

* * * * *

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Part V

Department of Health and Human Services

42 CFR Parts 5 and 51c

Designation of Medically Underserved Populations and Health Professional Shortage Areas; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 5 and 51c

RIN 0906–AA44

Designation of Medically Underserved Populations and Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Proposed rules.

SUMMARY: The rules proposed below would consolidate the processes for designating medically underserved populations (MUPs) and health professional shortage areas (HPSAs), designations that are used in several DHHS programs. The purpose is to improve the way underserved areas are designated by incorporating up-to-date measures of health status and access barriers and eliminating inconsistencies and duplication of effort. The intended effect is to reduce the effort and data burden on States and communities by simplifying and automating the design process as much as possible, while maximizing the use of technology. The proposed rules involve major changes to both the MUP and the primary care HPSA designation criteria, which have the effect of making primary care HPSAs a subset of the MUPs. No changes are proposed with respect to the criteria for designating dental and mental health HPSAs. Podiatric, vision care, pharmacy, and veterinary care HPSA designations would be abolished under the rules proposed below.

DATES: Comments on this proposed rule are invited, and, to be considered, must be submitted on or before November 2, 1998.

ADDRESSES: Comments should be submitted in writing to: Office of Policy Coordination, Bureau of Primary Health Care, Room 7–1D1, 4350 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Richard Lee, 301–594–4280.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services proposes below a consolidated, revised process for designation of Medically Underserved Populations (MUPs) pursuant to section 330 of the Public Health Service Act (as amended by the recent Health Centers Consolidation Act of 1996, Pub. L. 104–299), 42 U.S.C. 254c, and for designation of Health Professional Shortage Areas (HPSAs) pursuant to section 332 of the Act, 42 U.S.C. 254e. Currently, regulations at 42 CFR Part 5 govern the procedures and criteria for designation of HPSAs, while designation of MUPs has been carried out under the Community Health Center regulations at 42 CFR Part 51c, Subpart A, and implementing **Federal Register** notices. The proposed rules below would replace the existing Part 5 with regulations governing both MUP and HPSA designation, and would make conforming changes to Part 51c. Together, these changes would meet the MUP designation requirements of the new legislation and the HPSA designation requirements of existing legislation, while consolidating the two processes to a great degree.

(Note that the abbreviation MUP used here includes not only population group designations but also the populations of designated geographic areas, also known as medically underserved areas or MUAs. Similarly, the abbreviation HPSA includes not only geographic area designations but also population group and facility designations.)

I. Current Uses of Designations

The MUP and HPSA designations are currently used in a number of Departmental programs. MUP designations are used in the community health center (CHC) program as a basis for eligibility for funding under section 330(e) of the Act. Health professionals placed through the National Health Service Corps (NHSC) can be assigned only to designated HPSAs. Other health centers not funded by section 330 grants but otherwise meeting the definition of a community health center, including service to a MUP, may be certified by the Health Care Financing Administration (HCFA) upon the recommendation of the Health Resources and Services Administration (HRSA) as federally qualified health centers (FQHCs), eligible for reasonable cost-based Medicaid and Medicare reimbursement. Clinics in rural areas designated either as an MUA or as a geographic or population group HPSA, and which use nurse practitioners and/or physician assistants, may be certified by HCFA as Rural Health Clinics (RHCs); these RHCs are also eligible for reasonable cost-based Medicaid and Medicare reimbursement. Physicians delivering services in areas designated as geographic HPSAs are eligible for Medicare incentive payments of an additional 10 percent above the Medicare reimbursement they would otherwise receive. In addition, a number of health professions programs funded under Title VII of the Public Health Service Act are required to give preference to applicants placing graduates in medically underserved communities, defined to include both HPSA and MUPs. For most of the programs using the designations, designation of the area or population to be served is a necessary but not sufficient condition for allocation of program resources, in that other eligibility requirements must also be met, and/or there is competition among eligible applicants for available resources.

II. Purposes of Revising the Designation Mechanisms

The current HPSA criteria date back to 1978; their predecessor, the ''Critical Health Manpower Shortage Area'' or CHMSA criteria date back to the 1971 legislation creating the National Health Service Corps. The current MUA/P criteria date back to 1973 and 1975, when legislation was enacted creating grants for Health Maintenance Organizations and Community Health Centers, respectively.

The original CHMSA criteria were based on a simple population-to-primary care physician ratio; the HPSA criteria expanded this to require a lower ratio for areas with high needs indicated by high poverty, infant mortality or fertility, and for population groups with access barriers. The original MUA/P criteria, still in effect, employ a four-variable Index of Medical Underservice, including percent with incomes below poverty, population-to-primary care physician ratio, infant mortality rate and percent elderly, but poverty has tended to predominate (partly because it was available at subcounty levels).

Since the time these designations were developed, other programs have been required to use these designations, such as the Rural Health Clinic program, the Medicare Incentive Program, and the J–1 visa waiver program, and various Bureau of Health Professions programs now have preferences for applicants serving designated areas. In addition, there has been an evolution both in the types of requests for designation received and the application of the HPSA criteria. Instead of relatively simple geographic area requests, such as whole counties and rural subcounty areas, more and more requests have been received for urban neighborhoods and population group designations. The availability of census data on poverty, race and ethnicity down to the census tract level enabled the delineation of urban service areas based on their economic and race/ethnicity characteristics; thus areas with concentrations of poor, minority and/or linguistically isolated populations could achieve area or population group HPSA designations based on limited access to physicians serving other parts of their metropolitan areas. As a result, many

HPSA designations actually represent underserved populations within larger areas that may have reasonable population-to-practitioner ratios; the distinction between HPSA and MUA/P designations has become less sharp. Furthermore, Congress has explicitly identified indicators for identifying HPSAs with the greatest shortages to include not only provider-to-population ratio but also rates of low birth weight births, infant mortality, and poverty as well as access to primary health services.

Generally, the literature indicates that, despite increases in the total number of physicians practicing in the United States, including increases in numbers of primary care physicians, anticipated ''diffusion'' of these physicians into frontier and other remote rural areas has been limited. At the same time, while some areas have improved their population-to-practitioner ratios, the nature of the unmet need has shifted to populations with certain characteristics. Reflecting this evolution, the combined methodology proposed below includes both population-to-practitioner ratios and demographic and other factors associated with access problems. The designation processes and criteria are being revised to accomplish several goals and alleviate problems associated with the existing methods of designation. These purposes include: (a) To consolidate the two existing procedures, two sets of primary care-related criteria, and two overlapping lists of designations, one of which has been updated regularly while the other has not, into one procedure with consistent criteria that generates an integrated list, updated regularly; (b) to make the system more proactive, better able to identify new, currently undesignated areas of need and areas no longer in need; (c) to automate the scoring process as much as possible, making maximum use of national data and reducing the effort at State and community levels associated with information gathering for designation and updating; (d) to expand the State role in the designation process, with special attention to the State role in definition of rational service areas; (e) to reduce the need for time-consuming population group designations, by specifically including indicators representing access barriers experienced by these groups in the criteria applied to area data; (f) to incorporate better measures or correlates of health status; (g) among the selected indicators of underservice/shortage, to improve equity by more heavily weighting the more common attributes, while giving less weight to factors that apply only to subsets of underserved areas/populations; and (h) to ensure that current services to underserved populations are not disrupted in the transition to a new system. These purposes are explained more fully below.

A. Consolidation and Simplification

The separate statutes authorizing MUP and HPSA designations address fundamentally the same policy concern: that is, the identification of those areas and populations which have unmet needs for personal health services, for the purpose of determining eligibility for certain Federal health care resources. Some of these areas and populations have shortages of health professionals to deliver the health services; in others, the problem is lack of access to existing resources. The legislative requirements for the two are similar in many respects, but the designation processes have, up to now, been largely separate. The rules proposed below attempt to establish a unitary procedure and consistent criteria, insofar as is legally permissible, both to simplify the designation process for agencies, communities, entities, and individuals involved in it and to increase the efficient and effective use of Departmental resources. Thus, all the legislatively mandated elements of both statutes are included in the proposed procedures. Further, in redesigning the criteria, common definitions are used for MUPs and HPSAs. In addition, the criteria are structured so that primary care HPSAs become a subset of MUPs, the subset with particular shortages of health professionals.

B. Proactivity and C. Automation

The proposed methodology is also designed to enable a more automated process for designation, through a simpler method for scoring areas and for updating the scores when data updates occur. The new method makes considerable use of census variables for which data are available not only at the county level but also at subcounty levels (e.g., for census tracts and census divisions), so that a wide variety of State- and community-defined service areas can be evaluated for possible designation. The intent is to minimize the effort required by States, communities, and other entities to designate an area or update its designation. It should also enable more universal application of the designation criteria, so that applicant familiarity with the designation process will be less of a factor and independent data collection by applicants will be less of a barrier than previously. At the same time, States and communities will continue to have the opportunity to challenge federally-provided data.

D. Increased State Role

The proposed approach seeks to foster increased partnership between the various levels of government involved in designation, including a significantly larger State and local role in defining service areas, underserved population groups and unusual local conditions. The new criteria are significantly less prescriptive in terms of travel time and mileage standards for defining service areas. Each State will be encouraged to define, with community input and in collaboration with the Secretary, a complete set of rational service areas covering its territory. Once developed, these service areas will be used in underservice/shortage area designations unless new census data or other changes require further area boundary changes. It is also the agency's intention to ask States to provide information on their practitioner data sources and their methods for evaluating access to service area and contiguous area resources; where States have reliable data sources and analysis procedures, the time required for case-by-case review will be significantly reduced.

E. Reduce the Need for Population Group Designations

Designation of population groups is typically more resource-intensive than designation of geographic areas, both from the standpoint of data collection (since obtaining data for a particular population is often more difficult than for the area as a whole) and in terms of review. As discussed below, specific indicators included in the proposed approach represent the access barriers of low income, racial minority or Hispanic ethnicity, and linguistic isolation. It is hoped that the inclusion of these indicators in the proposed index will reduce the need for specific population group designations for these population groups, by increasing the probability of designation of geographic areas with concentrations of these groups.

F. Incorporate Better Measures or Correlates of Health Status

Both designation statutes speak of inclusion of indicators of health status. However, the only specific measure of health status mentioned in either statute or included in the existing designation criteria is infant mortality rate. Both infant mortality rate and low live birthweight rate are nationally available for all counties and for a limited number of subcounty areas (generally, for places

of population 10,000 or more), and these measures are both incorporated. As discussed further below, other direct measures of health status could not be included at this time; however, a number of indirect measures were included as proxies, because they are correlated with low health status.

G. Improve Equity Through Weighting

Experience in designation of both MUA/Ps and HPSAs has indicated that the most common characteristics of shortage/underserved areas involve high population-to-practitioner ratios and a high proportion of the population in poverty or with low incomes. Both these indicators figure prominently in the current HPSA and MUA/P designation approaches; both were considered logical candidates for high relative weighting in any new index. Other indicators of access barriers and low health status are being included, but with lower weights representing their less general applicability as underservice indicators.

H. Avoid Disruption

An improved system will not generate the exact same designations as the old system, or it would represent no change/improvement. However, in the transition to a new system, which will involve updating many MUP designations that have not been updated for some time, care must be taken to ensure that vulnerable underserved populations, identified under previous criteria and now being served by projects based on the existing designations, do not suffer an inappropriate disruption of services. This involved testing the new criteria against the database of currently-designated service areas and active projects.

III. Development of the New Methodology

The development of the proposed new methodology was initiated in the fall of 1992 through discussions with academic researchers and Federal experts in relevant fields, as well as representatives of State health departments and others involved in and affected by the designation process. These discussions covered problems with the current methods, and issues involved in developing better needs assessment/designation methods; the basic goals listed above were identified. A wide variety of potential shortage/underservice indicators and methodological approaches were discussed.

Particular attention was given to health status indicators. Morbidity and mortality rates, including those relevant to primary health care, are generally available only at the county level. This is a problem, because only about one-third of current designations cover whole counties (40 percent are subcounty areas, 22 percent are population groups, and 6 percent are facilities). Also considered were health status indicators based on ''ambulatory care sensitive conditions.'' However, since such data are currently available for less than half the States, their inclusion was not feasible. Developments in this field will be monitored for possible future inclusion of such indicators.

A third group of health status and utilization indicators identified as potentially useful in designation are those collected as part of the National Center for Health Statistics' Health Interview Survey (HIS). However, the surveying/sampling techniques used in collecting these data were originally designed to obtain conclusions valid at national, not local, levels. Efforts to develop a method to allow prediction of the indicators from local demographic data are underway, but have not yet been successful.

Based on the recommendations of various experts consulted and the gaps in data availability noted above, it was decided to pursue development of a new index using demographic proxies for those access and health status indicators that are not yet widely available. The literature was reviewed to identify additional candidate variables, potential variables were evaluated to establish a test data base, and correlation analysis was applied to identify which indicators could be treated as independent variables and which combinations of indicators would tend to over-represent the same underlying variables.

As a result of this process, some indicators considered were not selected for inclusion in the proposed new methodology. For example, the percentage of the population with incomes below 100 percent of the poverty level is not used as an indicator of ability-to-pay; instead, the percentage with incomes below 200 percent of poverty (which is very highly correlated with the proportion below poverty) was selected, since this low-income population is the prime target population of the CHC and NHSC projects which use the designations. Another indicator not ultimately included was educational level. Educational level is quite highly correlated with income; since percent of population with low income is being included in the new methodology, and is highly weighted, it was felt that educational level need not also be included. The percentage of the population which is uninsured was not included, because these data are generally available only at the State level. An indicator of health status, trimester of entrance into prenatal care, was likewise not used, because of concerns that these data are often unreliable.

Impact testing and analysis were conducted to ensure that variables most indicative of need were incorporated, that the scaling and relative weighting of the indicators identified areas of known high need, and that the transition to the new methodology would cause minimal disruption to projects already serving the underserved based on past designation methods. The proposed new methodology was discussed with a variety of academic and government experts and State partners in the designation process during 1995 and revised. As revised, the proposed methodology has been outlined in presentations to national and regional meetings of State and community primary care organizations and others.

IV. Description of the Proposed Regulations

A. Procedures

The proposed approach to processing both MUP and HPSA designation requests, set forth in proposed Subpart A below, is an adaptation of the HPSA designation procedures currently in effect, as codified at 42 CFR Part 5. The proposed procedures have been modified to include the particular comment and consultation requirements of the MUP legislation, but otherwise closely follow the present HPSA designation procedures, including those specifically required by statute.

As before, the procedures involve an interactive process between the Secretary, the States, and individual applicants. Any individual, community group or State or other agency may apply for designation of a geographic area or population group MUP and/or HPSA, or for a facility HPSA; the Secretary may also propose such designations. Such requests are reviewed both at State and federal levels, including a 30-day comment period for Governors, State health agency contacts, State primary care associations (*i.e.* organizations representing community health centers and other providers of primary care), and appropriate medical, dental or other health professional societies.

Annually, the Secretary will review all designations, with emphasis on those for which new data have not been submitted during the previous three years; this extends to MUA/Ps the review process previously used for HPSAs. In such reviews, the latest data from national sources on already-designated areas are provided by the Secretary to State entities and others for review and correction; if no corrections are provided, the national data are used as the Secretary's basis for decisions. The national data will normally be used for census-collected variables, and for infant mortality and low birth weight rates, but national data for practitioner counts and for population groups is typically updated during the designation process using State and local sources. State and local data are normally more up-to-date and accurate regarding provider locations and are the only source for accurate full-time-equivalency data on those practitioners practicing less than full time or splitting their time between two or more different areas.

There is also a section describing procedures that would operate during the transition from the current system to the new system. These procedures include a process for resolution of any overlapping boundaries that may exist between currently-designated HPSAs and MUA/Ps at the time the new regulations go into effect, and allow that any HPSA or MUA/P designation for which new data was submitted and approved under the old criteria may continue in effect for three years from the approval date. This is to relieve States, communities and others from having to provide updated data on all designations during the first year the new regulations go into effect.

B. MUP Criteria

The criteria for designating MUPs are set out in Subpart B. In brief, areas to be designated must be rational areas for the delivery of primary care services. For each area so defined and considered for designation, the Secretary will determine the area's score on its Index of Primary Care Shortage (IPCS). As discussed below, the IPCS is a composite of partial scores on a number of variables that reflect and incorporate statutory requirements. An area may be designated if its composite score for all variables equals or exceeds the designation threshold determined by the Secretary. (This approach is structurally quite similar to the approach previously used to designate MUA/Ps.)

C. Rational Service Areas

The proposed rules would continue to require that each area proposed for designation be a rational area for the delivery of primary care services. *See*, proposed § 5.103(a). Optimally, each State will develop a State-wide system that subdivides the territory of the State into rational service areas; criteria for such a State-wide system are specified. A definition of the term rational service area is included which allows for considerable flexibility of interpretation by States. Until a State develops such a State-wide system of areas, provisions for determining individual rational service areas would apply. These provisions allow for inclusion of service areas currently designated, whether made up of whole counties or portions thereof; of counties or county-equivalents; and of other areas meeting the regulation's definition of a rational service area. To deal with cases where the boundaries of currently designated MUA/Ps and HPSAs overlap but do not coincide, transition procedures allow the appropriate State official to define which area will be considered to be the rational service area for designation purposes.

D. IPCS Approach

The proposed rules provide that, for each area defined as a rational service area and considered for a primary care shortage/underservice designation, the Secretary will determine the area's score on a new Index of Primary Care Shortage (IPCS). *See*, proposed § 5.103(b). The IPCS is a composite of seven variables that reflect need for and lack of access to primary care services, including those factors that are legislatively mandated: (1) The population- to-primary care practitioner ratio, (2) the percentage of the population with incomes below 200 percent of the poverty level, (3) the infant mortality or low birthweight rate, (4) the percentage of the population that is racial minority, (5) the percentage of the population of Hispanic ethnicity, (6) the percentage of the population that is linguistically isolated, and (7) low population density. The basis for inclusion of these variables in the index is discussed below.

1. Population-to-Primary Care Practitioner Ratio

This ratio is the best available measure of primary care resources available within a particular area, is historically accepted as the prime indicator of primary care practitioner shortage, and reflects the resource decisions central to the NHSC and CHC programs. Also, inclusion of this measure is legislatively required for HPSAs, and meets the MUP legislative requirement for a measure of availability.

2. Percentage of the Population With Income Below 200 Percent of the Poverty Level

This variable represents the economic access barrier faced by many underserved populations, including Medicaid-eligibles and those working poor and Medicaid-ineligibles who tend to be uninsured or underinsured. It also closely approximates the target population of CHC/NHSC projects, which are required to provide care on a sliding fee scale to patients with incomes below 200 percent of poverty level, and fulfills the legislative requirement for a factor indicative of ability-to-pay. Furthermore, low income is highly correlated with low health status. *See*, for example, George Davey Smith, et al., ''Socioeconomic Differentials in Mortality Risk among Men Screened for the Multiple Risk Factor Intervention Trial,'' Am. J. Public Health, 1996:86:486–504.

3. Infant mortality rate or low birthweight rate

These two variables are both indicators of adverse birth outcomes. Consideration of infant mortality rate (deaths per thousand live births) is statutorily required; it has also been used historically as a measure of negative health status, and/or as an indicator of inadequacy of the health care system. Low live birthweight rate (percentage of live births below 2500 grams) is a statistically more robust indicator, since there are more events, and it better reflects access to prenatal care. The highest of the partial scores for each of these two indicators would be used in computing an area's overall IPCS score.

4. Percentage of the Population That Is a Racial Minority

This variable (defined in the census as including blacks, Asian and Pacific Islanders, Native Americans, and other non-whites) is included partly because various minority groups display higher prevalence of certain diseases than the population at large, and lower health status generally, and partly because of access barriers due to discrimination in some cases and cultural barriers in others. The literature indicates that these effects are independent of income. (*See*, for example, Gornick et al., ''Effects of Race and Income on Mortality and Use of Services among Medicare Beneficiaries,'' *New England*

Journal of Medicine, Vol. 335, No. 11, pp. 791–799, Sept. 12, 1996; Commonwealth Fund, National Comparative Survey of Minority Health Care, 1995.) Also, a high percentage of the CHC/NHSC patient population are minorities.

5. Percentage of the Population of Hispanic Ethnicity

This census variable is included because many persons of Hispanic ethnicity experience negative health status effects and discriminatory and cultural barriers, independent of income, while persons of Hispanic ethnicity are not included in the census variable ''racial minority'' unless they self-identify themselves as ''other non-white.'' (For reference relevant to both indicators (4) and (5), see, for example, Lillie-Blanton and Alfaro-Correa, Joint Center for Political and Economic Studies Project on the Health Care Needs of Hispanics and African-Americans, 1995.) Also, a high percentage of the underserved populations served by existing CHC/NHSC programs is Hispanic.

6. Percentage of the Population That Is Linguistically Isolated

This variable (defined in the census as the percentage of the persons in households in which no one over the age of 14 speaks English well) is used as a direct measure of those persons with a severe language barrier, as distinct from those of foreign origin who speak English well.

7. Low Population Density

This variable is included as a proxy for the long distances and high travel times to care experienced by frontier and other isolated rural communities.

E. Scoring

For a given area, partial scores are computed for each of the above variables; these partial scores are then summed to obtain the total IPCS score. An area will receive non-zero partial scores only for those variables which have, in that area, values worse than a normative level for that variable, if available, or the 1996 national rate, where no norm was available.

In the case of the population-to-primary care practitioner ratio, the normative floor level for scoring being used is 1250:1. This corresponds to the lower end of the acceptable range for supply of primary care providers recognized by the Council on Graduate Medical Education (COGME) after adjusting for inclusion of obstetrician-gynecologists and nonphysician providers. A range of 60–80 ''generalist'' physicians per 100,000 population was recognized by the Council on Graduate Medical Education (COGME) as adequate for primary care in its Eighth Report (see U.S. DHHS Report No.HRSA–P–DM 95–3, revised Nov. 1996, pp. 8–12). Since COGME's definition of ''generalist'' physicians encompasses only those physicians in Family Practice, General Practice, General Internal Medicine and Pediatrics, while the definition of Primary Care Practitioners (PCPs) in the MUP/HPSA criteria proposed herein also includes physicians in Obstetrics and Gynecology as well as nurse practitioners, physician assistants and certified nurse midwives, the COGME lower level of 60 per 100,000 was adjusted upward by the ratio of all U.S. PCPs to all U.S. generalists, yielding a level of 80 PCPs per 100,000 population or 1250 persons per PCP.

In the case of infant mortality and low live birthweight, the normative floor levels correspond to the Healthy People 2000 national targets of no more than 7 infant deaths per thousand live births and no more than 5 percent low birthweight births, respectively. In the case of the census-related variables, the 1996 national rates are used as the floor for scoring.

There is a maximum number of points for each variable, and scales for each variable have been devised which relate to its distribution across all U.S. counties. (For example, for a census variable given a maximum score of five points, the values of the variable which divide all counties above its national rate into five equal groups are used as breakpoints.) The scales proposed to be used are shown in Tables 1–7 below; following consideration of comments, they will be republished (with any changes made in response to comments) with the final rule.

The IPCS approach provides that certain variables are more heavily weighted than others, in determining an area's IPCS score. *See*, § 5.103(b). The weighting scheme chosen was designed to enhance equity by more heavily weighting common attributes of shortage areas, while giving less weight to factors that identify population subgroups with particular access problems. The population-to-primary care practitioner ratio and percentage of population with incomes below 200 percent of the poverty level variables are most heavily weighted (maximum 35 points each). The percentage of population that is linguistically isolated, percentage minority and percentage Hispanic variables are less heavily weighted (maximum 5 points each). Similarly, the infant mortality rate and low birthweight rate variables are scored at a maximum of 5 points each; the highest of these two scores is included in the total IPCS score. To address the isolation and distance-related access problems of rural populations, the low-population-density variable is weighted on a 10-point scale. These seven partial scores are combined to obtain the total IPCS score, which thus has a maximum value of 100 points.

TABLE 1.—IPCS PARTIAL SCORE FOR POPULATION-TO-PRIMARY CARE PRACTITIONER RATIO (R) [1]

Range	Partial score
R ≥ 9,000:1	35
9000:1 > R ≥ 7000:1	34
7000:1 > R ≥ 5000:1	33
5000:1 > R ≥ 4500:1	32
4500:1 > R ≥ 4000:1	31
4000:1 > R ≥ 3800:1	30
3800:1 > R ≥ 3500:1	29
3500:1 > R ≥ 3400:1	28
3400:1 > R ≥ 3300:1	27
3300:1 > R ≥ 3200:1	26
3200:1 > R ≥ 3100:1	25
3100:1 > R ≥ 3000:1	24
3000:1 > R ≥ 2800:1	23
2800:1 > R ≥ 2600:1	22
2600:1 > R ≥ 2500:1	21
2500:1 > R ≥ 2400:1	20
2400:1 > R ≥ 2300:1	19
2300:1 > R ≥ 2200:1	18
2200:1 > R ≥ 2100:1	17
2100:1 > R ≥ 2000:1	16
2000:1 > R ≥ 1950:1	15
1950:1 > R ≥ 1900:1	14
1900:1 > R ≥ 1850:1	13
1850:1 > R ≥ 1800:1	12
1800:1 > R ≥ 1750:1	11
1750:1 > R ≥ 1700:1	10
1700:1 > R ≥ 1650:1	9
1650:1 > R ≥ 1600:1	8
1600:1 > R ≥ 1550:1	7
1550:1 > R ≥ 1500:1	6
1500:1 > R ≥ 1450:1	5
1450:1 > R ≥ 1400:1	4
1400:1 > R ≥ 1350:1	3
1350:1 > R ≥ 1300:1	2
1300:1 > R ≥ 1250:1	1
R < 1250:1	0

[1] For areas or population groups where the number of FTE primary care practitioners equals zero, the appropriate ratio R for entering this table is computed as follows: R = adjusted population + 1250.

TABLE 2.—IPCS PARTIAL SCORE FOR PERCENT OF POP. WITH INCOMES BELOW 200% OF POVERTY LEVEL (P)

Range	Partial score
P ≥ 65%	35
65% > P ≥ 60%	34
60% > P ≥ 57%	33
57% > P ≥ 55%	32

TABLE 2.—IPCS PARTIAL SCORE FOR PERCENT OF POP. WITH INCOMES BELOW 200% OF POVERTY LEVEL (P)—Continued

Range	Partial score
55% > P ≥ 52%	31
52% > P ≥ 50%	30
50% > P ≥ 49.5%	29
49.5% > P ≥ 49%	28
49% > P ≥ 48.5%	27
48.5% > P ≥ 48%	26
48% > P ≥ 47%	25
47% > P ≥ 46%	24
46% > P ≥ 45%	23
45% > P ≥ 44.5%	22
44.5% > P ≥ 44%	21
44% > P ≥ 43.5%	20
43.5% > P ≥ 43%	19
43% > P ≥ 42%	18
42% > P ≥ 41%	17
41% > P ≥ 40%	16
40% > P ≥ 39.5%	15
39.5% > P ≥ 39%	14
39% > P ≥ 38.5%	13
38.5% > P ≥ 38%	12
38% > P ≥ 37%	11
37% > P ≥ 36%	10
36% > P ≥ 35%	9
35% > P ≥ 34.5%	8
34.5% > P ≥ 34%	7
34% > P ≥ 33.5%	6
33.5% > P ≥ 33%	5
33% > P ≥ 32.5%	4
32.5% > P ≥ 32%	3
32% > P ≥ 31%	2
31% > P ≥ 30%	1
P < 30%	0

TABLE 3.—IPCS PARTIAL SCORE FOR INFANT MORTALITY RATE (IMR)—OR—LOW BIRTH WEIGHT RATE (LBWR)

Range	Partial score
Deaths/1000 Birth	
IMR ≥ 15.0	5
15.0 > IMR ≥ 12.0	4
12.0 > IMR ≥ 11.0	3
11.0 > IMR ≥ 10.0	2
10.0 > IMR ≥ 7.0	1
IMR < 7.0	0
LBW births as % of live births	
LBWR ≥ 9.0	5
9.0 > LBWR ≥ 8.0	4
8.0 > LBWR ≥ 7.5	3
7.5 > LBWR ≥ 7.0	2
7.0 > LBWR ≥ 5.0	1
LBWR < 5.0	0

The highest of the IMR and LBWR scores is to be used.

TABLE 4.—IPCS PARTIAL SCORE FOR PERCENT POP. RACIAL MINORITY (M)

Range	Partial score
M ≥ 50%	5
50% > M ≥ 40%	4
40% > M ≥ 30%	3
30% > M ≥ 25%	2
25% > M ≥ 20%	1
M < 20%	0

TABLE 5.—IPCS PARTIAL SCORE FOR PERCENT POP. OF HISPANIC ETHNICITY (H)

Range	Partial score
H ≥ 40%	5
40% > H ≥ 25%	4
25% > H ≥ 15%	3
15% > H ≥ 11%	2
11% > H ≥ 8.8%	1
H < 8.8%	0

TABLE 6.—IPCS PARTIAL SCORE FOR PERCENT OF POP. LINGUISTICALLY ISOLATED (LI)

Range	Partial score
LI ≥ 10.0	5
10.0 > LI ≥ 7.0	4
7.0 > LI ≥ 5.0	3
5.0 > LI ≥ 4.0	2
4.0 > LI ≥ 3.0	1
LI < 3.0	0

TABLE 7.—IPCS PARTIAL SCORE FOR POPULATION DENSITY (D)

[persons/sq. mi.]

Range	Partial score
D < 3	10
3 ≤ D < 7	9
7 ≤ D < 10	8
10 ≤ D < 15	7
15 ≤ D < 20	6
20 ≤ D < 25	5
25 ≤ D < 30	4
30 ≤ D < 35	3
35 ≤ D < 40	2
40 ≤ D < 50	1
D ≥ 50	0

F. Designation Threshold

A county or other rational service area will be designated if its composite IPCS score for all variables equals or exceeds the designation threshold determined by the Secretary. This rule proposes to set this threshold at a level which does not cause a major disruption at the time of implementation in the number of counties with some designation, reduces the total population in designated areas somewhat, and, by keeping the threshold constant, allows for future decreases in the number and population of designated areas as conditions improve. The threshold level proposed is 35, approximating the current median of all U.S. county IPCS scores—i.e., the score which would, based on 1996 data, separate the highest-scoring 50 percent of counties nationwide from the remaining counties.

Use of a designation threshold set at the median county value is consistent with past practice for designating MUA/Ps, and testing indicates it would result in a total U.S. underserved population of about 64 million, approximately 10 percent lower than the unduplicated population of currently-designated MUA/Ps and HPSAs, 72 million. The difference is primarily attributable to improvements since the time of the last major MUA/P update.

G. Degree of Shortage; Relationship of Designations to Interventions; Types of Shortage Lists

An important issue in the preparation of these regulations was whether those practitioners who are present in designated areas as a result of interventions based on the designations should be included in computations when updating the designations. One school of thought emphasizes concerns about potential ''yo-yo'' effects, in which an area is designated, a CHC or NHSC intervention occurs as a result of the designation, those practitioners are then counted resulting in a loss of the designation, the intervention is removed, the area again becomes eligible for designation, and the cycle repeats itself. Another school of thought reflects concerns about carrying on the list of designations areas whose needs have been met through CHC and/or NHSC interventions. This can lead to such eventualities as waiver of J–1 visa physicians' return-home requirements in return for service in a designated area or certification of a new Rural Health Clinic in a designated area, although that area's needs are already being met by CHC, NHSC, and/or previously waived J–1 visa providers.

To deal with these concerns it is proposed to publish a two-tiered list of designations. Each designated MUP or HPSA will be identified as having either a first or second degree of shortage. First degree of shortage designations will be those which continue to be designatable even when resources placed in the area through CHC and/or NHSC interventions are counted; second degree of shortage designations will be those which are designatable only when

resources placed through CHC and/or NHSC interventions are excluded. Both types of designations would be eligible for CHC and NHSC resources, but other programs would be encouraged to concentrate their resources on first degree of shortage areas. For primary care HPSAs, these two degrees of shortage would replace the previously defined degree of shortage groups.

Some have suggested that the second group should also include areas that would remain designatable if physicians whose J–1 visa return-home requirements have been waived were not counted. This has not been done, since J–1 waiver physicians are not equivalent to those placed or supported by HRSA: they are not required to serve patients regardless of ability to pay, and for many, there is no monitoring system in place. However, public comment on this issue is invited.

H. Data Definitions

The proposed rules spell out the data needed to determine the score for each of the IPCS variables for an area. *See*, proposed § 5.103(c).

1. Population and Practitioner Counts

The population and practitioner count variables are to be calculated in essentially the same way as now provided for HPSAs under the existing Part 5. Like the present Part 5, the proposed rules anticipate adjustment of population by age/sex; however, rather than including these adjustments in the regulation as before, the proposed rules provide that the table for making such adjustments will be published by notice from time to time in the **Federal Register**, so that updated data on age/sex utilization rates can be used as it becomes available. The age-adjustment table proposed to be used initially is shown as Table 8 below; it will be republished (with any changes made) in the preamble to the final rules.

TABLE 8.—AGE ADJUSTMENT OF POPULATION

[Based on 1992 Health Interview Survey data]

Number of physician contacts =
malepop < 1 yr * 5.9 + femalepop < 1 yr * 5.9
malepop 1–4 * 5.9 + femalepop 1–4 * 5.9
malepop 5–17 * 3.0 + femalepop 5–17 * 3.0
malepop 18–44 * 3.5 + femalepop 18–44 * 5.4
malepop 45–64 * 3.5 + femalepop 45–64 * 5.4
malepop 65–74 * 5.5 + femalepop 65–74 * 7.1
malepop > 74 * 11.1 + femalepop > 74 * 11.1

TABLE 8.—AGE ADJUSTMENT OF POPULATION—Continued

[Based on 1992 Health Interview Survey data]

Adjusted population = Number of physician contacts/5.3 (here, 5.3 is the national average number of physician contacts per year)
Population-to-primary care practitioner ratio (R, for Table 1) = Adjusted population / number of FTE primary care practitioners

The practitioner count requirements are similar to those in the current Part 5, although they are reorganized for clarity and some important changes have been made. Foreign medical graduates who are citizens or permanent residents or are on J or H visas are to be fully counted unless they have restricted licenses. Practitioners providing medical services under a federal service obligation or as an employee of a federal grantee are counted for first degree of shortage designations but are excluded for second degree of shortage designations; see, discussion above. It should be noted that, although the proposed rules would allow NHSC and grant-hired practitioners to be excluded from the practitioner count for second degree of shortage designation purposes, these practitioners are included by the Department in making decisions as to how to allocate additional NHSC assignees and health center grant resources. Also, the current HPSA provision allowing the discounting of physicians with restricted practices on a case-by-case basis is proposed to be eliminated; experience has shown that this provision is not useful as a practical matter.

2. Non-Physician Primary Care Practitioners

Significant interest has been expressed in including nurse practitioners (NPs), physician assistants (PAs), and certified nurse-midwives (CNMs) in counts of primary care practitioners for designation purposes, particularly where they practice as effectively independent providers of care and particularly given the role of these practitioners in the Rural Health Clinic program. However, controversy exists as to whether the available data will permit them to be counted accurately and how they should be weighted relative to primary care physicians. There are several related issues involved. First, significant differences exist among the States as to the modes of practice allowed for these practitioners, including the extent to which they are allowed to work independently, and what medical tasks they are legally allowed to perform. This means that it has been difficult or impossible to incorporate their contributions in a consistent way across all States. Second, there are significant limitations to the national databases currently available on these practitioners as compared with the national data available for M.D.s and D.O.s. While some States have accurate data on the number, location and practice characteristics of these practitioners, others do not; however, if incorporation of these practitioners were made dependent on use of State data, those States willing and able to provide the data would effectively be penalized relative to those States which could not or did not provide it, since inclusion of more practitioners decreases the likelihood of designation. Finally, for those States in which nonphysician practitioners can legally provide many of the same services as primary care physicians, exactly how they complement physicians, and therefore how they should be weighted relative to physicians, is not well-defined.

The proposed rules below include these nonphysician practitioners by requiring that all of them be counted as equivalent to 0.5 FTE. Some have suggested that different equivalencies be used in different States, depending on the degree of independence allowed by the different State laws, or that the equivalency be different in areas without physicians as compared to areas where physician and nonphysician providers are teamed together. This has not been done, both to avoid further complexity and to avoid penalizing those States where nonphysician providers are effectively used; however, public comment on the equivalency issue is solicited. The rules provide that the proposed relative weight of 0.5 may be revised upward by **Federal Register** notice, if the Secretary determines that national practice data support a higher weight. Please note that the 0.5 relative weighting is proposed only for purposes of estimating primary care practitioner counts for shortage area designation purposes; it should not be construed as representing the relative cost of these providers' services compared to physician services. However, its use is consistent with productivity standards currently used by HCFA for RHCs and FQHCs, which are 2100 visits per year for NPs and PAs as compared with 4200 visits per year for physicians.

A national database for these practitioners will be constructed from those data available from national sources on NPs, PAs and CNMs. Data from this national database will be used

as a first approximation, but States will be encouraged to provide more accurate State data, if available. In this way, States with better data should not be penalized.

Methods for computing the remaining IPCS variables are also included in Subpart B below. The proposed rules specify the type of data to be used, so as to achieve, insofar as possible, uniformity and comparability of designations. It should be noted that HRSA plans to initially compute the IPCS scores for county-equivalents and existing HPSAs and MUPs from national data, providing them to the States and other interested parties for review.

I. Population Group Designations

The inclusion in the proposed IPCS of a number of variables representing the access barriers and/or negative health status experienced by certain at-risk populations, and its use in geographic area designations, is likely to decrease the need for specific population group designations, which are more difficult procedurally for both applicants and reviewers to deal with. However, the proposed rules continue to provide for population group designations within geographic areas which, taken as a whole, do not meet the criteria for designation. *See*, proposed § 5.104(a). These generally build on the criteria for designating geographic areas, with several key differences. First, the proposed rules recognize certain additional types of areas as rational areas for the delivery of primary care services for specific population groups (*e.g.*, reservations for Native American population groups). *See*, proposed § 5.104(a). Second, there are particular minimum population size requirements applicable to the designation of low income population groups. *See*, proposed § 5.104(b). Finally, each variable in the IPCS is to be calculated based on data for the population group for which designation is sought, as nearly as possible, rather than on the population of the area as a whole. *See*, proposed § 5.104(a). However, where the definition of a population group requested for designation essentially coincides with one of the variables used in the index (*e.g.*, a low-income population group, defined as the population with incomes below 200 percent of the poverty level), the total IPCS score could be distorted by automatically assigning the maximum possible score to one variable. To avoid this, it is proposed that the variable involved not be considered in scoring the requested population group; instead, its weight would be distributed among the other variables.

J. Designation of Primary Care HPSAs

1. Criteria and Procedures

The criteria and procedures for designating primary care HPSAs are set out in proposed Subpart C. They build upon and are integrally related to the criteria and procedures for designating MUPs set out in Subpart B; to be considered for primary care HPSA designation, areas and population groups must first achieve the same minimum IPCS score used in MUP designation. However, to clearly identify those underserved areas and population groups with practitioner shortages, consistent with past HPSA practice the proposed new primary care HPSA designation criteria also require a specific minimum population-to-practitioner ratio, not required for designation of an MUP. *See*, proposed §§ 5.202(c) and 5.203(b)(4). Thus, under the rules proposed below, the geographic area and population group primary care HPSAs will be a subset of the MUPs.

2. HPSA Designation Threshold

The threshold population-to-primary care practitioner ratio for primary care HPSA designation of this subset (within the group of all areas above the threshold for MUA/P designation) is proposed to be set at 3,000:1. In effect, this maintains current practice with regard to the HPSA threshold. A threshold of 3,000:1 is currently used for HPSA designation of population groups and of ''high need'' geographic areas, which are identified based on criteria including proportion of the population with low incomes, infant mortality and fertility rates, and indicators of insufficient primary care capacity. Under the proposed regulation, all areas considered for HPSA designation will first have been identified as ''high need'' by achieving an IPCS score of 35 or more, using similar criteria which include proportion of the population that is low income or minority, infant mortality or low birthweight rates and low population density.

Public comments are specifically requested on whether the proposed 3,000:1 threshold or some alternative threshold would best serve to identify those areas and population groups with shortages of primary care health professionals.

As with the other thresholds mentioned above, there are no plans to change this level once set; therefore, the number of designated areas should decrease as the national provider distribution improves. Note also that this level is not being identified as an adequacy level but as a shortage level.

3. HPSA Designation of ''Special Medically Underserved Populations.''

The proposed provisions for population group HPSAs allow for HPSA designation of the ''special'' populations defined by section 330 of the PHS Act (as recently amended by Pub. L. 104–299), which are not required to be designated as MUPs. For example, the provisions for designation of migrant/seasonal farmworker population groups as primary care HPSAs allow the use of agricultural areas as the service area unit of analysis. Although no particular special requirements are specified for designation of homeless populations as primary care HPSAs, they can be considered for designation either in similar fashion to or in combination with poverty or low-income populations, i.e. by utilizing the ratio of the total number of persons in the population group to the total FTE primary care practitioners serving them, together with data for the other IPCS variables representing as closely as possible their values for the population group being considered. Similarly, a project serving a public housing project can be considered for primary care HPSA designation by either assessing its geographic area for a geographic area HPSA designation or assessing its low income population for a population group HPSA designation.

K. Designation of Facility Primary Care HPSAs

1. Correctional Facility HPSAs

The criteria and methodology for designating correctional facilities as primary care HPSAs are essentially unchanged from the current Part 5. They have no MUP counterpart, since the statute does not provide for designation of facility MUPs.

2. Other Public or Private Non-Profit Facilities as HPSAs

These criteria are proposed to be simplified. Under the proposed rules, such a facility will be considered for primary care HPSA designation only if it is serving one or more designated geographic or population group HPSAs but is not located within a designated geographic HPSA or within the area of residence of a designated population group HPSA. To be designated, the facility would then need to demonstrate from patient origin data that a majority of its services are being provided to residents of designated areas or to designated population groups; travel

time would not be a consideration. Second, as before, the facility would need to show that it has insufficient capacity to meet the primary care needs of the designated areas or population groups served. However, instead of showing that two of four criteria for insufficient capacity are met, as in the past, only one criterion would be used: more than 6,000 outpatient visits per year per FTE primary care physician on the staff of the facility. The two previously-used waiting time criteria were difficult to document but almost always automatically met, while the indicator ''excessive use of emergency rooms for non-emergent care'' was not well-defined.

L. Dental and Mental Health HPSAs

The proposed procedures in Subpart A would apply to the designation of dental and mental health HPSAs as well. The criteria currently in use for these types of HPSA designations are contained in Appendices B and C of the current part 5. Appendix B (dental HPSAs) would be redesignated as Appendix A, and Appendix C (mental health HPSAs) would be redesignated as Appendix B, but no other changes to the appendices are proposed at this time.

M. Podiatry, Vision Care, Pharmacy and Veterinary Care HPSAs

The HPSA regulations now in use at part 5 also contain, in appendices D, E, F, and G, criteria for the designation of vision care, podiatric, pharmacy, and veterinary care HPSAs. These were originally developed for use in student loan repayment programs for individuals in those health professions which are no longer authorized or funded. Consequently, the proposed rule would abolish these types of designation by revoking these appendices.

N. Transition provisions

The proposed rules also include transition provisions. *See,* proposed § 5.5. These would allow existing designations of MUA/Ps and primary care HPSAs which were made or updated under the previous criteria within the past three years to remain in effect while older designations are updated under the new criteria, unless the State itself indicates that it would like to revise them earlier. The intent is to review all designations under the same schedule used under the previous HPSA procedures; i.e., each year those designations which are more than three years old must be updated, while review of more recent designations is optional. The proposed rules also set out a procedure for resolving situations where MUA/P and primary care HPSA boundaries overlap.

O. HPSAs of Greatest Shortage Determinations

Section 333A of the Public Health Service Act provides that priority in the assignment of NHSC members be given to entities that, in addition to meeting certain other requirements, serve HPSAs ''of greatest shortage,'' and lists the factors to be used in determining which HPSAs qualify as such. At present, the ''HPSA of greatest shortage'' score is calculated under criteria published in the **Federal Register**, 56 FR 41363–41365, Aug. 20, 1991, and uses population-to-primary care physician ratio, percent of population below the poverty level, infant mortality rate or low birthweight rate, and travel time or distance to care.

Although the regulations proposed below were developed to implement requirements of sections 330 and 332 of the Act and thus do not directly address the additional ''HPSA of greatest shortage'' determinations required by section 333A, the agency's intent is to use the new IPCS variables in making those determinations for geographic and population group primary care HPSAs in the future. Section 333A(b) requires that certain exclusive factors be considered in determining HPSAs of greatest shortage: the ratio of available health professionals to the population, the rate of low birthweight births, the infant mortality rate, the ''rate of poverty,'' and ''access to primary health services, taking into account the distance to such services.'' In the agency's view, these required factors are captured by the proposed IPCS. ''Rate of poverty'' in the statute is represented by the percent of the population with incomes below 200 percent of the poverty line, and ''access to primary health services, taking into account the distance to such services' in the statute is represented by the combination of four access variables—percent linguistically isolated, percent minority, percent Hispanic ethnicity, and low population density. All these factors represent access barriers; furthermore, the low population density variable in particular represents and is correlated with excessive travel distance to care. Therefore, the agency intends to use the IPCS variables in determining relative shortage for the purposes of making HPSA of greatest shortage determinations under section 333A for primary care HPSAs. The precise method for doing so will be published following publication of the final rules.

P. Impact Analysis

The agency has conducted an analysis of the impact of the new designation methodology on counties, existing geographic HPSAs, and existing MUAs. It is important to note that the agency's impact analysis was done using national data for all variables in the IPCS; therefore, it could not reflect the use of State and local data which is normally obtained during the back-and-forth activity of the actual designation process. Accordingly, the results of the impact analysis for particular areas are not definitive; in fact, the scoring based on national data would represent only the first step in an exchange with State and local partners in the actual designation process. However, the aggregate results of this impact analysis (in terms of total numbers of areas designated or dedesignated nationally) represent a conservative approximation to the likely results of the real designation process—conservative since more corrective feedback is likely to be received from areas which the national data would tend to dedesignate than from areas which it would newly designate or continue in designation.

The U.S. has 3,141 counties (including D.C., but excluding Puerto Rico and other non-States). Under the existing designation system, 703 counties have been wholly-designated as both MUA and HPSA; 700 others as whole-county MUAs; and 202 others as whole-county HPSAs, for a total of 1,605 counties wholly-designated. In addition, 1,063 other counties contain either a part-county MUA designation, a part-county geographic HPSA designation or both. The 35 unduplicated population of all designated HPSAs and MUAs is 72 million.

The agency's impact analysis indicates that, under the new system, approximately 1,600 counties would be wholly designated, and about 750 other counties partially designated, with a total designated population of 64 million. Thus, there would be a net decrease of about 300 counties with some designation, and 8 million fewer persons living in designated areas. The percentage of counties containing some type of designation would decrease from 85 percent to 76 percent.

The impact analysis also indicates that nationally 23 percent of existing MUAs (counting each designated whole county and each separate subcounty area as one MUA) would lose their designation, while only nine percent of existing HPSAs would lose designation. Most of the anticipated net decrease in counties wholly or partially designated

corresponds to the anticipated old MUA dedesignations, which in turn relates to the fact that many MUAs have not been updated for 15 years and underservice-relevant conditions in some of these have improved.

Of the 3,141 U.S. counties, 2,134 are rural, while 1,007 are urban; 447 have large minority (non-white) populations, while 260 have large Hispanic populations. As shown in Table 9, the impact analysis indicates that approximately 78 percent of the rural counties, 65 percent of the urban counties, 92 percent of the high-minority counties, and 88 percent of the high-Hispanic counties would continue to be at least partially designated. The table shows other relevant statistics for these groups of counties; for example, two percent of both rural and urban counties would gain designation, while 11 percent of rural counties and 12 percent of urban counties would lose their designation. Another nine percent of rural counties and 21 percent of urban counties which previously contained no designations would remain undesignated.

TABLE 9.—IMPACT BY TYPE OF COUNTY

[in percents]

	Total (3141)	Rural (2134)	Urban (1007)	High Minority (447)	High Hispanic (260)
Remain Designated	74	78	65	92	88
Gain Designation	2	2	2	1	6
Lose Designation	11	11	12	5	3
Remain Undesignated	13	9	21	2	3

It should be emphasized that these numbers approximate the national overall impact, based on the use of national data only. It is impossible to predict the actual final impact on specific communities and States because of the iterative process built into the system. As described in section IV.A above, State and local officials will have the opportunity to examine the data used to develop these first approximations during the actual designation process, and to correct inaccurate provider and other data. In addition, they will have the opportunity to reconfigure service areas so as to more closely identify the boundaries of areas where shortages now exist, which may have changed since some of these service areas were constructed (particularly the MUAs). We believe this is a major strength of the proposal, since States and communities know best their service areas and provider supplies. At the same time, it makes it difficult to predict precisely the impact of the new method at the local level, since the data used will be altered by State and local input.

The impact of the proposal on projects and providers in existing MUPs and HPSAs has also been considered by HRSA. Estimates indicate that most of the former MUA/Ps that would be dedesignated are not ones that are currently served by CHCs. This is because the CHC grant program employs further tests of need in the grant application process; current grantees are generally serving areas and population groups which would remain designatable under the new process. In those few cases where a grantee is serving an area which would be dedesignated under the new process, it is anticipated that an appropriate population group will be designatable under the new process.

Although it is estimated that the total number of HPSAs will not change appreciably, some particular HPSAs will lose designation either because their IPCS score does not reach 35 or because the counting of NPs, PAs and CNMs results in their population-to-practitioner ratio falling below 3,000:1. The effect on existing NHSC sites will be muted because NHSC assignees serving HPSAs that are dedesignated after they arrive are allowed to complete their tours of duty; however, such sites would not be able to ''backfill'' such assignees once they leave. HRSA will examine this effect in more detail during the comment period.

No national database on location of physicians who have obtained J–1 visa waivers currently exists, so a detailed analysis of the potential impact on that program is not immediately available. However, once such physicians obtain waivers, they can complete their obligation in the area for which they were waived even if the area loses its designation.

HRSA and HCFA will collaboratively analyze the combined impact of the proposed new criteria and relevant provisions of the Balanced Budget Act of 1997 on Rural Health Clinics during the comment period. (See also section V below.)

Public comments on the anticipated effects of the proposal on these various programs are specifically solicited.

Q. Technical and Conforming Amendments

Minor technical and conforming amendments to the CHC regulations at 42 CFR Part 51c are proposed. These amendments refer to Part 5 for definition of designated medically underserved populations, and for factors to be considered in assessing the needs of populations to be served by grantee projects. In addition, they amend the definitions section of the CHC regulations to include a definition of ''special medically underserved populations'', which refers to language in the statute as amended by Pub. L. 104–299. This definition states that such populations are not required to be designated pursuant to part 5; this is consistent with their treatment under prior legislation. Finally, the amendments add a provision explicitly stating that a grantee which was serving a designated MUA/P at the beginning of a project period will be assumed to be serving an MUP for the duration of the project period, even if that particular designation is withdrawn during the project period.

V. Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, budgetary impact, or novel legal or policy issues, require special analysis. The Department has determined that this rule will not have an annual effect on the economy of $100 million or more and does not otherwise meet the definition of a ''significant'' rule under Executive Order 12866.

The Regulatory Flexibility Act requires that agencies analyze regulatory proposals to determine whether they create a significant impact on a substantial number of small entities. ''Small entity'' is defined in the Regulatory Flexibility Act as ''having the same meaning as the terms 'small business,' 'small organization,' and 'small governmental jurisdiction'.''

''Small organizations'' are defined in the Regulatory Flexibility Act as not-for-profit enterprises which are independently owned and operated and not dominant in their field. The small organizations relevant to this regulation would be the Community Health Center grantees. While we cannot predict actual impact at the community level, for reasons discussed in section IV.P above, the similarity between the need component of the funding criteria for CHCs and the elements of the new designation methodology suggest that very few CHC service areas would lose designation. In addition, because of the provision that projects whose designation is lost will nevertheless be considered as serving an MUA/P for the duration of the project period, any negatively affected CHC will have time to submit an alternate type of designation request (such as population group or Governor's) or to make the transition to unfunded status.

With regard to small businesses, while the designation process may affect some small profit-making health care-related businesses, it is unlikely that it could have a significant economic impact (five percent or more of total revenues) on three percent or more of all such small businesses. Physician practices can obtain a 10 percent Medicare Incentive Payment bonus for those services delivered in HPSAs; however, this would be unlikely to amount to five percent of their total revenues.

Rural Health Clinics already certified based on an MUA or HPSA designation have not been adversely affected by dedesignations in the past since the legislative authority for them has had a grandfather clause; once certified, the RHC certification could not be withdrawn based on loss of designation. However, recent legislation (the Balanced Budget Act of 1997) has changed that; effective January 1, 1999, RHCs in areas that have lost designation may lose their RHC certification. On the other hand, the same legislation also provides that RHC certifications can be retained if it is determined that the RHC is essential to the delivery of primary care services in its area. Therefore, dedesignation will not automatically decertify an RHC.

''Small governmental jurisdictions'' are defined by the Regulatory Flexibility Act to include governments of those cities, counties, towns, townships, villages, or districts with a population of less than 50,000. Of the 3,141 counties in the U.S., 2,134 are rural and 1,007 are urban. Our impact analysis indicated that 11 percent of all counties could lose a designation, including 12 percent of urban counties and 11 percent of rural counties. This would suggest that a substantial number of small government jurisdictions could be affected. However, it is unlikely that the economic impact on these jurisdictions would be significant, i.e. that they would lose more than 5 percent of their federal funding, as discussed in more detail below.

The impact on particular jurisdictions of loss of designation can take one or more of three forms: loss of grant funding for primary care services, loss of a source of clinicians to provide primary care services, or loss of a more favorable level of Medicaid and/or Medicare reimbursement. (941 counties have CHC and/or other BPHC funding, and/or have NHSC resources.) The first of these types of impact would occur only in the case of a Community Health Center (CHC) which, at the beginning of a new project period, had been unable to identify a Medically Underserved Population in the area it proposed to serve. Typically, grant funding forms 30 percent of the income to a CHC; it is possible that such a health center would be able to continue in operation without this revenue. Moreover, dedesignation would indicate that not only provider availability but also the income of the area's population had increased. As a result, the percentage impact on the economy of the area involved would likely be relatively low.

The second of these types of impact corresponds to an area which, due to loss of its HPSA designation, is no longer eligible for NHSC clinicians, once the tour of duty of any NHSC personnel already placed there is completed. Given that the area will have recently been dedesignated, there must have been an increase in the number of providers in the area and/or a decreased population and/or improved demographics, so that loss of NHSC clinicians will be unlikely to have a major economic effect on the area.

The third type of impact applies in the case of FQHCs and/or RHCs which lose eligibility for cost-based reimbursement, and private physicians in former geographic HPSAs which lose the 10 percent Medicare bonus. None of these entities would actually cease receiving Medicare or Medicaid reimbursement; they simply would receive a lower level of reimbursement. In the latter case, it is a loss of 10 percent, but it is unlikely that it would amount to 5 percent of the physician's total revenue. In the FQHC/RHC case, there could be a 20–30 percent decrease in reimbursement to the provider in question, but again this would not necessarily be a major economic loss to the county or other jurisdiction as a whole.

It should also be noted that, to the extent that the proposed regulation ultimately results in some areas losing designation while others gain designation, and some areas therefore losing program benefits which go to designated areas while others gain such benefits, the benefits available in a particular fiscal year will have been better targeted to the neediest areas, because the criteria will have been improved and will have been applied to more current data.

The Department nevertheless requests comments on whether there are any aspects of this proposed rule which can be improved to make the designation process proposed more effective, more equitable, or less costly.

VI. Information Collection Requirements Under Paperwork Reduction Act of 1995

Sections 5.3 and 5.5 of the proposed rule contain information collection requirements as defined under the Paperwork Reduction Act of 1995 and implementing regulations. As required, the Department of Health and Human Services is submitting a request for approval of these information collection provisions to OMB for review. The collection provisions are summarized below, together with a brief description of the need for the information and its proposed use, and an estimate of the burden that will result.

Title: Information for use in designation of MUA/Ps and HPSAs.

Summary of Collection: These regulations revise existing criteria and processes used for designation of Medically Underserved Areas/Populations (MUA/P) and Health Professional Shortage Areas (HPSA). As discussed above, service to an area or population group with such a designation is one requirement for entities to obtain Federal assistance from one or more of a number of programs, including the National Health Service Corps and the Community and Migrant Health Center Program.

In order to initially obtain such a designation, a community, individual or State agency or organization must request the designation in writing.

Requests must include data showing that the area, population group or facility meets the criteria for designation, although these data need not necessarily be collected by the applicant, but may be based on data obtained from a State entity or data available from the Secretary. If the request is made by a community or individual, the State entities identified in the regulation are given an opportunity to review it, which implies maintenance by these State entities of some recordkeeping on designations previously made or commented upon by the State. These requirements apply under both current rules and the proposed rule.

Once a designation has been made, it must be updated periodically (at least once every three years) or it will be removed from the list of designations. Although in the past this requirement applied only to HPSA designations, the proposed rule would extend the regular periodic update requirement to MUA/P designations, in response to concerns raised by the GAO and Congressional committees, among others. The update process involves the Secretary each year informing State (and/or community) entities as to which of their designations require updates, and providing these entities with the most current data available to the Secretary for the areas, population groups and facilities involved, with respect to the data elements used in designation. The State entities are then asked to verify whether the designations are still valid, using the data furnished by the Secretary together with any additional, more current or more accurate data available to the State entity (in consultation with the communities involved as necessary). In the past, this has generally meant that the State (or community) entities have needed to verify primary care physician counts in the areas involved, especially for subcounty areas, since only county-level physician data have been available from national sources; national population data have been largely limited to decennial census data and official Census Bureau intercensus county-level updates, so that State population estimates were sometimes necessary; other relevant data have generally been available from national sources. Under the proposed new process, the data furnished by the Secretary will include provider data and population estimates for subcounty areas as well as counties, in an easily accessible database, and these data from national sources may be used without further collection and analysis if acceptable to the State and community involved. This should reduce the burden on States and communities, except where the Secretary's data suggest withdrawal of a designation, in which cases the State or community will still need to obtain local data to support continued designation. In such cases the inclusion of nonphysician providers under the proposed new rules will increase the burden on those States or communities which wish to challenge provider data furnished by the Secretary.

Need for the information. The information involved is needed in order to determine whether the areas, populations and facilities involved satisfy the criteria for designation, and are therefore eligible for the programs for which these designations are a prerequisite. While furnishing such information is purely voluntary, failure to provide it can prevent some needy communities from becoming eligible for certain programs. The Secretary will make a proactive effort to identify such communities using national data, but feedback from State entities and others with appropriate data is vital to ensuring that the designation/need determination process is accurate and current.

Likely respondents. The entities that generally submit this information to DHHS are the State Primary Care Offices (within State Health Departments) or the State Primary Care Associations (non-profit associations of health centers and other organizations rendering primary care). The total burden placed on these entities will be determined by the number of applications they submit, review or update each year, and, therefore, will vary from State to State. Updates of all designated areas will not be required immediately when the new method is initiated; State entities will be given the opportunity to spread out updates of previously designated areas over a 3-year period following implementation of the proposed regulation.

Burden estimate. The overall public reporting and record keeping burden for this collection of information is estimated to be reduced under the new method. This is primarily because, while the new method will require some data collection from the same sources utilized in the previous MUA/P and HPSA designation procedures, and will also require MUA/Ps to undergo an updating process which was not previously required, it eliminates the need to submit separate requests for the two types of designation and allows the use of national data where acceptable to the State and community. We also plan to allow electronic submission of data.

The burden for compiling a request for new designation (including supporting data) or for update of an existing designation, under the existing system, was estimated by consulting with State entities who prepare such requests/updates about the amount of time required for the various aspects of request preparation, varying these estimates for requests with several different levels of difficulty, and then factoring in the approximate frequency of that type of request. Similar estimates for the new system were then made, revising the contributing factors to account for those aspects that would require more or less effort under the new approach. These estimates also assume that some applications are State-prepared, while others involve both an applicant and a State consultation or review; the estimates include both parties' time where two parties are involved. Under the new method States and communities may use data provided by the Secretary, as mentioned above; however, some may wish to provide their own data for primary care physicians, while others may wish to provide data for both primary care physicians and for the nonphysician primary medical care providers which are included in the new system (Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives). Use of State and/or community data will be more likely in those cases where the national data suggest dedesignation; the estimates below include consideration of the extent to which such local data collection will likely be necessary.

The resulting burden estimates are as follows:

Type of request	Average time to compile (in hours)
Current system:	
MUA/P application—urban area/pop group	11.5
MUA/P application—rural area/pop group	4.7
HPSA application—urban area/pop group	44.9
HPSA application—rural area/pop group	14.9
HPSA facility application	2.6
Average time per application—all types	24.5
New system:	
MUA/P/HPSA application—urban area/pop group	27.4
MUA/P/HPSA application—rural area/pop group	10.9
HPSA facility application	2.6
Average time per application—all types	15.4

Thus the reporting burden per application is reduced by 9.1 hours, or 37 percent.

Purpose of comments: Comments by the public on this proposed collection of information will be considered in (1) 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 a practical use; (2) 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; (3) enhancing the quality, usefulness, and clarity of the information to be collected; and (4) minimizing the burden of 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.

Address for comments: Any public comments specifically regarding these information collection requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for DHHS, and to Susan Queen, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Comments on the information collection requirements will be accepted by OMB throughout the 60-day public comment period allowed for the proposed rules, but will be most useful to OMB if received during the first 30 days, since OMB must either approve the collection requirement or file public comments on it by the end of the 60-day period.

List of Subjects

42 CFR Part 5

Health facilities, Health professions, Health statistics, Manpower, Mental health programs, Reporting and recordkeeping requirements.

42 CFR Part 51c

Grant programs—health, Health care, Health facilities, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

Claude Earl Fox,

Acting Administrator, Health Resources and Services Administration.

Approved: April 6, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set out in the preamble, parts 5 and 51c of title 42, Code of Federal Regulations, are proposed to be amended as follows:

PART 5—DESIGNATION OF MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONAL SHORTAGE AREAS

1. The heading for part 5 is revised as set forth above.

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

Authority: 42 U.S.C. 216, 254c, 254e.

3. The table of contents for part 5 is revised to read as follows:

Subpart A—General Procedures for Designation of Medically Underserved Populations and Health Professional Shortage Areas

Sec.
5.1 Purpose.
5.2 Definitions.
5.3 Procedures for designation and withdrawal of designation.
5.4 Notice and publication of designation and withdrawals.
5.5 Transition provisions.

Subpart B—Criteria and Methodology for Designation of Medically Underserved Populations

5.101 Applicability.
5.102 Criteria for designation of populations of geographic areas as MUPs.
5.103 Methodology for designation of geographic areas as MUPs.
5.104 Criteria for designation of population groups as MUPs.
5.105 Requirements for designation of MUPs recommended by State and local officials.

Subpart C—Criteria and Methodology for Designation of Primary Care Health Professional Shortage Areas

5.201 Applicability.
5.202 Criteria for designation of geographic areas as primary care HPSAs.
5.203 Criteria for designation of population groups as primary care HPSAs.
5.204 Criteria for designation of medical and other public facilities as primary care HPSAs.

Appendix A to Part 5—Criteria for Designation of Areas Having Shortages of Dental Professionals

Appendix B to Part 5—Criteria for Designation of Areas Having Shortages of Mental Health Professionals

4. The existing text is designated as subpart A; a subpart heading is added; and newly designated subpart A is revised to read as follows:

Subpart A—General Procedures for Designation of Medically Underserved Populations and Health Professional Shortage Areas

§ 5.1 Purpose.

This part establishes criteria and procedures for the designation and withdrawal of designations of medically underserved populations pursuant to section 330 of the Public Health Service Act and of health professional shortage areas pursuant to section 332 of the Act.

§ 5.2 Definitions.

As used in this part:

(a) *Act* means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

(b) *FTE* means full-time equivalent.

(c) *Governor* means the Governor or other chief executive officer of a State.

(d) *Health professional shortage area* (or ''HPSA'') means any of the following which the Secretary determines in accordance with this part has a shortage of health professionals:

(1) An urban or rural area;

(2) A population group; or

(3) A public or private nonprofit medical facility or other public facility.

(e) *Medical facility* means a facility for the delivery of health services and includes:

(1) A health center (such as a community health center, migrant health center, health center for the homeless, or a health center for residents of public housing), public health center, facility operated by a city or county health department, outpatient medical facility, or a community mental health center;

(2) A hospital, State mental hospital, facility for long-term care, or rehabilitation facility;

(3) An Indian Health Service facility, or a health program or facility operated under the Indian Self-Determination Act by a federally recognized tribe or tribal organization;

(4) A facility for delivery of health services to inmates in a U.S. penal or correctional institution (under section 323 of the Act) or a State correctional institution;

(5) Any medical facility used in connection with the delivery of health

services under section 320, 321, 322, 324, 325, or 326 of the Act;

(6) Any other federal medical facility.

(f) *Medically underserved population* or *MUP* means:

(1) The population of an urban or rural area designated by the Secretary in accordance with this part as having a shortage of personal health services (also called a medically underserved area or ''MUA''); or

(2) A population group designated by the Secretary in accordance with this part as having a shortage of such services.

(g) *Metropolitan statistical area* means an area which has been designated by the Office of Management and Budget as a metropolitan statistical area. All other areas are ''non-metropolitan areas.''

(h) *Poverty level* means the current poverty line issued by the Secretary pursuant to 42 U.S.C. 9902.

(i) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department to whom the authority involved has been delegated.

(j) *State* includes, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, Palau, the U.S. Outlying Islands (Midway, Wake, *et al.*), the Marshall Islands, and the Federated States of Micronesia.

§ 5.3 Procedures for designation and withdrawal of designation.

(a)(1) Any agency or individual may request the Secretary to designate (or withdraw the designation of) a particular area, population group, or facility as an MUP or HPSA, as applicable. The Secretary will forward a copy of each such request to the agencies, officials, and entities listed below, with a request that they review the request and offer their recommendations, if any, to the Secretary within 30 days:

(i) The Governor;

(ii) The appropriate State health agency or agencies;

(iii) Appropriate county or other local health officials within the State;

(iv) The State primary care association or other State organization, if any, that represents a majority of community health centers in the State;

(v) State medical, dental, or other appropriate health professional societies; and

(vi) Where a public facility (including a federal medical facility) is proposed for designation or withdrawal of designation, the chief administrative officer of such facility.

(2) The Secretary may propose the designation, or withdrawal of the designation, of an area, population group, or facility under this part. Where such a designation or withdrawal is proposed, the Secretary will notify the agencies, officials, and entities described in paragraph (a) of this section and request comment as therein provided.

(b) Using data available to the Secretary from national and State sources and based upon the applicable criteria in the remaining subparts and appendices to this part, the Secretary will annually prepare listings (by State) of currently designated MUPs and HPSAs, relevant data available to the Secretary, and an identification of those MUPs and HPSAs within the State whose designations, because of age or other factors, are required to be updated. Such listings shall distinguish between first and second degree-of-shortage MUPs and HPSAs, as determined in accordance with § 5.103. The Secretary will provide the listing for the State and a description of any information needed to the appropriate entities described in paragraphs (a)(1) (ii) and (iv) of this section in each State and request review and comment within 90 days.

(c) The Secretary will furnish, upon request, an information copy of a request made pursuant to paragraph (a) of this section or the materials provided pursuant to paragraph (b) of this section to other interested persons and groups for their review and comment. Comments or recommendations may be provided to the Secretary, the Governor, the appropriate State agency(ies), or any other contact designated by the Governor.

(d) In the case of a proposed withdrawal of a designation, the Secretary shall afford, to the extent practicable, other interested persons and groups in the affected area an opportunity to submit data and information concerning the proposed action, including entities directly dependent on the designation and primary care associations and State health professional associations.

(e)(1) The Secretary may request such further data and information deemed necessary to evaluate particular proposals or requests for designation or withdrawal of designation under paragraph (a) of this section. Any data so requested must be submitted within 30 days of the request therefor, unless a longer period is approved by the Secretary.

(2) If the information requested under paragraph (b) or (e)(1) of this section is not provided, the Secretary will evaluate the proposed designation (including continuation of designation) or withdrawal of designation of the areas, population groups, and/or facilities for which the information was requested on the basis of the information available to the Secretary.

(f) After review and consideration of the available information and the comments and recommendations submitted, the Secretary will designate those areas, population groups, and facilities as MUPs and/or HPSAs, as applicable, which have been determined to meet the applicable criteria under this part and will withdraw the designation of those which have been determined no longer to meet the applicable criteria under this part.

§ 5.4 Notice and publication of designations and withdrawals.

(a) In the case of a request under § 5.3(a)(1), the Secretary will notify the individual or agency requesting the designation or withdrawal of designation of the determination made.

(b) The Secretary will give written notice of a designation (or withdrawal of designation) under this part on, or not later than 60 days from, the effective date of the designation (or withdrawal) to:

(1) The Governor of each State in which the designated or withdrawn MUP or HPSA is located in whole or in part;

(2) The State health department of the affected State or States and any other State agency(ies) deemed appropriate by the Secretary; and

(3) Other appropriate public or nonprofit private entities which are located in or which the Secretary determines have a demonstrated interest in the area designated or withdrawn, including entities directly dependent on the designation and primary care associations and State health professional associations.

(c) The Secretary will periodically, but not less than annually, publish updated lists of designated MUPs and HPSAs in the **Federal Register**, by type of designation and by State. Such listings shall identify the degree-of-shortage of each MUP or HPSA determined pursuant to § 5.103 of this part.

(d) The effective date of the designation of an MUP or HPSA shall be the date of the notification letter provided pursuant to paragraph (a) or (b) of this section or the date of publication in the **Federal Register**, whichever occurs first.

(e) The effective date of the withdrawal of the designation of an MUP or HPSA shall be the date of the notification letter provided pursuant to

paragraph (a) or (b) of this section, the date on which notification of the withdrawal is published in the **Federal Register**, or the date of publication in the **Federal Register** of an updated list of designations of the type concerned which does not include the designation, whichever occurs first.

§ 5.5 Transition provisions.

(a) *Revision of MUPs and primary care HPSAs.* (1) The Secretary will, after [date of publication of final rule in the **Federal Register**], submit to the entities in each State identified pursuant to § 5.3(a)(1) and (2) a listing of the Index of Primary Care Services (IPCS) scores computed under § 5.103(b) for each currently designated MUP and primary care HPSA within its boundaries, based on the data and information available to the Secretary.

(2) The State health agency or other designee of the Governor shall have 90 days from receipt of such listing, or such longer time period as the Secretary may approve, to provide comments to the Secretary. Such comments should take into account the effects on local communities and any comments by affected entities and may include recommendations on the following topics:

(i) Where the boundaries of a currently designated MUP and primary care HPSA overlap but do not coincide —

(A)(*1*) Which area boundaries the State recommends be continued in effect; and

(*2*) Whether the State proposes to have any remaining area separately designated, either on its own or as part of another area; or

(B) If the State wishes to designate a new area instead of either area currently designated, a request for such designation in accordance with the applicable subpart or appendix of this part;

(ii) Any other area boundaries that the State recommends be revised; and

(iii) Accuracy of the FTE primary care practitioner data and other data used in scoring.

(b) *Continuation of currently designated MUPs and primary care HPSAs.* (1) Except as otherwise provided in this section, the designation of a MUP or a primary care HPSA designated in the period up to three years prior to [the date of publication of the final rule in the **Federal Register**] will remain in effect for three years from the date of designation, unless part of the area covered by the designation is revised under this part.

(2) Where a current MUP and a primary care HPSA designation overlap, and the State makes an election under paragraph (a)(2)(i)(A) of this section, the MUP or primary care HPSA that is not selected will be deemed to be automatically withdrawn.

(3) If part of the area of a currently designated MUP or primary care HPSA is revised under this part and the State does not request designation of the remaining area, the current designation covering the remaining area will be deemed to be automatically withdrawn.

(4) If a State does not provide recommendations to resolve overlapping area situations under paragraph (a) of this section, the Secretary may revise the areas involved, based on the applicable criteria and data and information available.

(5) Subparts B and C are added to read as follows:

Subpart B—Criteria and Methodology for Designation of Medically Underserved Populations

§ 5.101 Applicability.

The following criteria and methodology shall be used to designate populations of geographic areas and population groups as medically underserved populations (or ''MUPs'') under section 330(b) of the Act.

§ 5.102 Criteria for designation of populations of geographic areas as MUPs.

The population of an urban or rural area will be designated as a medically underserved population, pursuant to section 330(b) of the Act, if it is demonstrated, by such data and information as the Secretary may require, that the area meets the following criteria:

(a) The area meets the requirements for a rational service area for the delivery of primary medical care services under § 5.103(a); and

(b) The area's Index of Primary Care Shortage (IPCS) score, computed in accordance with § 5.103(b), equals or exceeds the designation threshold specified under § 5.103(b)(4).

§ 5.103 Methodology for designation of geographic areas as MUPs.

(a) *Rational service areas for the delivery of primary care services*—(1) *State-wide system.* Each State is encouraged to develop a State-wide system which divides the territory of the State into rational service areas for the delivery of primary care services within the State.

(i) A ''rational service area'' is a geographic area that—

(A) Is composed of one or more contiguous census tracts (CTs), block numbering areas (BNAs), or census divisions and does not include partial CTs or BNAs;

(B) The boundaries of which do not overlap with the boundaries of another rational service area defined by the State;

(C) In which travel time from the population center of the area to the population center of each contiguous area is typically greater than 30 minutes but less than 60 minutes, except where the circumstances in any of the following subparagraphs of this paragraph are shown to exist:

(*1*) Travel time from the population center of the area to the population center of a contiguous area may exceed 60 minutes in a frontier or other sparsely populated area, where topography, market, transportation, or other conditions and patterns lead to utilization of providers at greater distances;

(*2*) Travel time from the population center of the area to the population center of a contiguous area may be less than 30 minutes where established neighborhoods and communities within metropolitan statistical areas display a strong self-identity (as indicated by a homogeneous socioeconomic or demographic structure and/or a tradition of interaction or interdependence), have limited interaction with contiguous areas, and, in general, have a population density equal to or greater than 100 persons per square mile; or

(*3*) The State has defined a different travel time standard for use in its State, has provided a rationale for use of this travel time standard, and the travel time standard proposed is accepted by the Secretary as reasonable; and

(D) In which contiguous area resources are not reasonably available to the population of the area at the time of submission of the area for consideration as a rational service area. Contiguous area resources are deemed not reasonably available if any of the following conditions exists:

(*1*) Primary care practitioner(s) in the contiguous area are more than 30 minutes travel time from the population center(s) of the area;

(*2*) The contiguous area population-to-FTE primary care practitioner ratio is in excess of 1,500:1; or

(*3*) Primary care practitioner(s) in the contiguous area are inaccessible to the population of the area because of specific access barriers, such as—

(*i*) Significant differences between the demographic (or socio-economic) characteristics of the area and those of the contiguous area indicative of isolation of the area's population from

the contiguous area, such as language differences; or

(*ii*) A lack of economic access to contiguous area resources, particularly where a very high proportion of the area population is poor (*i.e.*, where more than 20 percent of the population or the households have incomes below the poverty level or more than 40 percent have incomes below 200 percent of the poverty level), and Medicaid-covered or public primary care services are not available in the contiguous area.

(ii) Each State-wide system of rational service areas shall be developed in collaboration with the Secretary and be approved by the State health department or other designee of the Governor.

(2) *Non-statewide system*. Until a State develops a State-wide system of rational service areas pursuant to paragraph (a)(1) of this section, the following areas will be considered to be rational service areas for the delivery of primary care services:

(i) Currently designated HPSA or MUP service areas, consistent with the requirements of § 5.5;

(ii) A county or a political subdivision equivalent to a county, such as a parish in Louisiana; and

(iii) Any other area that the Secretary determines meets the requirements set out at paragraph (a)(1)(i) of this section.

(b) *Index of Primary Care Shortage (IPCS).* (1) The IPCS score for an area is the sum of the area's score with respect to the scales for each of the following seven variables, with the following maximum scores:

(i) Population-to-primary care practitioner ratio (35 points);

(ii) Percentage of the population with incomes below 200 percent of the poverty level (35 points);

(iii) Percentage of the population consisting of racial minorities (5 points);

(iv) Percentage of the population that is Hispanic (5 points);

(v) Percentage of the population that is linguistically isolated (5 points);

(vi) The greater of the area's score for—

(A) Infant mortality rate (5 points); or

(B) Low birthweight births rate (5 points);

(vii) Low population density (10 points).

(2) Scales for each variable comprising the IPCS are determined by giving zero points to areas having values for the variable below a normative level for that variable, or below the 1996 national rate, where no norm is available, and allocating breakpoints between zero and the above maximum scores proportionally based on the number of counties with values above the norm or national rate.

(3) IPCS scores will be computed in accordance with paragraph (c) of this section and will be determined on both a first degree-of-shortage basis and a second degree-of-shortage basis.

(4) The threshold for designation of an MUP is an IPCS score of 35.

(c) *Calculation of specific IPCS variables*—(1) *Population count.* The population of an area is the total resident civilian population, excluding inmates of institutions, based on the most recent U.S. Census data, adjusted for increases/decreases to the current year using the best available intercensus projections, and making the following adjustments, as appropriate:

(i) Adjustments to the population for the differing health service requirements of various age/sex population groups of the area shall be computed using a table based on national utitilization rates by age/sex provided by the Secretary and published from time to time in the **Federal Register**.

(ii) Migratory workers and their families may be added to the adjusted resident civilian population, if significant numbers of migratory workers are present in the area, using the latest Migrant Health Atlas or best available federal or State estimates. Estimates used must be adjusted to reflect the percentage of the year that migratory workers are present in the area.

(iii) Where seasonal residents significantly affect the effective total population of an area, seasonal residents (not including tourists) may be added to the adjusted resident civilian population, if supported by acceptable State, Chamber of Commerce, or other local estimates. Estimates used must be adjusted to reflect the percentage of the year that seasonal residents are present in the area.

(2) *Counting of primary care practitioners.* (i) In determining an area's IPCS for designation as having a first degree-of-shortage, practitioners shall be counted as follows:

(A) *Practitioners included.* All non-Federal doctors of medicine (M.D.) and doctors of osteopathy (D.O.) who provide direct patient care and practice principally in one of the four primary care specialties (general or family practice, general internal medicine, pediatrics, and obstetrics and gynecology) shall be counted in terms of FTEs, to the extent possible. In computing the number of FTE primary care physicians, the following adjustments shall be made:

(*1*) Each intern or resident counts as 0.1 FTE physician;

(*2*) Each graduate of a foreign medical school who is a citizen or lawful permanent resident of the United States but does not have an unrestricted license to practice medicine counts as 0.5 FTE physician;

(*3*) Hospital staff physicians practicing in organized outpatient departments and primary care clinics, shall be counted on an FTE basis, calculated as provided for in paragraph (c)(2)(iii) of this section;

(*4*) Practitioners who are semi-retired, who operate a reduced practice, or who provide patient care services to the residents of the area only on a part-time basis shall be counted on an FTE basis, calculated as provided for in paragraph (c)(2)(iii) of this section; and

(*5*) Each nurse practitioner, physician's assistant, or certified nurse midwife counts as 0.5 FTE. The Secretary may revise this weight upward if, based on such national practice data as the Secretary considers reliable, the Secretary determines that a higher weight better represents the average contribution of such practitioners.

(B) *Practitioners excluded.* The following shall be excluded from primary care practitioner counts under paragraph (c)(2)(i) of this section:

(*1*) Physicians who are engaged solely in administration, research, or teaching;

(*2*) Hospital staff physicians involved exclusively in inpatient and/or in emergency room care; and

(*3*) Physicians who are suspended under provisions of the Medicare-Medicaid Anti-Fraud and Abuse Act, during the period of suspension.

(ii) In determining an area's IPCS for designation as having a second degree-of-shortage, practitioners shall be counted as provided for under paragraph (c)(2)(i) of this section, except that the following practitioners shall also be excluded:

(A) Primary care practitioners who are providing medical services pursuant to a federal scholarship or loan repayment program obligation, such as obligations under sections 338A, 338B, 338I, and 338L of the Act; and

(B) Primary care practitioners who are employed by a federal grantee under section 330 of the Act.

(iii) *Counting of FTEs.* FTEs shall be computed as follows: for practitioners working less than a 40-hour week, every four hours (or ½-day) spent providing patient care, in either ambulatory or inpatient settings, counts as 0.1 FTE, and each practitioner providing patient care 40 or more hours a week counts as 1.0 FTE. Numbers obtained for FTEs shall be rounded to the nearest 0.1 FTE.

(3) *Computation of other variables.* (i) Data for the IPCS variables at paragraphs (b)(1)(ii) through (b)(1)(v) of this section

for an area shall be aggregated from the most recent available U.S. Census data for the counties, census tracts, and/or census divisions which comprise the area; more recent national updates thereof may be used, if available.

(ii) The IPCS variables at paragraph (b)(1)(vi) of this section shall be calculated based on the latest available five-year average for the county of which the service area is a part, unless the area is a subcounty area and statistically significant five-year average subcounty data on these variables are available for the subcounty area. For service areas which cross county lines, a population-weighted combination of the rates for the counties involved shall be used.

(iii) The IPCS variable at paragraph (b)(1)(vii) of this section shall be calculated using U.S. Census TIGRE data or the equivalent for the specific service area involved.

§ 5.104 Criteria for designation of population groups as MUPs.

(a) A population group may be designated as an MUP under section 330(b) of the Act, if it is demonstrated, by such data and information as the Secretary may require, that the following criteria are met, as applicable:

(1) The area in which the population group resides—

(i) Meets the requirements for a rational service area under § 5.103(a); or

(ii) In the case of a American Indian or Alaska Native population group, is an Indian reservation; or

(iii) In the case of a health center population group, is the catchment area of the health center, as defined by its application under section 330 of the Act;

(2) The rational service area in which the population group resides does not meet the criteria for designation as a geographic area MUP under § 5.102;

(3) There are access barriers that prevent the population group from accessing primary medical care services available to the general population of the area, as demonstrated by an IPCS score for the population group that equals or exceeds the currently applicable designation threshold, as provided for by § 5.102(b). In calculating the IPCS score for a population group:

(i) The IPCS variables shall be calculated based as nearly as possible on their values for the applicable population group and service area, using such methodology as the Secretary may require; and

(ii) If the type of population group for which designation is sought is one for which one variable automatically achieves the maximum possible score, the point value assigned to that variable shall be distributed among the other variables, using such methodology as the Secretary may require.

(b) The following types of population groups may be designated as MUPs only if the applicable criteria of this section are met, as shown by such data and information as the Secretary may require:

(1) *Low income population group:* at least 1,500, or 30 percent, of the area's population, whichever is less, have annual incomes below 200 percent of the poverty level;

(2) *American Indian or Native Alaskan tribal population group:* the tribe is listed in the current listing of **Federal Register** by the Department of the Interior.

§ 5.105 Requirements for designation of MUPs recommended by State and local officials.

The population of a service area that does not meet the criteria at § 5.102(b) or § 5.104 may be designated as an MUP, if the following requirements are met:

(a) The area is recommended for designation by the Governor of the State in which the area is located and by at least one local official of the area. A ''local official'' for this purpose may be—

(1) The chief executive of the local governmental entity which includes all or a substantial portion of the requested area or population group (such as the county executive of a county, mayor of a town, mayor or city manager of a city); or

(2) A city or county health official (such as the head of a city or county health department) of the local governmental entity which includes all or a substantial portion of the requested area or population group.

(b) The request for designation is based on the presence of unusual local conditions, not covered by the criteria at §§ 5.102(b) and 5.104, which are a barrier to access to or the availability of personal health services in the area or for the population group for which designation is sought.

(c) The request for designation contains such documentation as the Secretary may require.

Subpart C—Criteria and Methodology for Designation of Primary Care Health Professional Shortage Areas

§ 5.201 Applicability.

The following criteria and methodology in this subpart shall be used to designate geographic areas, population groups, and facilities as primary care HPSAs under section 332 of the Act.

§ 5.202 Criteria for designation of geographic areas as primary care HPSAs.

An urban or rural geographic area may be designated as a primary care HPSA where the following criteria are met:

(a) The area is a rational service area under § 5.103(a);

(b) The area's IPCS score equals or exceeds the designation threshold specified under § 5.103(b)(4); and

(c) The area's population-to-primary care practitioner ratio, as determined in accordance with § 5.103(c), equals or exceeds 3,000:1.

§ 5.203 Criteria for designation of population groups as primary care HPSAs.

(a) The following types of population groups may be designated as primary care HPSAs:

(1) A population group designated under § 5.104;

(2) A migrant and/or seasonal farmworker population, as defined in section 330(g) of the Act;

(3) A homeless population, as defined in section 330(h) of the Act; and

(4) A public housing resident population, as defined in section 330(i) of the Act.

(b) A population group specified in paragraph (a) of this section may be designated as a primary care HPSA where the following criteria are met:

(1) The area in which the population group resides—

(i)(A) Meets the requirements for a rational service area under § 5.104(a); and

(B) In the case of a public housing resident population group, the rational service area includes public housing, as defined under section 330(i)(1) of the Act; or

(ii) In the case of a migrant and/or seasonal farmworker population group, is an agricultural area, as defined by the Secretary;

(2) The area in which the population group resides does not meet the criteria for designation as a geographic area HPSA under § 5.202;

(3) The criteria in § 5.104, as appropriate to the type of population group under consideration, are met; and

(4) The population-to-primary care practitioner ratio determined in accordance with § 5.104(a)(3) equals or exceeds 3,000:1.

§ 5.204 Criteria for designation of medical and other public facilities as primary care HPSAs.

A public or private nonprofit medical facility or other public facility will be designated as a primary care HPSA, if the following criteria are met:

(a) *Federal and State correctional institutions.* (1) Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as primary care HPSAs, if both of the following criteria are met:

(i) The institution has at least 250 inmates; and

(ii) The ratio of the number of internees per year to the number of FTE primary care practitioners, determined in accordance with § 5.103(c)(2)(iii), serving the institution is at least 1,000:1. For purposes of this paragraph, the number of internees shall be determined as follows:

(A) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake medical examinations are routinely performed upon entry, then the number of internees equals the number of inmates;

(B) If the average length-of-stay is specified as one year or more, and intake medical examinations are routinely performed upon entry, then the number of internees equals the average number of inmates plus the product of 0.3 multiplied by the number of new inmates per year; or

(C) If the average length-of-stay is specified as less than one year, and intake examinations are routinely performed upon entry, then the number of internees equals the average number of inmates plus the product of 0.2 multiplied by (1 + ALOS/2) multiplied by the number of new inmates per year. ''ALOS'' is the average length of stay, in fractions of a year.

(2) Physicians permanently employed by the Federal Bureau of Prisons or by States to provide services to Federal or State prisoners shall be counted based on the FTE services they provide, calculated as provided for in § 5.103(c)(2)(iii).

(b) *Public or non-profit private medical facilities*—(1) *Criteria.* Public or non-profit private medical facilities will be designated as primary care HPSAs, if the following criteria are met:

(i) The facility is providing primary medical care services to one or more areas and/or population groups designated under this subpart as a primary care HPSA but is not located within a designated geographic area HPSA or within the rational service area for a designated population group HPSA; and

(ii) The facility has insufficient capacity to meet the primary care needs of the designated area(s) or population group(s) served.

(2) *Methodology.* In determining whether public or non-profit private medical facilities or other public facilities meet the criteria established by paragraph (b)(1) of this section, the following methodology will be used:

(i) A facility will be considered to be providing services to one or more designated areas or population groups, if a majority of the facility's primary care services are being provided to residents of geographic areas designated as primary care HPSAs under this subpart or members of population groups designated as primary care HPSAs under this subpart.

(ii) A facility will be considered to have insufficient capacity to meet the primary care needs of the designated area(s) and/or population(s) it serves, if there are more than 6,000 outpatient visits per year per FTE primary care physician on the staff of the facility.

Appendices A, D, E, F, G [Removed]

6. Appendices A, D, E, F, and G of part 5 are removed.

Appendix B [Redesignated as Appendix A and Amended]

7. Appendix B of part 5 is redesignated as new Appendix A of part 5 and the appendix heading is revised to read as follows:

Appendix A to Part 5—Criteria for Designation of Areas Having Shortages of Dental Professionals.

Appendix C [Redesignated as Appendix B and Amended]

8. Appendix C of part 5 is redesignated as new Appendix B of part 5.

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

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

Authority: 42 U.S.C. 216, 254c.

10. Section 51c.102 is amended by revising paragraph (e) and adding paragraph (k) to read as follows:

§ 51c.102 Definitions.

* * * * *

(e) *Medically underserved population* means the population of an urban or rural area which is designated as a medically underserved population by the Secretary under part 5 of this chapter.

* * * * *

(k) *Special medically underserved population* means a population defined in section 330(g), 330(h), or 330(i) of the Act. A special medically underserved population is not required to be designated in accordance with part 5 of this chapter.

11. Section 51c.104 is amended by revising paragraph (b)(3) and adding paragraph (d) to read as follows:

§ 51c.104 Applications.

* * * * *

(b) * * *

(3) The results of an assessment of the need that the population served or proposed to be served has for the services to be provided by the project (or in the case of applications for planning and development projects, the methods to be used in assessing such need), utilizing, but not limited to, the factors set forth in § 5.103(b) of this chapter.

* * * * *

(d) If an application funded under this part demonstrates that the grantee would serve a designated medically underserved population at the time of application, then the grantee will be assumed to be serving a medically underserved population for the duration of the project period, even if the designation is withdrawn during the project period.

12. Section 51c.203 is amended by revising paragraph (a) to read as follows:

§ 51c.203 Project elements.

* * * * *

(a) Prepare an assessment of the need of the population proposed to be served by the community health center for the services set forth in § 51c.102(c)(1), with special attention to the need of the medically underserved population for such services. Such assessment of need shall, at a minimum, consider the factors listed in § 5.103(b) of this chapter.

* * * * *

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Tuesday
September 1, 1998

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1998–99 Early Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE93

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1998–99 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 1998.

ADDRESSES: The public may inspect comments received, if any, on the proposed special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The public should send communications regarding the documents to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703–358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 14, 1998, **Federal Register** (63 FR 43854), the Service proposed special migratory bird hunting regulations for the 1998–99 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10—September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the March 20, 1998, **Federal Register** (63 FR 13748), the Service requested that tribes desiring special hunting regulations in the 1998–99 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. The Service has successfully used the guidelines since the 1985–86 hunting season. The Service finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the July 19, 1998, **Federal Register** (63 FR 38700), the Service reviewed the status for various populations for which early seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-wing teal, Canada goose populations hunted in September seasons, sea ducks, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons.

At an August 6 public hearing on proposed late seasons, the Service presented a report on the status of waterfowl. This report is briefly summarized here.

Most goose and swan populations in North America remain numerically sound and the size of most fall flights will be similar to those of last year. Nine of the 28 populations of geese and swans we report on appear to have decreased since last year, 7 appear to have increased, 7 appear to have changed little, and no comparisons were possible for the remaining 5. Spring estimates of several Canada goose populations that nest near Hudson Bay declined this year; the declines may be at least partly an artifact of survey timing. Forecasts for production of young in 1998 varied regionally based largely on spring weather and habitat conditions. Generally, spring phenology was earlier than normal in northern Quebec and the Hudson Bay Lowlands, and this should lead to greater-than-average rate of production for geese nesting there. In the central and western Arctic, and along the west coast of Alaska, mostly average production is expected from nesting geese and swans. In the interior of Alaska, a mild spring with only minimal flooding should lead to better-than-average production. Habitat conditions for nesting geese deteriorated in much of south-central Canada since last spring, but they remained mostly favorable in eastern Canada and much of the contiguous U.S.

The 1998 estimate of total ducks in the traditional survey area was 39.1 million birds, an 8% decrease ($P < 0.01$) from 1997 but still 20% higher ($P < 0.01$) than the long-term average. The estimate for mallards (*Anas platyrhynchos*) was 9.6 million, a value similar ($P = 0.49$) to that of last year.

Abundances of green-winged teal (*Anas crecca*), northern shovelers (*A. clypeata*), northern pintails (*A. acuta*), and scaup (*Aythya affinis* and *A. marila*, combined) decreased ($P < 0.04$) from levels observed in 1997. Estimates for 7 of the 10 principal species were above ($P \leq 0.04$) their respective long-term averages, but northern pintail and 2 scaup species (combined) remained below their averages ($P < 0.01$). The number of ponds in May (4.6 million) was 38% lower ($P < 0.01$) than last year, and 6% lower ($P = 0.06$) than the long-term average. In eastern areas of Canada and the U.S., the number of total ducks was similar ($P = 0.74$) to that of last year and to the 1995–97 average ($P = 0.85$). Habitats in the eastern area were somewhat drier than last year, but conditions remained favorable for waterfowl production. The preliminary estimate of the total-duck fall-flight index is 84 million birds, compared to 92 million last year. The fall flight is predicted to include 11.7 million mallards, 18% lower ($P < 0.01$) than the estimate of 14.4 million in 1997.

As a result of this status, the Service has responded by proposing Flyway frameworks that are the same as those of last season for the 1998–99 waterfowl hunting season (August 25, 1998, **Federal Register**, 63 FR 43350). The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 1998–99 migratory bird hunting season, the Service proposed regulations for 19 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 12 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 14, 1998, closed on August 24, 1998. Because of the necessary brief comment period, the Service will respond to any comments received on the proposed rule and/or these early-season regulations not responded to herein in the September late-season final rule.

The Service received two comments regarding the notice of intent published on March 20, 1998, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members.

The South Dakota Department of Game, Fish, and Parks (South Dakota) commented on the proposal by the Lower Brule Sioux Tribes. South Dakota questioned whether a tundra swan permit would be required or whether all licensed waterfowl hunters would be allowed to take a swan during the Tribes' proposed tundra swan season. They further questioned whether hunters would be queried after the season to determine the harvest, age ratio, date and location of kill, and unretrieved kill. South Dakota also believed that any special youth season on tribal land should conform to the same framework allowed for the State's youth hunting season.

The Wisconsin Department of Natural Resources (Wisconsin) commented on the Great Lakes Indian Fish and Wildlife Commission's (GLIFWC) proposal. Wisconsin suggested monitoring the impact of the daily bag limit on giant Canada goose restoration efforts and that the Service and GLIFWC initiate and complete studies to show that current GLIFWC duck regulations have no negative impact on local populations before expanding hunting opportunities during time periods when local birds are most vulnerable. Wisconsin also requested that tribal members honor the noon opening for shooting hours for the first day of the State's duck season and comply with the State's open water hunting restrictions.

Service Response: Regarding South Dakota's comments on the Lower Brule Sioux Tribe's proposals, Federal frameworks for tundra swan hunting in South Dakota do not allow tundra swan seasons west of the Missouri River because of concerns for the potential harvest of trumpeter swans. Thus, the Service did not approve the Tribe's requested tundra swan season. Additionally, final Federal early-season frameworks published in the August 28, 1998, **Federal Register**, provided for a 1-day special youth waterfowl hunt. Any special youth waterfowl hunt for non-tribal members should conform to the final Federal frameworks.

Regarding Wisconsin's comments, the Service can find no evidence that the tribes' harvest of giant Canada geese has negatively impacted giant Canada goose populations in Wisconsin. In fact, as the GLIFWC point out in their July 14, 1998, response, tribal harvest has never exceeded 365 geese since off-reservation hunting resumed in 1985 and has averaged less than 200 birds annually. Additionally, tribal goose harvest per trip has averaged 0.2 geese per trip since 1990 when daily bag limits were significantly less than the currently allowed 10 geese per day. While the Service believes that the current population status of giant Canada geese can easily support the tribes' limited harvest, it is incumbent upon the GLIFWC to continue to closely monitor both duck and goose harvest to ensure that local and/or regional breeding populations are not negatively impacted by harvest. Furthermore, as in the past, the Service again requests that tribal members honor both the noon opening for shooting hours for the first day of the State's duck season and Wisconsin's open water hunting restrictions.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the ''Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)'' was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)'' was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.** In addition, an August 1985 Environmental Assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' Consequently, consultations were conducted to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened

species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

In the March 20, 1998, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act. One measure was to update the 1996 Small Entity Flexibility Analysis (Analysis) documenting the significant beneficial economic effect on a substantial number of small entities. The 1996 Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. The Service has updated the 1996 Analysis with information from the 1996 National Hunting and Fishing Survey. Nationwide, the Service now estimates that migratory bird hunters will spend between $429 and $1,084 million at small businesses in 1998. Copies of the 1998 Analysis are available upon request from the Office of Migratory Bird Management.

Executive Order (E.O.) 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, it qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act

The Service examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under hunting regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015 (expires 08/31/1998). The renewal clearance packet was submitted to OMB July 22, 1998. This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. The information collection requirements of the Sandhill Crane Harvest Questionnaire have been approved by OMB and assigned clearance number 1018–0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion its constitutes of the total population. The Service 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.

Unfunded Mandates Reform Act

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. The Service annually prescribes frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulation. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the March 20 request for proposals and the August 14 proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for

public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

1. **Authority:** 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Non-tribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 1998; then open November 21, close January 4, 1999.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-tribal Hunters)

Sandhill Cranes

Season Dates: Open September 19, close October 25, 1998.

Daily Bag Limit: 3 sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and non-tribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Ducks

Minnesota 1854 Zone

Season Dates: Open September 12, close November 29, 1998.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Mergansers

Minnesota 1854 Zone

Season Dates: Open September 12, close November 29, 1998.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

Minnesota 1854 Zone

Season Dates: Open September 1, close November 29, 1998.

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Gallinule)

Minnesota 1854 Zone

Season Dates: Open September 12, close November 29, 1998.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Minnesota 1854 Zone:

Season Dates: Open September 1, close November 29, 1998.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe

Minnesota 1854 Zone

Season Dates: Open September 1, close November 29, 1998.

Daily Bag Limit: 8 snipe.

Woodcock

Minnesota 1854 Zone

Season Dates: Open September 12, close November 29, 1998.

Daily Bag Limit: 5 woodcock.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in

the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

Ducks

Michigan, 1836 Treaty Zone

Season Dates: Open September 20, 1998, close January 20, 1999.

Daily Bag Limit: 10 ducks, which may include no more than 1 pintail, 1 canvasback, 2 black ducks, 1 hooded merganser, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens).

Canada Geese

Michigan, 1836 Treaty Zone

Season Dates: Open September 1, close November 30, 1998, and open January 1, 1999, close February 8, 1999.

Daily Bag Limit: 5 geese.

Sora Rails

Michigan 1836 Treaty Zone

Season Dates: Open September 1, close November 14, 1998.

Daily Bag Limit: 5 rails.

Common Snipe

Michigan 1836 Treaty Zone

Season Dates: Open September 1, close November 14, 1998.

Daily Bag Limit: 5 snipe.

Woodcock

Michigan 1836 Treaty Zone

Season Dates: Open September 1, close November 14, 1998.

Daily Bag Limit: 5 woodcock.

General Conditions: A valid Grand Traverse Band Tribal license is required for all persons 12 years and older and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 5 mergansers.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese: Canada Geese

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 Canada geese, minus the number of blue, snow or white-fronted geese taken.

B. Michigan, 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1997. In addition, the same dates and season length permitted the State of Michigan during the Special September Canada goose Season.

Daily Bag Limit: 10 Canada geese, minus the number of blue, snow or white-fronted geese taken. In addition, the same bag limit permitted the State of Michigan during the Special September Canada goose Season.

Geese: Blue, Snow and White-fronted Geese

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

Other Migratory Birds: All Ceded Areas

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 8 common snipe.

D. Woodcock

Season Dates: Begin September 8 and end December 1, 1998.

Daily Bag Limit: 5 woodcock.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 15, 1998, close January 31, 1999.

Daily Bag and Possession Limits: 7 ducks, including no more than 1 pintail, 2 hen mallards, and 1 canvasback.

Geese

Season Dates: Open September 1, 1998, close January 31, 1999.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but not more than 3 light geese. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1998.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 1998.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(h) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members)

Ducks

Season Dates: Open September 19, close November 25, 1998.

Daily Bag and Possession Limits: 6 ducks, including no more than 4 mallards (only 1 of which may be a hen), 5 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close November 20, open November 30, close December 31, 1998.

Daily Bag and Limits: 3 Canada geese, that must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 1, close November 15, 1998.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: Tribal members and non-tribal members hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Tribal hunters are exempt from the requirement to purchase a Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp) and the plugging of shotgun to limit capacity to 3 shells.

(i) Point No Point Treaty Tribes, Kingston, Washington (Tribal Hunters)

Ducks

Season Dates: Open September 15, 1998, close January 15, 1999.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 hen mallards, 3 pintails, 1 canvasback and 2 redheads. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1998, close January 15, 1999.

Daily Bag and Possession Limits: 4 geese, and may include no more than 2 brant or 3 light geese. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, 1998, close January 15, 1999.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 1, close September 30, 1998.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, close January 15, 1999.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

(j) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members)

Ducks

Season Dates: Open September 15, 1998, close January 15, 1999.

Daily Bag and Possession Limits: 5 ducks, including no more than 1 canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1998, close January 15, 1999.

Daily Bag and Possession Limits: 4 geese, and may include no more than 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 1998.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Coots

Season Dates: Open September 15, 1998, close January 15, 1999.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 1998, and close January 15, 1999.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 15, close December 1, 1998.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(k) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members)

Ducks/Coot

Season Dates: Open September 15, 1998, and close February 1, 1999.

Daily Bag and Possession Limits: 6 and 12 ducks, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail, and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1998, and close February 1, 1999.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

(l) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

Band-tailed Pigeons

Season Dates: Open September 1, close September 10, 1998.

Daily Bag and Possession Limits: 3 and 6 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 10, 1998.

Daily Bag and Possession Limits: 8 and 16 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 26, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–23563 Filed 8–28–98; 9:31 am]

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September 1, 1998

Part VII

Department of Housing and Urban Development

24 CFR Parts 5, et al.

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 207, 266, 880, 881, 882, 883, 884, 886, 891, 965, and 983

[Docket No. FR–4280–F–03]

RIN 2501–AC45

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a June 30, 1998 proposed rule that proposed to establish for housing insured and/or assisted under certain HUD programs uniform physical condition standards. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair. To the extent possible, HUD believes that its Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing (collectively, HUD housing) should be subject to uniform physical standards. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, this rule amends HUD's regulations to require that certain HUD housing, as defined in this rule, must meet uniform physical condition standards to ensure that the HUD housing is decent, safe, sanitary and in good repair. This rule also generally establishes new physical inspection procedures that will allow HUD to determine conformity with such standards. This rule does not change the requirement for annual physical inspections currently found in the covered HUD programs. Additionally, this rule does not affect the existing requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection. This rule takes into consideration public comment received on the June 30, 1998 proposed rule.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Real Estate Assessment Center, Attention: William Thorson, Director of Physical Inspection Management, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102. Persons with hearing and speech impairments may contact the Center via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On June 30, 1998 (63 FR 35650), HUD published a proposed rule that would establish for housing insured and/or assisted under certain HUD programs uniform physical condition standards. HUD proposed the standards in the June 30, 1998 proposed rule in an attempt to ensure that such housing is decent, safe, sanitary and in good repair. HUD's Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing (collectively, HUD housing) must meet certain standards and must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what would constitute acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, varied from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs.

Proposed Standards and Inspection Process

HUD proposed that certain HUD housing, as defined in the rule, must meet uniform physical condition standards to ensure that the HUD housing is decent, safe, sanitary and in good repair. The proposed rule also generally described new physical inspection procedures that would allow HUD to determine conformity with such standards. HUD proposed the standards and inspection process to achieve three significant objectives:

(1) Consistency in physical condition standards for HUD housing;

(2) Standardization of the inspection to be undertaken to determine compliance with the standards; and

(3) Implementation of an electronically-based inspection system to evaluate, rate, and rank the physical condition of HUD housing objectively.

In proposing uniform physical condition standards, HUD did not propose to alter the statutory standard for maintaining HUD housing. Instead, the proposed rule, by using the statutory terminology, clearly acknowledged that the physical condition of the housing that is to be met is one of ''decent, safe, and sanitary.'' Furthermore, the rule did not propose to change the preexisting requirement for annual physical inspections currently found in the covered HUD programs, nor did it propose to affect the preexisting requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection.

Covered Programs

HUD proposed to apply the new physical condition standards to housing insured and/or assisted by HUD under the following programs:

1. Section 8 Project-Based and Other Assisted Housing

—Section 8 Project-Based Assistance, including the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals), and project-based Certificate programs;
—Section 202 Program of Supportive Housing for the Elderly;
—Section 811 Program of Supportive Housing for Persons with Disabilities; and
—Section 202 Program of Supportive Housing for the Elderly;
—Section 811 Program of Supportive Housing for Persons with Disabilities; and
—Section 202 Loan Program for Projects for the Elderly and Handicapped (including 202/8 projects and 202/162 projects).

2. Federal Housing Administration (FHA) Multifamily Housing

HUD also proposed to apply the standards to multifamily housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

—Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);
—Section 213 of the NHA (Cooperative Housing Insurance);
—Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
—Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 231 of the NHA (Housing for Elderly Persons);
—Section 232 of the NHA (Mortgage Insurance for Nursing Homes,

Intermediate Care Facilities, Board and Care Homes);

—Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

—Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

—Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

3. Public Housing

—Housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act (e.g., housing receiving assistance under sections 5, 9, and 14 of the Act).

The proposed standards would address six major areas of the HUD housing:

(1) Site;

(2) Building exterior;

(3) Building systems;

(4) Dwelling units;

(5) Common areas; and

(6) Health and safety.

II. Changes at the Final Rule Stage

HUD has made one change at the final rule stage in response to implementation concerns about the new inspection protocol. HUD will not require entities covered by this rule to conduct inspections in accordance with the uniform physical condition standards and procedures until HUD issues the final version of the inspection software and accompanying guidebook. When these two items have been issued, HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available. The notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with this rule. Until the date that is 30 days after HUD publishes the notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with the uniform physical condition standards in § 5.703 of this rule, must continue to comply with inspection requirements in effect immediately prior to that date. The standards in § 5.703 will become effective on the effective date of this final rule, however, so that owners and mortgagors of HUD housing will begin to bring such housing into compliance with those standards.

III. Discussion of Public Comments

The initial deadline for the receipt of public comments on the proposed uniform physical condition standards and inspection requirements was July 30, 1998. HUD published a notice extending the deadline for public comments until August 13, 1998 (63 FR 41754). HUD received 77 comments on the proposed rule.

A. Qualified Support

Many commenters expressed support for HUD's goals of ensuring the quality of housing, and streamlining and unifying its physical condition standards and physical inspection requirements. One commenter remarked that the new physical inspection system should help improve the image of housing authorities, and should help identify both the high performers and those in need of HUD intervention. The commenter also remarked favorably on the thoroughness of the inspections and the emphasis on safety. Another commenter remarked that the uniform physical condition standards would assist in promoting and strengthening a nationwide partnership of public and private institutions. That commenter also supported the electronic reporting of inspection information. The commenters who expressed support for the new standards, however, expressed certain reservations about the proposal, as discussed below.

B. General Comments on the Proposed Rule

The Public Comment Period for the Rule Was Not Sufficient. Several commenters responded that a 30-day comment period for the proposed rule was insufficient. The commenters stated that 30 days is inadequate for a rule that addresses such critically important responsibilities of housing providers.

The public comment period for this rule was extended through August 13, 1998 in response to commenters' requests. Additionally, this rule does not impose new or significantly different requirements on the owners and managers of HUD housing with respect to the maintenance of HUD insured or assisted properties. This rule does not alter the statutory standard for the maintenance of HUD housing, nor the requirement to conduct annual property inspections. This rule more clearly describes that statutory standard and makes that definition consistent across HUD's applicable programs. The rule also sets forth an inspection protocol that will be more objective and effective in producing a higher quality assessment of the housing.

Before publication of the June 30, 1998 proposed rule, HUD sought and obtained the participation of its program participants, industry leaders, and industry experts with the development of: (1) physical condition standards that are appropriate, uniform, and consistent; and (2) an inspection protocol that is objective to the greatest degree possible. HUD received valuable input, suggestions, and recommendations from all these parties, as well as considerable support for replacing vague and inconsistent standards and inspection procedures with standards and a process that identifies housing deficiencies that make HUD housing substandard. HUD also involved some program participants in its testing of proposed inspection protocol. Given the importance of this mission—providing HUD housing that is decent, safe, and sanitary and in good repair—it is important for HUD and the Real Estate Assessment Center to move forward with this rulemaking with deliberate speed. While most housing developments that are assisted or insured by HUD are maintained in good physical condition, some developments are in deplorable condition and may even be unsafe or unhealthy. HUD must seek to ensure that all HUD housing is decent, safe, and sanitary as expeditiously as possible. Therefore, in light of the involvement of program participants, the degree of changes to the physical maintenance and inspection requirements, and the important benefits to be achieved in the implementation of the new inspection system, HUD believes that the comment period was adequate.

The Rule Needs to Provide Additional Information About the Physical Inspection Standards and Protocol

Many commenters remarked that the proposed rule was too vague and uninformative. Specific areas about which commenters asked for additional details included how the inspection will be conducted; what due process procedures HUD will provide for disputing scores, correcting errors in reports, and enforcement; how scores will be calculated; and how HUD will determine a statistically valid sample of units.

The preamble to the proposed rule generally described the new inspection protocol and the procedures by which the inspection would be conducted. It has been HUD's practice to date, with the agreement and support of its program participants, and consistent with Administrative Procedure Act principles, that the lengthy details of an

inspection process, and the multiple examples of deficiencies (e.g., when the various types of electrical systems, heating systems, and ventilation systems may be found to be seriously defective or in disrepair) are provided through guidebooks, handbooks, and other supplementary materials. Unlike the Code of Federal Regulations, which is updated only annually, such guidance materials are easier for program participants and other interested parties to obtain, and can be easily and quickly supplemented as need may arise with charts and additional examples. HUD followed this practice of providing more detailed information through HUD handbooks with its Housing Quality Standards (HQS) and with its FHA multifamily housing program participants. (See, e.g., HUD Handbook 4350.5 and Form HUD–9602 for HQS/contract administrator inspections; HUD Handbook 7420.7 for PHA HQS inspections; HUD Handbook 4350.4 and Form HUD–9822 for FHA multifamily housing mortgagee inspections.) HUD will continue to follow this practice with the uniform physical condition standards. Handbooks and other supplementary materials are the best vehicles to provide its program participants with the materials that they need to serve as guidance for the standards and inspection protocols. The following, however, provides additional information on how HUD intends for the inspections to be conducted under this new protocol.

All inspectors must be trained and certified in the use of HUD's software. As an inspector prepares to inspect a property, the HUD-certified inspector will download property profile information from HUD databases. The inspector will arrive at the site to be inspected at the predetermined date and time. The inspector will meet with a representative of the owner/management agent or housing authority (HA), who must accompany the inspector throughout the inspection. As described in the proposed rule, the inspector will conduct the inspection using a portable computer and HUD software, which will prompt the inspector to make necessary observations regarding the condition of the property. The inspector will inspect a randomly selected, statistically valid sample of the units in the project. Neither the inspector nor the owner will know exactly which units will be inspected until the time of the inspection. The statistically valid sample is generated by the software based on a determination of the number and configuration of the dwelling units on the property, with a high degree of confidence (95 percent) and a low margin for error (plus or minus approximately 2 or 3 percentage points).

If the inspection results in the identification of any life threatening health or safety deficiencies (e.g., electrical hazards, blocked emergency exits, inoperative or missing smoke detectors), the inspector will immediately note such deficiencies on a form, require the owner or HA representative to sign the form, and leave a copy of the form on site with the representative. The inspector will then immediately transmit the form to the Real Estate Assessment Center (REAC). All of the data obtained during the inspection will be electronically transferred to the REAC, which will perform quality assurance measures on the raw data (e.g., to ensure that the data transmission was complete, to verify certain information about the development, etc.). The REAC will then score the data and make an inspection report available electronically via a HUD Web page to the owner or HA, as well as to HUD's relevant field office. HUD expects that the inspection report will be made available very quickly—optimally within 48 hours of the inspection. HUD field offices will review the results and work with the owner to ensure the timely correction of any deficiencies.

HUD intends that all owners, housing authorities, mortgagees, or contract administrators will receive notification of the inspection results electronically via a HUD Web page. The entities' retrieval of the inspection results from the Web page will trigger an electronic receipt acknowledgement to HUD. However, HUD recognizes that not all entities currently have the capability to receive information in this manner. Therefore, for a limited interim period, if HUD does not receive an electronic acknowledgement for a particular inspection report after 10 business days, it will send the inspection report to the owner or housing authority via certified mail.

If the owner or housing authority detects a technical error in the inspection report, that entity is responsible for notifying HUD and for providing HUD with sufficient justifying information. If HUD determines that the owner or housing authority provided reasonable substantiation regarding the error, HUD will allow for a full reinspection, which would produce a whole new score.

As described in the proposed rule, the computer program will record observations for the major areas (the site, the building exterior, the building systems, the dwelling units, the common areas, and health and safety factors) and their respective elements. The computer system will then create a composite score for the physical condition of the housing by calculating the component scores on a weighted average basis that is sensitive to the relative importance of the individual inspectable areas and the relative severity of the deficiencies observed. HUD expects to examine and improve the detailed scoring methodology continuously and to make improvements based on the cumulative results of inspections. The values may also be subject to change based on the extent to which a given property does not have a certain inspectable element. For example, a property may not have any common areas such as community rooms. The available weights for the other inspectable areas would then automatically and proportionately increase. HUD does not believe that it would be appropriate to include extensive details regarding the calculations of the weighted scores. By not revealing specific details of the calculations, property owners will be required to provide a comprehensive approach to property maintenance—to maintain their entire property in a decent, safe, and sanitary condition and in good repair, in accordance with the standards in this rule.

As described more fully in the rulemaking for the Public Housing Assessment System (PHAS), the scores generated by the computer-based inspection for public housing will allow HUD to rank the PHAs' public housing developments objectively according to physical condition. However, many owners and managers of multifamily HUD housing other than public housing expressed concern about the implications of the rule. HUD reminds such entities that this rule does not change the responsibilities of the owners to maintain the housing, nor does it change the responsibilities of the mortgagees to inspect the housing. This rule simply sets forth a description of the statutory and contractual standard with which the physical condition of the housing must always comply, and makes that definition consistent across HUD's applicable programs. The inspection protocol established in this rule is simply the mechanism for gathering and transmitting the physical inspection data to HUD more objectively and in a manner that will allow HUD to assess more effectively the physical condition of the housing. Similar to the new Public Housing Assessment System, HUD will use the data obtained

through the inspections and the calculated scores for internal monitoring purposes and as a way to determine how best to focus its resources where they are most needed.

HUD will make the inspection software and the guidebook available through the REAC Customer Service Center at no cost (besides the nominal cost of shipping) by calling (888) 245–4860 or by writing to the REAC at the following address: Real Estate Assessment Center, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Washington, DC 20410.

Many commenters expressed concern with regard to inspections that may result in a referral to HUD's new Enforcement Center. The Enforcement Center is a fundamental programmatic reform measure that will help restore public trust in HUD's fulfillment of its mission to provide decent, safe, and sanitary housing for lower and moderate income households. The Enforcement Center is intended to be the central Departmental focus for taking aggressive action against owners of HUD's troubled assisted housing and public housing portfolios. The Enforcement Center will be responsible for correcting long-standing noncompliance issues and will take action against owners who do not cooperate with HUD during any recovery process or who may have put housing developments in jeopardy by engaging in waste, fraud, or abuse. Owners that do not maintain properties in decent, safe, and sanitary condition and in good repair will be referred to the Enforcement Center. However, this rule does not provide the Enforcement Center with additional enforcement authority; the Enforcement Center will use existing HUD authorities and procedures for enforcing owners' responsibilities to maintain housing that is decent, safe, sanitary and in good repair. These existing procedures provide entities with all requisite due process. Each case may be different and requires analysis to determine the most appropriate course of action.

Implementation Requires Additional Time

Several commenters objected to the implementation schedule and suggested that HUD provide additional consideration, demonstration, and transition time. In comparing this rulemaking with the rulemaking for the new Public Housing Assessment System (PHAS), several commenters objected that housing authorities will have at least a year before the new physical condition requirements become effective for public housing, while lenders must begin complying much sooner.

HUD's relationship with such private entities that own or manage HUD-assisted or HUD-insured housing is necessarily different than HUD's relationship with public housing authorities. This rule does not alter the statutory standard for maintaining HUD housing, nor does it change the requirement for annual inspections currently found in the covered HUD programs or the requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection. Owners who are currently maintaining their housing in decent, safe, and sanitary condition and in good repair should have no problem in meeting the standard. Any experienced and qualified residential property inspector should easily be able to complete the training and conduct inspections using the new inspection protocol. Since it is essential for HUD and the Real Estate Assessment Center to move forward with this rulemaking with deliberate speed in order to ensure that deplorable and life threatening housing conditions are remedied as quickly as possible, HUD has determined that it is justifiable and necessary to proceed to effectuate this rulemaking.

However, HUD understands that owners and managers of multifamily housing that are not subject to PHAS may also require additional time to gain the capability to conduct inspections in accordance with this rule. Therefore, for all entities, besides housing authorities with public housing that are subject to PHAS, HUD will not require such entities to conduct inspections in accordance with this rule until HUD issues the final version of the inspection software and accompanying guidebook. HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available. The notice will provide 30 days within which such entities must prepare to conduct inspections in accordance with this rule. Until the date that is 30 days after HUD publishes such notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must continue to comply with inspection requirements in effect immediately prior to that date. The standards in § 5.703 will become effective on the effective date of this rule, however, so that owners and mortgagors of HUD housing will begin to bring such housing into compliance with those standards.

HUD Should Focus on Correcting Problem Developments; Developments in Good Condition Should Not Be Subject to Annual Inspections

Several commenters remarked that the uniform physical standards will result in the expenditure of an inordinate amount of time, energy, and money on the great majority of properties that are not ''a problem.'' Some commenters asserted that HUD has, in the past, effectively ignored lenders' recommendations regarding physically troubled properties. Some commenters suggested that for entities or properties that receive a favorable inspection report, those entities or properties should only be inspected every 2, 3, or 4 years. HUD agrees that most housing developments that are assisted or insured by HUD are maintained in good physical condition. However, HUD is not at this time relaxing the long-standing requirement for an annual inspection. The greatest breach of the public trust at HUD is the waste, fraud, and abuse in HUD's existing portfolio of millions of housing units. Such abuse often includes or results in unacceptable living conditions for the lower and moderate income families that rely upon HUD assistance. HUD assures the commenters that HUD will not ignore such abuse in the future.

Limited Funds Allocated for Improving Physical Condition of Housing

Several commenters remarked that housing authorities do not always have adequate Federal funding for improving the physical condition of housing. Some of these commenters suggested that the housing authority should not be adversely scored for those items identified in their Five-Year Plan that are not yet completed, since these items do not reflect housing authority malfeasance or neglect.

The intent of this rule is to ensure that HUD housing is decent, safe, and sanitary and in good repair, and to establish a uniform standard and means of assessing the condition of HUD housing. It is important that HUD housing is assessed accurately and objectively. After the condition of the property is accurately assessed, the analysis of the needed corrective actions can commence. That analysis can take into account past, present, or future funding (e.g., the Comprehensive Grant Five-Year Plan), the allocation of existing resources, or other factors.

Rule Contravenes National Housing Act

Some commenters asserted that this rule contravenes section 203(e) of the National Housing Act (12 U.S.C.

1709(e)). The commenters asserted that the statute clearly conditions the existence and validity of a contract for insurance between HUD and a lender solely on HUD's execution of the contract (in the absence of fraud by the lender). The commenters objected to this rule's implication that lenders' participation could be conditioned upon additional, material terms such as the physical condition of the property.

Section 203(e) of the National Housing Act prevents HUD from contesting the contract of mortgage insurance in the absence of lender fraud or material misrepresentation. It does not, however, prevent HUD from defining or otherwise delineating the parameters of acceptable physical condition of properties with insured mortgages, as necessary to ensure residents of decent, safe, and sanitary housing and to protect the insurance fund, which are the purposes of this rulemaking.

Proposed Rule Adversely Affects Contract Rights

Several commenters asserted that HUD may not amend its regulations in a way that would adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured. The commenters pointed to § 207.260 (as it existed prior to streamlining amendments on April 1, 1996), which required the mortgagee to ascertain the general physical condition of the property and to furnish HUD with its inspection report, along with recommendations for necessary action. The commenters concluded that HUD is prohibited from implementing this rule in a way that would alter that regulatory provision in a manner adverse to lenders. These commenters asserted, therefore, that HUD could only apply the new physical condition standards and inspection requirements to new insurance contracts.

The mortgage insurance contract requires the mortgagee to perform an annual inspection. However, the contract of insurance does not ''lock in'' any particular inspection protocol. HUD previously established the parameters for an acceptable inspection through guidance in a handbook (HUD Handbook 4350.4). HUD has the legal authority and responsibility to change these parameters to meet changing conditions. HUD has determined that it is necessary to implement a more uniform, objective, and effective inspection protocol in order to assess its insured portfolio more accurately.

Rule Should Not Apply to Healthcare Facilities

Two commenters suggested that the uniform physical condition standards and physical inspection requirements in this rule should not apply to facilities with mortgages insured under section 232 of the National Housing Act (nursing homes, intermediate care facilities, and board and care homes). These commenters urged HUD to recognize the unique characteristics of such housing, particularly the fact that it may otherwise be subject to detailed and comprehensive Federal and State regulation. These commenters stated that since there is already sufficient government oversight of such housing, the requirements of this rule would be unduly duplicative and burdensome.

While HUD recognizes that healthcare facilities may be covered by other regulatory requirements, HUD believes that the other requirements focus on the medical aspects of such facilities, such as the delivery of medical services and the proper maintenance of medical equipment. HUD's focus is to ensure that the residents of such facilities, which may vary widely in the level of healthcare services that are provided, are living in decent, safe, and sanitary housing. Furthermore, HUD (as an insurer) has an interest in the preservation of the housing asset, and HUD is responsible for determining compliance with statutory, regulatory, and contractual requirements. HUD believes that its new physical inspection system will work well to assess the building's compliance with the physical condition standards. Therefore, HUD has decided that this rule will apply to facilities insured under section 232 of the National Housing Act.

C. Comments on the Uniform Physical Condition Standards

Physical Conditions Beyond Owner's Control

Several commenters questioned how the inspection system would treat conditions that are beyond the control of the owner, such as resident neglect (e.g., poor housekeeping) or intentional damage. Other commenters stated that housing authorities should not be penalized for conditions over which they have no control, or about which they could not reasonably have known. Other commenters remarked on the fact that the local governments are usually responsible for maintaining roads and drainage systems, and that other entities are often responsible for maintaining playground equipment. The commenters remarked that the inspection system should take this into account.

The new physical inspection system is objective and does not distinguish those defects that are the fault of the resident, nor does the system in itself recognize good faith efforts of the owner. The system is simply a tool for observing and transmitting data regarding the physical condition of the property. As HUD has stated previously, the owner of HUD housing is, as always, statutorily and contractually responsible for maintaining the physical condition of the property. HUD anticipates that such owners, like all landlords, would rely on lease provisions regarding the resident maintenance or destruction of the unit, and HUD would encourage them to do so in furtherance of compliance with the physical condition standards. Good property management, which includes regular housekeeping and preventative maintenance inspections throughout the year, coupled with strict lease enforcement, will result in well-maintained housing that meets the standard.

However, the physical condition standards and inspection requirements in this rule only apply to aspects of the housing that are within the ownership of the owner. For instance, an owner of HUD housing is not responsible for maintaining roads if the owner does not own the roads. However, the owner will be responsible for maintaining roads that are legally part of the property.

Physical Condition Standards Are Too Vague

Several commenters remarked that the physical condition standards in the rule are too vague. Other commenters stated that such vague standards are difficult for inspectors to interpret and difficult for owners to achieve. The commenters stated that the standards must be more clearly defined if HUD intends to initiate enforcement actions against owners or managers.

The inspectors must meet minimum qualifications and will be trained and certified, and they will be guided in their observations by the inspection software and the guidebook. The software and the guidebook will be made available through the REAC Customer Service Center at no cost (besides the nominal cost of shipping) by calling (888) 245–4860 or by writing to the REAC at the following address: Real Estate Assessment Center, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Washington, DC 20410. However, with regard to the vagueness of the standards, the physical condition standards are intentionally broad,

defined with terms such as ''in proper operating condition,'' ''adequately functional,'' and ''free of health and safety hazards.'' Given the differences in construction and design of HUD housing, and the different types of electrical and utility systems that an inspector will encounter, the rule itself cannot define or describe every type of housing or system. The standards in the rule describe the inspectable areas and items and require that they are all maintained in a condition that is decent, safe, sanitary, and in good repair. Although time and experience with standards may reveal the need for modifications to the regulations at some point in the future, HUD believes that the standards in this rule are sufficiently specific for purposes of compliance and indeed provide a great deal more detail than previous regulations for many of HUD's programs.

Odor and Ventilation

Section 5.703(f) of the rule requires that, as a matter of health and safety, the dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. Several commenters objected that odor and ventilation (often affected by resident cooking, preference for closed windows, or personal hygiene) are subjective and are not otherwise matters of decent, safe, and sanitary housing. These commenters remarked that these factors should not be included in the physical condition standards.

HUD recognizes that this requirement in the physical condition standards could have caused confusion. For purposes of health and safety, the inspectors will be prompted to observe whether there are strong propane, natural gas, and/or methane gas odors that could pose risk of explosion or fire, or a risk to health if inhaled. Such odors are indeed a matter of decent, safe, and sanitary housing, and therefore HUD has retained the requirement in this rule.

Physical Condition Standards Should Apply to Section 8 Certificate and Voucher Program

Several commenters objected that the rule does not apply to housing with tenants assisted by Section 8 Certificates and Vouchers. The commenters stated that this exemption undermines the uniformity position presented by HUD in the proposed rule. The housing quality standards (HQS) in HUD's regulations were originally established by the Secretary for the purpose of Section 8 tenant-based housing assistance (the Rental Certificate and Rental Voucher programs). As HUD explained in the proposed rule, unlike Section 8 project-based assistance, HUD is continuously reviewing and approving new units into the Section 8 tenant-based assistance programs, and HUD has found that HQS is appropriate for that purpose. HUD will continue considering the application of the new uniform standards to housing with Section 8 tenant-based housing in the future, although it is not prepared to do so in this rule. However, since this rule does not alter the standard with which owners must comply, but merely describes the standard in clear terms, there should be no conflicting results from the continuing existence of HQS for the Certificate and Voucher program.

Physical Standards Should Not Apply to PHA-Owned or Leased Projects

One commenter reviewed the conforming amendments in the proposed rule, and objected to the amendments to 24 CFR part 965 (PHA-Owned or Leased Projects), which would require that housing that is owned or leased by a housing authority must be maintained in accordance with the physical condition standards in this rule. The commenter remarked that it is inappropriate for HUD to include housing that is owned by a housing authority but that is not in any way funded through a HUD program within the scope of its new standards or inspection requirements.

HUD agrees that such an application of the standards would be inappropriate, and HUD had no intention of applying them in that manner. If a housing authority owns or leases housing that is not in any way supported by HUD funds, the regulations in 24 CFR part 965 would not apply, nor would the provisions of this rule.

Uniform Physical Condition Standards Are Higher Than ''Good Repair'' Standard

Several commenters asserted that the physical condition standards in the rule are different and more strict than the insured mortgage standard of ''good repair.'' A few of these commenters asserted that ''good repair'' requires only that the project's original improvements be maintained. The commenters asserted that ''good repair'' is merely a general assessment of the overall physical condition of the property, used to determine whether the property is at least worth the balance due on the mortgage.

HUD maintains that the physical condition standards in this rule are not significantly different than the standards to which all HUD housing has previously been subject. As HUD explained in the proposed rule, all HUD-assisted housing is statutorily subject to a standard of decent, safe, and sanitary. In HUD-insured multifamily housing, the mortgagors are required by contract to maintain the housing in good repair and condition. Although HUD's regulations for its multifamily programs did not specifically define ''good repair and condition,'' HUD Handbook 4350.1 REV–1, Multifamily Asset Management and Project Servicing, provides that in determining the level of management review HUD should perform on site, it should review the mortgagee's annual physical inspection ''to determine if the condition of the property is consistent with the provision of ''decent, safe, and sanitary housing.'' Regardless of whether the standard is labelled ''decent, safe, and sanitary,'' ''good repair,'' or both (as in this rule), owners and managers of HUD housing have always been required to maintain the housing and to ensure that it is free from health and safety hazards. This rule simply sets forth a uniform set of standards for HUD housing and combines the familiar labels of ''decent, safe, and sanitary'' and ''in good repair.''

Physical Condition Standards Should Allow Adjustments for Age and Neighborhood Environment

Several commenters noticed that the proposed rule for the new Public Housing Assessment System for public housing allowed for adjustments for public housing based on the age of the development and on neighborhood environment. Although the commenters recognized that the public housing statute requires such allowance, the commenters suggested that the physical condition standards should make similar allowances for all housing.

As the commenters recognized, HUD is required by section 6(j)(1)(I)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)(I)(2)) to permit an adjustment to a housing authority's assessment score based upon negative conditions related to the age of the development or to the surrounding neighborhood. However, HUD has determined that such an adjustment is not otherwise appropriate in assessing the physical condition of property. As HUD mentioned above, the new physical inspection system is objective; regardless of the age of the development or the surrounding neighborhood, the housing must be maintained for the residents in decent, safe, and sanitary condition.

D. Comments on the Uniform Physical Inspection Requirements

Rule Needs To Clarify Whether PHAs, Owners, and/or Mortgagees Would Have Access to Inspection Report

Several commenters objected that the proposed rule was unclear about when and how the owner (and the mortgagee, if applicable) would be informed of the results of the inspection. With the direct electronic submission described in the proposed rule, some of these commenters expressed concern that an adverse inspection could lead to a referral to the Enforcement Center without the mortgagee or owner becoming aware of the findings in the inspection report. The commenters remarked that it is essential for the owner and its site staff to receive a copy of the inspection report immediately, which would be easy and would result in the quick resolution of gross errors. The commenters further stated that the inspection report is otherwise important for asset management purposes and for presenting to third-party investors upon request.

As HUD described above, the REAC will make an inspection report available electronically via a HUD Web page to the owner, mortgagee, or HA, as well as to HUD's relevant field office. HUD expects that the inspection report will be provided to the owner or housing authority very quickly—optimally within 48 hours of the inspection.

Mandatory Use of the Inspection Procedures

Several commenters objected to lenders being singled out for adverse treatment, since housing authorities are not required to use the inspection system to inspect public housing. These commenters remarked that since other entities such as contract administrators and mortgagees also have existing physical inspection systems in place, HUD's argument for exempting public housing would also apply to them. The commenters stated that those entities should also be allowed maximum latitude for determining how best to assess compliance with the new physical condition standards. These commenters stated that such different treatment belies HUD's efforts toward uniformity.

HUD's relationship with such private entities that own or manage HUD-assisted or HUD-insured housing is necessarily different than HUD's relationship with public housing agencies in their operation of public housing. Public housing agencies are basically governmental entities that are government-funded under the U.S. Housing Act of 1937 for the purpose of providing public housing to low income households. Public housing agencies (PHAs) are subject to a statutory requirement to inspect 100 percent of their units to determine maintenance and modernization needs. Private entities are not subject to this same requirement of 100 percent unit inspection. Additionally, for private entities that own or manage HUD housing, participation in HUD programs is voluntary. As the preamble to the June 30, 1998 proposed rule on the new Public Housing Assessment System noted, HUD will be conducting independent inspections of public housing units in accordance with this new inspection protocol. The preamble also noted that HUD is considering requiring PHAs at some future point to inspect their units in accordance with the new inspection protocol. However, given the statutory requirement to inspect all units, HUD decided not to impose mandatory use of the new inspection protocol on PHAs in the first year or first few years of implementation of the new protocol.

The consistent assessment and evaluation of HUD housing that is the mission of the REAC depends upon the consistent, nationwide use of a standardized analytical and risk evaluation tool for each property. Therefore, HUD has determined that it is important to rely upon the physical inspection system in this rule to the greatest extent feasible. As HUD has stated previously, HUD is making the software available to owners/agents and housing authorities at no cost (besides shipping). Furthermore, HUD is not requiring the use of specific hardware; the inspection software can be run on any portable computer with certain minimum capacity (e.g., Pentium/100MHz processor or equivalent; 320MB hard drive; 16MB RAM; battery life of 3.5 hours). Therefore, required use of the inspection system should not be a significant burden.

Objections Regarding the Number of Units to be Inspected

Several commenters objected that under HUD's current handbook guidance for lenders with HUD-insured mortgages, lenders are only required to conduct inspections for two vacant and two occupied units. Several commenters objected that while the rule provides that a statistically valid number of public housing units will be inspected, it does not appear to limit the number of units that lenders must inspect, and it could be read to require that all units must be inspected.

To be accurate, under HUD's handbook guidance for lenders with HUD-insured mortgages that was used prior to this rulemaking, lenders were required to conduct an inspection ''of sufficiently high quality to permit an accurate evaluation of the condition of the property.'' (HUD Handbook 4350.4 CHG–7, Ch. 2, Sec. 5, 2–20) The guidance provided that inspectors should randomly select at least two vacant units, and if time and resources permit, select two additional vacant units—one just after move-out and one ready for occupancy. In addition, the guidance provided that the inspectors should randomly select several occupied units for inspection.

This rule will not require lenders to inspect all units. The inspection system established under this rule requires the inspection of a statistically valid number of units. As described above, immediately prior to the inspection, the HUD-certified inspector will download relevant property profile information from HUD databases. The inspector will determine a statistically valid sample of the units based on the number and configuration of the dwelling units on the property. In statistical validity tables, there is a point at which it serves no useful purpose to inspect additional units. HUD recognizes that the requirement to inspect a statistically valid sample of units may pose an additional requirement on some mortgagees that were previously inspecting fewer units. However, HUD's goal and mission is to ensure that residents of HUD housing are provided decent, safe, and sanitary housing, which obviously requires an accurate assessment of the physical condition of such housing. In order to obtain an accurate assessment of such housing, it is necessary to obtain inspection data from a statistically valid number of units, and to put an end to lax inspections.

Double Inspection

Several commenters asserted that under subsidy contracts (generally Housing Assistance Payments contracts), HUD already requires contract administrators, such as housing authorities and housing finance agencies, to perform project inspections. These commenters objected that the rule does not eliminate those duplicative inspections. HUD's goal is to require a single inspection for such properties. HUD is exploring ways to implement the new inspection system in a way that will eliminate any duplicative inspections.

Accompanying Inspectors During Inspection

Three commenters asked whether owners would be allowed to accompany inspectors. Other commenters objected to the increased administrative burden of assigning staff to such a task. As noted earlier in this rule, the new inspection system requires that a representative of the owner/management agent accompany inspectors during these inspections. This is necessary in order to gain access to units, utilities, and other areas of the property. It is also important for the owner's representative to observe and discover any significant deficiencies, including health and safety deficiencies, so that corrective action can be taken at the earliest possible time. It is customary in the inspection industry for owner representatives to accompany third-party inspectors during inspections. As such, HUD does not believe that this is an undue requirement, but rather, as some of the commenters remarked, an important and necessary feature.

Notice to Owners and Residents of Units to be Inspected

Two commenters asked how much advance notice the owner would receive regarding the specific units to be inspected. Other commenters objected to a potential administrative burden of notifying ''thousands'' of residents, especially with regard to the additional notices required for the confirmatory inspections of public housing. With respect to inspectors under contract to HUD, contractors are to attempt to communicate, preferably by telephone, with the owners to arrange for an inspection date. They are to confirm the inspection date in writing. The owner is to have a minimum of 5 calendar days advance written notice to provide time for notification to the residents. Typically, owners will have more than 5 calendar days based on the original telephone call from the inspector. HUD would expect mortgagees and contract administrators to follow a similar procedure. While there is a burden of notifying residents, such a burden is inherent when the owner participates in HUD programs and is unavoidable.

Qualification of Inspectors and Fairness of the Inspection

Several commenters asked about the quantity and type of training the inspectors would receive. Two commenters specifically asked whether the inspectors would be qualified to inspect all the various forms of housing (highrise buildings to single family homes), and all state-of-the-art systems (which otherwise the commenters asserted require specifically trained technicians). Three commenters asked what quality control measures HUD intends to use to ensure inspectors are fair and accurate. These commenters expressed concern that the qualifications of the inspectors are critical, and remarked that HUD must set parameters for qualifications and training well above simply a general familiarity with real estate of the type to be inspected, as provided in the proposed rule.

HUD has developed a training curriculum and certification test that all inspectors must take to conduct inspections using HUD inspection software. The course is approximately 40 hours long, and the certification test involves downloading property profile information from HUD data bases, using HUD software to conduct inspections, and uploading the completed inspection results to HUD. HUD has established specific qualifications and criteria for inspectors who will be conducting these inspections; such qualifications include but are not limited to, at least 3 years of experience that demonstrates sufficient knowledge of multifamily and public housing. HUD believes that it has set a reasonable and sufficient level of qualifications for inspectors to conduct inspections of this nature. Further, HUD will monitor the inspectors with its own quality assurance staff to assure that the inspectors are using the protocol as intended and that inspection reports are valid.

Increased Costs of Inspection Under This Rule

Many commenters asserted that HUD's original estimate of the costs of an inspection is several times higher than the current industry average and would significantly exceed the servicers' average annual income on loans. The commenters concluded that the increase in servicing costs will result either in higher rents, increased mortgage rates, higher rates of FHA claims, fewer lenders willing to service FHA mortgages, fewer owners and investors interested in HUD housing, and/or reduced availability of affordable financing.

HUD now estimates that the costs for the inspection will be substantially lower than it originally projected, and HUD is exploring possible ways of lowering the costs to program participants. HUD is determined, however, to obtain accurate assessments of its housing portfolio in an effort to ensure that residents are not living in substandard HUD housing. HUD can no longer tolerate shoddy inspections. If lenders have been performing adequate inspections, HUD believes that the new inspection procedures should not substantially increase their costs. HUD reiterates, however, that the software will be provided, and HUD is not requiring that inspectors use a particular type of hand-held computer.

Furthermore, HUD believes that the commenters' claims regarding the adverse effects of increased servicing costs will not inevitably result from improved inspections. In fact, HUD believes that such inspections may have a beneficial impact on the industry. The overall image of the industry will be enhanced, because the public will perceive that HUD and its program partners care about the quality of the affordable housing they are offering.

Rule Affects the Liability of the Mortgagee

Several commenters objected to the rule due to their claims that it affects the liability of the mortgagee. These commenters stated that if HUD is requiring lenders to be responsible for inspections on HUD's behalf, and HUD intends to make determinations about enforcement actions based upon those inspections, HUD should somehow indemnify lenders in the event of lawsuits regarding inspections. The commenters explained that such indemnification could be of the conventional sort, or could take the form of a declaration that the inspectors are acting as HUD's agents and HUD is liable for their conduct. Some of these commenters stated that the new physical inspection system may create a conflict of fiduciary responsibilities for the servicing lender—its responsibilities to its investor(s) and its responsibilities to HUD under this rule.

This rule does not alter the lenders' responsibilities with respect to the inspection of HUD housing. Therefore, this rule does not impose additional liability upon lenders, and HUD does not have plans to indemnify lenders or to accept undue liability for their conduct. HUD is establishing this inspection system as an objective and accurate means of fulfilling HUD's assessment and monitoring responsibilities, and of providing HUD an accurate basis for determining where to focus its monitoring and enforcement resources. Any enforcement action taken by the Enforcement Center will be within HUD's existing authority and fully in accordance with due process procedures.

Frequency of Inspections

Several commenters commented on § 5.705 of the proposed rule, which

provided that responsible entities must conduct inspections annually ''(unless otherwise specifically notified by HUD).'' These commenters objected that this would allow HUD to require more frequent inspections solely upon notification, without notice and comment rulemaking.

HUD included this language in the rule in order to provide it with flexibility in the event that poor-performing owners need follow-up reinspection in some circumstances. It is necessary for HUD to have the flexibility to meet the needs of the individual situation.

IV. Regulatory Amendments

New Subpart for Physical Condition Standards and Inspection Requirements

This rule creates a new subpart G in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart G consists of three sections. Section 5.701 provides the lists of the types of HUD housing to which the uniform physical condition standards and inspection requirements apply. This section also describes the unique applicability of the requirements to the Public Housing program.

Section 5.703 contains the physical condition standards for HUD housing that is decent, safe, sanitary and in good repair. These are the standards to which HUD housing must be maintained. Section 5.705 simply provides that any entity responsible for conducting a physical inspection of HUD housing must inspect such housing annually (unless HUD provides notice to the contrary), in accordance with HUD-prescribed physical inspection procedures. This rule does not affect the existing requirements under each covered HUD program regarding which entity is responsible for conducting the physical inspection.

Conforming Amendments in Program Regulations

In accordance with the physical condition standards and inspection requirements, this rule also makes several conforming amendments to HUD's program regulations.

1. 24 CFR Part 207; Multifamily Housing Mortgage Insurance

This rule adds a new § 207.260, which provides that for FHA-insured multifamily properties, the mortgagor must maintain the insured project in accordance with the physical condition standards in the new subpart G of part 5. This section also requires the mortgagee to inspect the project in accordance with the requirements in subpart G of part 5. As described above, however, the requirements for the mortgagor to maintain the property in a condition that is decent, safe, sanitary and in good repair (and for the mortgagee to inspect the property) are not new. This rule provides a clear set of physical condition standards and inspection requirements to help ensure that these properties are maintained in accordance with such obligations.

2. 24 CFR Part 266; Housing Finance Agency (HFA) Risk-Sharing

This rule adds a new § 266.507 to provide that the mortgagor must maintain the project in accordance with the new physical condition standards in subpart G of part 5. This new section applies the new standards to all projects insured previously or in the future. This rule also removes § 266.505(b)(6) regarding the maintenance requirements of the Regulatory Agreement between the HFA and the mortgagor, since the maintenance requirements will be in the new § 266.507. This rule also amends § 266.510(a) to require HFAs to perform their inspections in accordance with the inspection requirements in subpart G of part 5.

3. 24 CFR Part 880; Section 8 New Construction

This rule amends § 880.201 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes paragraph (a) of § 880.207 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 replaces the requirement to comply with these standards.

4. 24 CFR Part 881; Section 8 Substantial Rehabilitation

This rule amends § 881.201 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes paragraph (a) of § 881.207 regarding HUD's minimum design standards, since compliance with the new subpart G of part 5 replaces the requirement to comply with these standards.

5. 24 CFR Part 882; Section 8 (Project-Based) Moderate Rehabilitation (Including the Single Room Occupancy Program for Homeless Individuals)

HUD recently amended its regulations in part 882 to remove the regulatory provisions on certificates. These provisions are now in part 982. (Please see the Section 8 Certificate and Voucher Programs Conforming Rule, published in the **Federal Register** on April 30, 1998, 63 FR 23826.) The only regulatory provisions remaining in part 882 are for two Section 8 project-based programs—Moderate Rehabilitation and Single Room Occupancy for homeless individuals.

This rule amends part 882 further to recognize the new uniform physical condition standards. This rule amends § 882.102 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes the definition of ''Housing Quality Standards'' from § 882.102, since those standards are replaced by the new uniform physical condition standards in this rule.

This rule then amends § 882.404 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule retains, however, the lead-based paint requirements that were otherwise embedded in the Housing Quality Standards. (HUD is developing consolidated final regulations to implement portions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C 4851 *et seq.*). These final regulations will be based upon a proposed rule published on June 7, 1996 (61 FR 29170), and will be codified in 24 CFR part 35.) This rule does not affect the applicability of HUD's lead-based paint requirements. This rule also retains the requirements for special housing types. Single room occupancy, congregate housing, and group homes have particular requirements since the individual dwelling units or sleeping areas do not contain kitchen and/or bathroom facilities; such facilities are provided in common areas.

This rule also amends § 882.803(b) for the SRO program by replacing references to the Housing Quality Standards with references to § 882.404. This rule retains the requirements for the adequacy of the location of the site (e.g., site must be suitable from the standpoint of further fair housing laws); the new physical standards in part 5 would relate to the condition of the site,

rather than the initial adequacy of the location of the site.

6. 24 CFR Part 883; Section 8 State Housing Agencies

This rule amends § 883.302 to add a definition of the term ''Decent, safe, and sanitary.'' This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes the definition of ''MPS (Minimum Property Standards)'' in § 883.302, and paragraphs (a)(1) and (b)(1) of § 883.310 regarding HUD's minimum property and design standards, since compliance with the new subpart G of part 5 replaces any requirement to comply with these standards.

7. 24 CFR Part 884; Section 8 New Construction Set-Aside for Rural Rental Housing

This rule amends § 884.102 to revise the definition of the term ''Decent, safe, and sanitary.'' This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes the definition of ''Minimum property standards'' in § 884.102, and paragraph (b)(1) of § 884.110 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 replaces any requirement to comply with those standards.

8. 24 CFR Part 886; Section 8 Special Allocations (Loan Management Set-Aside (LMSA) and Property Disposition (PD))

This rule amends §§ 886.102 (LMSA) and 886.302 (PD) to revise the definition of the term ''Decent, safe, and sanitary.'' This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also amends §§ 886.113 (LMSA) and 886.307 (PD) by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule retains, however, the specific occupancy requirements (i.e., the number of residents per dwelling unit); such requirements are not addressed by the new uniform physical condition standards. This rule also retains the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule does not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint). This rule also retains the special requirements for congregate housing and/or independent group residences in §§ 886.113 and 886.307.

9. 24 CFR Part 891; Supportive Housing for the Elderly and Persons With Disabilities

This rule adds a new § 891.180 to provide that housing assisted under these supportive housing programs must be maintained and inspected in accordance with the physical condition standards and inspection requirements in subpart G of part 5.

10. 24 CFR Part 965; PHA-Owned or Leased Projects—General Provisions

This rule adds a new subpart F (consisting of § 965.601) to part 965. Section 965.601 requires that housing that is owned or leased by a PHA must be maintained in accordance with the new uniform physical condition standards. Section 965.601 also provides that for each PHA, HUD intends to perform independent inspections to confirm that Public Housing is being maintained in accordance with the new uniform physical condition standards using the new inspection system, based upon a statistically valid sample of Public Housing units for each PHA.

11. 24 CFR Part 983; Section 8 Project-Based Certificate Program

This rule amends § 983.5 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule retains, however, the specific occupancy requirements, since these requirements are not addressed by the new uniform physical condition standards. This rule also retains the lead-based paint requirements that were otherwise embedded in the Housing Quality Standards. This rule does not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint).

V. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Environmental Impact

During the development of the June 30, 1998 proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding continues to apply to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. All HUD housing is currently subject to physical condition standards and a physical inspection requirement. There are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. Accordingly, this rule does not alter that requirement, nor does the rule shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals previously responsible for the inspection of HUD subsidized properties remain responsible. The rule, however, provides for uniform physical inspection standards for the majority of HUD programs. These standards are not significantly different from those standards to which HUD housing is currently subject. The previous applicable standards are similar, but there were some variations from HUD program to program. Making these standards uniform and consistent for the HUD programs covered by this rule should ease the administrative burden for participants in the covered HUD programs, including and particularly small entities. As with the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made. As stated earlier in this preamble, HUD will be providing the inspection software and guidebook,

and HUD is not requiring the use of specific hardware (so long as it meets certain minimum capacity requirements). Therefore, HUD is anticipating that the cost for the inspections will be substantially lower than initial estimates. Entities that have been conducting adequate inspections as previously required should not experience a significant increase in costs. HUD is also providing additional time for entities that are not subject to the new Public Housing Assessment System to gain the capability to conduct inspections. Therefore, HUD has considered the effects of this rule on small entities. Since this rule does not impose additional responsibilities on HUD's program partners, and since HUD estimates that the cost differences will not be substantial, this rule is not anticipated to have a significant economic impact on a substantial number of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule provides a uniform set of physical condition standards and physical inspection requirements for HUD housing, which make HUD's requirements clearer and more objective. As a result, this rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Several commenters asserted that this rule would violate the Unfunded Mandates Reform Act, arguing that HUD failed to assess the costs of the inspections on private sector lenders, failed to estimate the disproportionate effects of the rule on the private sector, and failed to consider and select the least costly, most cost-effective, or least burdensome alternative for the private sector. Section 201 of the UMRA requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. HUD has assessed the effects of this rule on housing authorities and other owners and managers of HUD housing. While this rule provides a uniform set of physical condition standards for HUD housing, these standards are not significantly different from the standards with which program participants already have had to comply. While this rule establishes a new physical inspection system, it does not change the requirements in HUD's programs for annual physical inspections. HUD has determined that the quality of the inspections to be performed under this rule are necessary to replace the lax inspections that may have been conducted in the past. The uniform standards and the inspection system established in this rule are necessary in order to bring consistency, objectivity, accuracy, and efficiency to the assessment of the physical condition of HUD housing.

This rule would not impose a Federal mandate within the definitions provided in section 101 of the UMRA, because this rule merely provides standards relating to duties that arise from participation in a voluntary Federal program, for which funds are provided through budget authority that is not entitlement authority. Since HUD has assessed the effects of this rule on State, local, and tribal governments, and on the private sector, and since this rule does not include a Federal mandate, HUD has complied with the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that are affected by this rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.850—Public Housing
14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
14.852—Public Housing—Comprehensive Improvement Assistance Program
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
14.859—Public Housing—Comprehensive Grant Program

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart G is added to part 5 to read as follows:

Subpart G—Physical Condition Standards and Inspection Requirements

Sec.
5.701 Applicability.
5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).
5.705 Uniform physical inspection requirements.

Subpart G—Physical Condition Standards and Inspection Requirements

§ 5.701 Applicability.

(a) This subpart applies to housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. ''Project-based assistance'' means Section 8 assistance that is attached to the structure (see § 982.1(b)(1) of this title regarding the distinction between ''project-based'' and ''tenant-based'' assistance);

(2) Section 202 Program of Supportive Housing for the Elderly;

(3) Section 811 Program of Supportive Housing for Persons with Disabilities;

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) This subpart also applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(5) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(6) Section 231 of the NHA (Housing for Elderly Persons);

(7) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(8) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(9) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(10) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(11) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

(c) This subpart also applies to Public Housing (housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act).

(d) For purposes of this subpart, the term ''HUD housing'' means the types of housing listed in paragraphs (a), (b), and (c) of this section.

§ 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in § 5.701(a), mortgagors of housing described in § 5.701(b), and PHAs and other entities approved by HUD owning housing described in § 5.701(c), must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) *Dwelling units.* (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors,

HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) *Compliance with State and local codes.* The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

§ 5.705 Uniform physical inspection requirements.

(a) Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually (unless otherwise specifically notified by HUD), in accordance with HUD-prescribed physical inspection procedures. For Public Housing, PHAs have the option to inspect Public Housing units using the procedures prescribed in accordance with this section.

(b) Inspections in accordance with the physical inspection procedures identified in paragraph (a) of this section shall not be required until HUD has issued the inspection software and accompanying guidebook. When the software and guidebook have been issued, HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available. The notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with this subpart. Until the date that is 30 days after HUD publishes such notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must continue to comply with inspection requirements in effect immediately prior to that date.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. A new § 207.260 is added, immediately after § 207.259a, to read as follows:

§ 207.260 Maintenance and inspection of property.

As long as the mortgage is insured or held by the Commissioner, the mortgagor must maintain the insured project in accordance with the physical condition requirements in 24 CFR part 5, subpart G; and the mortgagee must inspect the project in accordance with the physical inspection requirements in 24 CFR part 5, subpart G.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

5. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.505 [Amended]

6. Section 266.505 is amended by removing and reserving paragraph (b)(6).

7. A new § 266.507 is added, to read as follows:

§ 266.507 Maintenance requirements.

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G.

8. In § 266.510, paragraph (a) is revised to read as follows:

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform inspections in accordance with the physical inspection procedures in 24 CFR part 5, subpart G.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

10. Section 880.201 is amended by revising the definition of ''*Decent, safe and sanitary*'', to read as follows:

§ 880.201 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 880.207 [Amended]

11. Section 880.207 is amended by removing and reserving paragraph (a).

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

12. The authority citation for 24 CFR part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

13. Section 881.201 is amended by revising the definition of ''*Decent, safe and sanitary*'', to read as follows:

§ 881.201 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 881.207 [Amended]

14. Section 881.207 is amended by removing and reserving paragraph (a).

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

15. The authority citation for 24 CFR part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

16. In § 882.102, paragraph (b) is amended by revising the definition of ''*Decent, safe, and sanitary*''; and by removing the definition of ''*Housing quality standards (HQS)*''; to read as follows:

§ 882.102 Definitions.

* * * * *

(b) * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the

physical condition standards in 24 CFR part 5, subpart G.

* * * * *

17. Section 882.404 is revised to read as follows:

§ 882.404 Physical condition standards; physical inspection requirements.

(a) *Compliance with physical condition standards.* Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, a dwelling unit used in the Section 8 moderate rehabilitation program that is not SRO housing must have a living room, a kitchen area, and a bathroom. Such a dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Special housing types.* The following provisions in 24 CFR part 982, subpart M (Special Housing Types) apply to the Section 8 moderate rehabilitation program:

(1) 24 CFR 982.605(b) (for SRO housing). For the Section 8 moderate rehabilitation SRO program under subpart H of this part 882, see also § 882.803(b).

(2) 24 CFR 982.609(b) (for congregate housing).

(3) 24 CFR 982.614(c) (for group homes).

(d) *Compliance with lead-based paint requirements.* Housing used in the Section 8 moderate rehabilitation program must comply with the lead-based paint requirements in § 982.401(j). For purposes of the SRO program, however, see § 882.803(b).

18. Section 882.803 is amended by revising paragraph (b), to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b)(1) *Physical condition standards.* Section 882.404 applies to this program; however, the lead-based paint requirements in § 982.401(j) of this title do not apply to this program, since these SRO units will not house children.

(2) *Site standards.* (i) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with local law, may be considered adequate utilities.)

(ii) The site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19), E.O. 11063 (as amended by E.O. 12259; 3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307), and HUD regulations issued pursuant thereto.

(iii) The site must be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

19. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

20. Section 883.302 is amended by adding a definition of ''*Decent, safe, and sanitary*'', in alphabetical order; and by removing the definition of ''*MPS (Minimum Property Standards*''; to read as follows:

§ 883.302 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 883.310 [Amended]

21. Section 883.310 is amended by removing and reserving paragraphs (a)(1) and (b)(1).

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

22. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

23. Section 884.102 is amended by revising the definition of ''*Decent, safe, and sanitary*''; and by removing the definition of ''*Minimum property standards*''; to read as follows:

§ 884.102 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

24. In § 884.110, paragraph (b) is revised to read as follows:

§ 884.110 Types of housing and property standards.

* * * * *

(b) Participation in this program requires compliance with:

(1) [Reserved]

(2) In the case of congregate housing, the appropriate HUD guidelines and standards;

(3) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly, disabled, or handicapped;

(4) HUD requirements pertaining to noise abatement and control; and

(5) Applicable State and local laws, codes, ordinances, and regulations.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

25. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

26. Section 886.102 is amended by revising the definition of ''*Decent, Safe and Sanitary*'', to read as follows:

§ 886.102 Definitions.

* * * * *

Decent, Safe, and Sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

27. Section 886.113 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); by removing and reserving paragraphs (j) through (m); and by revising the introductory text of paragraph (n); to read as follows:

§ 886.113 Physical condition standards; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

* * * * *

(n) *Congregate housing.* In addition to the foregoing standards, the following standards apply to congregate housing:

* * * * *

28. Section 886.302 is amended by revising the definition of ''*Decent, safe, and sanitary*'', to read as follows:

§ 886.302 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

29. Section 886.307 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); by removing and reserving paragraphs (j) through (l); by revising the introductory text of paragraphs (m) and (n); and by removing paragraphs (o) and (p); to read as follows:

§ 886.307 Physical condition standards; physical inspection requirements.

(a) *General.* Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

* * * * *

(m) *Congregate housing.* In addition to the foregoing standards, the following standards apply to congregate housing:

* * * * *

(n) *Independent group residence.* In addition to the foregoing standards, the standards in 24 CFR 887.467 (a) through (g) apply to independent group residences.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

30. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

31. In subpart A of part 891, a new § 891.180 is added, to read as follows:

§ 891.180 Physical condition standards; physical inspection requirements.

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

32. The authority citation for 24 CFR part 965 continues to read as follows:

Authority: 2 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

33. In part 965, a new subpart F, consisting of § 965.601, is added, to read as follows:

Subpart F—Physical Condition Standards and Physical Inspection Requirements

§ 965.601 Physical condition standards; physical inspection requirements.

Housing owned or leased by a PHA, and public housing owned by another entity approved by HUD, must be maintained in accordance with the physical condition standards in 24 CFR part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

34. The authority citation for 24 CFR part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

35. Section 983.5 is revised to read as follows:

§ 983.5 Physical condition standards; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Lead-based paint.* 24 CFR 982.401(j) applies to assistance under this part.

Dated: August 26, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–23421 Filed 8–31–98; 8:45 am]

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September 1, 1998

Part VIII

Department of Housing and Urban Development

24 CFR Part 5, et al.

Uniform Financial Reporting Standards for HUD Housing Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 236, 266, 880, 886, and 982

[Docket No. FR–4321–F–03]

RIN 2501–AC49

Uniform Financial Reporting Standards for HUD Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a June 30, 1998 proposed rule that proposed to establish for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs uniform annual financial reporting standards. The rule requires public housing agencies and project owners of HUD-assisted housing, which already, under longstanding regulatory and contractual requirements, submit financial information on annual basis to HUD to submit this information electronically to HUD. The rule also requires that the annual financial information to be submitted to HUD must be prepared in accordance with generally accepted accounting principles (GAAP). Electronic submission is important in reducing the administrative burden that manual submission presents to housing authorities, project owners, mortgagees and HUD. It is also important in bringing HUD and its program partners up-to-date with modern technology. Reporting in GAAP is important because GAAP accounting is more widely accepted and allows for financial consistency among various entities.

The objective of this rule is to standardize the annual financial information submission process and, through standardization, bring consistency and increased fairness to the evaluation of the financial condition of housing assisted under various HUD programs. This final rule takes into consideration public comments received on the June 30, 1998 proposed rule.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention Paul Maxwell, Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–7540, ext. 132 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On June 30, 1998 (63 FR 35662), HUD published a proposed rule that would establish for HUD's public housing, Section 8 housing, other assisted housing, and multifamily insured housing programs annual financial reporting standards. The rule proposed to require public housing agencies and project owners of HUD-assisted housing, which already, under longstanding regulatory and contractual requirements, submit financial information on annual basis to HUD to submit this information electronically to HUD in accordance with a standardized format to be established by HUD. The rule also proposed that the annual financial information to be submitted to HUD must be prepared in accordance with generally accepted accounting principles (GAAP).

Electronic Submission

Electronic submission was determined important in reducing the administrative burden that manual submission presents to housing authorities, project owners, mortgagees and HUD. It is also important in bringing HUD and its program partners up-to-date with modern technology. With the dramatic growth of personal computer ownership, reports are compiled electronically and electronic reporting will allow for the rapid submission of the reports and enhances HUD's ability to analyze these reports quickly, which is of benefit to the reporting entities (or individuals).

GAAP Accounting

The rule also proposed to require that the annual financial information to be reported to HUD must be prepared in accordance with generally accepted accounting principles (GAAP). ''Generally accepted accounting principles'' has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA). Under GAAP, the accounting principles and financial reporting standards are established by the Governmental Accounting Standards Board (GASB) for governmental entities, and by the Financial Accounting Standards Board (FASB) for nongovernmental entities. Reporting in GAAP was determined important because GAAP accounting is more widely accepted and allows for financial consistency among various entities. HUD's FHA multifamily program participants are already reporting in GAAP (and have been for sometime). The requirement for all financial reports to be prepared in accordance with GAAP would bring public housing agencies (PHAs) under similar accounting standards as FHA multifamily program participants, thereby increasing consistency and fairness in the reporting process, including the evaluation of these reports.

Report Submission Date

The rule proposed that the annual submission date for the report would be sixty (60) days after the end of the covered entity's fiscal year. The proposed report due date was consistent with the reporting deadline established for multifamily program participants, and would have added an additional 15 days to the established annual reporting deadline for PHAs.

Standardized Format

In the proposed rule, HUD explained that the format of the financial report would be substantially the same for all covered programs, although the format may vary in certain respects to reflect different types of reporting entities (e.g., owners of multifamily/FHA-related housing vs. PHAs). However, the content of the annual financial report to be submitted to HUD would not have been materially altered by the proposed rule; the proposed rule would have continued to require much of the financial information that is now submitted to HUD. The manner in which the financial information is prepared and the format in which it is submitted would be altered by the requirements to comply with GAAP and to submit the report electronically and in a standardized format. A standardized format is anticipated to bring uniformity and consistency to the evaluation of the financial data. Electronic submission is anticipated to bring efficiency to the process and reduce administrative burden.

Covered Programs

HUD proposed to apply the uniform financial reporting standards to owners and/or administrators of housing under the following HUD programs:

1. Public Housing

The reporting requirements would apply to PHAs receiving assistance under sections 5, 9, or 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437g, and 1437*l*) (the 1937 Act).

2. PHAs Administering Section 8 Housing Assistance Payments Programs

The reporting requirements would apply to PHAs as contract administrators for any Section 8 project-based or tenant-based housing

assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

3. Owners of Housing Receiving Section 8 Project-Based Housing Assistance

The reporting requirements would apply to owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program.

4. Multifamily Housing

The reporting requirements would apply to owners of housing receiving assistance or loans under the following HUD programs:

(i) Section 202 Program of Supportive Housing for the Elderly;

(ii) Section 811 Program of Supportive Housing for Persons with Disabilities; and

(iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

The reporting requirements would also apply to owners of all housing with mortgages insured, coinsured, or held by HUD, or housing that is receiving assistance from HUD. Such housing would include, but may not be limited to, housing under the following authorities:

(iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 et seq.) (Rental Housing Insurance);

(v) Section 213 of the NHA (Cooperative Housing Insurance);

(vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(vii) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(viii) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(ix) Section 231 of the NHA (Housing for Elderly Persons);

(x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(xiv) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

Proposed Implementation Schedule. As described in the June 30, 1998 proposed rule, for PHAs (as recipients of assistance under sections 5, 9, or 14, or as contract administrators of the various Section 8 assisted housing programs listed above), HUD proposed that the requirement of electronic submission of GAAP-based financial reports, in the manner and in the format prescribed by HUD, would begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements would be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements would then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Amendments Act of 1996 and revised OMB Circular A–133. For all other entities to which this rule would apply (''other covered entities''), HUD proposed that the requirement of electronic submission of GAAP-based audited financial reports, as provided in this rule, would begin with those other covered entities with fiscal years ending December 31, 1998 and later.

II. Changes at the Final Rule Stage

The initial due date for the receipt of public comments on the proposed uniform financial reporting standards was July 30, 1998. HUD published a notice extending the deadline for public comments until August 13, 1998 (63 FR 41754). HUD received 73 comments on the proposed rule.

As a result of the public comments, the following two changes were made to the rule at the final rule stage.

1. Report Submission Deadline for Multifamily Housing Properties Is April 30, 1999 for First Year of Compliance

The final rule provides that for the first year of implementation of the uniform financial reporting requirements, the annual report submission deadline for entities (or individuals) with fiscal years ending December 31, 1998 reporting on multifamily housing properties is April 30, 1998 for the first year of compliance only.

2. Clarification of Owner Responsibility for Submission of Financial Report

The final rule clarifies that the owner is responsible for the submission of the financial report.

III. Discussion of Public Comments

The majority of the public commenters on this rule supported the proposed changes in annual financial reporting announced in the June 30, 1998 proposed rule. The commenters stated that accounting in accordance with GAAP and electronic submission reporting were steps in the right direction. They commented that: reporting in accordance with GAAP will bring more standardization and thus more comprehensive understanding of financial reports produced by housing authorities; a significant byproduct of the conversion to GAAP will be to make agencies much more conversant with the private industry; and use of electronic submission of annual statements via the internet would result in significant benefits to both HUD and program participants. The majority of the commenters supporting these changes, however, expressed reservations about certain components of the proposed rule, and particularly expressed reservations about the following three areas. First, the commenters expressed concern that the implementation date for financial reporting changes was too early, and would not allow sufficient time to make the conversion to GAAP and electronic submission. Second, the commenters expressed concern that there would be increased costs as a result of conversion to GAAP and electronic submission. Third, the commenters expressed concern about the annual report submission due date. The commenters thought a report due date of 60 days after the end of the fiscal year was not reasonable, particularly during the first year of compliance with the reporting requirements.

As already noted in section II of this preamble, the final rule provides for an extended report due date for the first

year of compliance for entities (or individuals) with fiscal years ending December 31, 1998 and reporting on multifamily housing properties. For PHAs, the final rule provides, as did the proposed rule, for compliance with the reporting requirements beginning with fiscal years ending September 30, 1999 and later. The longer implementation period for PHAs, and the changes made by this final rule with respect to multifamily housing properties, should address to a significant degree concerns about the implementation date, and should minimize costs concerns raised by the commenters as will be discussed further below. The following provides a more detailed discussion of these concerns as well as other issues raised by the public commenters on the June 30, 1998 proposed rule.

A. General Comments on the Proposed Rule

The Public Comment Period for the Rule Was Not Sufficient

Several commenters responded that a 30-day comment period for the proposed rule was inadequate. The commenters stated that 30 days is not sufficient time for a rule that addresses such critically important responsibilities of housing providers.

HUD notes that the public comment period for this rule was extended through August 13, 1998 in response to commenters' request. Additionally, HUD notes that although the financial reporting changes proposed in the June 30, 1998 rule address important responsibilities, the changes themselves are not dramatic. First, the rule does not impose a new annual financial reporting requirement. The statutes, regulations and contracts governing HUD housing programs currently provide for the annual submission of financial information to HUD, as well as such other information that HUD may require to monitor compliance with program statutory, regulatory, and contractual requirements.

Second, the financial information to be submitted is not changed significantly by this rule. As the proposed rule stated, much of the financial information that is now submitted to HUD would continue to be submitted to HUD. The changes in financial information that HUD has targeted for revision are those that result in a needed update to reflect existing requirements, the elimination of redundant information, or greater standardization. These changes are designed to reduce the administrative burden of preparing the annual financial information.

Third, FHA multifamily program participants have been reporting in accordance with GAAP for a substantial period of time. There are some changes in GAAP reporting for the annual financial report to be submitted by multifamily program participants but these changes are those that primarily result from the issuance of an updated chart of accounts that captures accounting information that is already separately recorded by project owners. PHAs that have not yet converted to GAAP (and a number of PHAs already have) will not be disadvantaged by the new reporting requirements because again the final rule provides, as did the proposed rule, that reporting in accordance with the uniform financial reporting requirements will begin with PHAs with fiscal years ending September 30, 1999 and later.

Fourth, electronic reporting should not create an undue administrative burden for entities covered by this rule. With the dramatic growth of personal computer ownership and the even more dramatic growth of internet access through personal computers, most entities, including small entities, have internet access. As discussed later in this rule, PHAs and FHA multifamily program participants are already submitting electronically to HUD data necessitated under other program requirements.

Fifth, as the June 30, 1998 proposed rule discussed, in the development of the uniform financial reporting requirements, HUD created working groups involving HUD's program participants and others familiar with both FHA properties and public housing properties, GAAP reporting and electronic submission, to examine the annual financial information that is now submitted to HUD and how preparation and evaluation of that information could be made less burdensome while preserving the enforcement integrity of the information. HUD also posted this rule on HUD's web page to provide greater dissemination of notice of this proposed rulemaking, and the **Federal Register** also provides electronic posting of published rules. Given the pre-publication discussions with program participants, the limitation on changes to financial reporting requirements proposed by the June 30, 1998, and the benefits to be reaped through implementation of uniform financial reporting requirements, HUD believes that the comment period provided was adequate.

The Rule Needs to Provide Additional Information About the Financial Reporting Requirements

Several commenters stated that the proposed rule failed to provide the specifics on the implementation of the reporting requirements and on the financial information to be provided. One commenter stated that the proposed rule failed to describe what information is to be submitted and by whom. Another commenter asked who will provide the necessary software and training that will be needed in complying with these requirements.

HUD believes that the proposed rule was clear on the implementation schedule of the uniform financial reporting requirements, both in the preamble to the rule and the text of the rule. That schedule is also found later in Section IV of this preamble under the heading ''Compliance Schedule for Uniform Financial Reporting Requirements.'' With respect to the details of the financial information to be reported, HUD's current regulations, and indeed other agency regulations, have not provided in regulatory text the details of the financial information to be submitted. This information can be lengthy and technical and not suitable for an authority (the Code of Federal Regulations) which is updated only once a year. The regulation provides the broad reporting requirements, but the specifics of the financial information is left to supplemental documents such as handbooks and guidebooks, which allow for a more detailed discussion of the financial information to be submitted (and therefore more helpful), allows for examples and model reports to be included, and can be corrected and updated easily, as a result of users' suggestions and recommendations, and as a result of experience in using the model reports and forms provided.

HUD's approach to the uniform reporting requirements will follow this traditional practice. As changes have come about in reporting requirements, HUD developed the necessary guidance for its program participants. For example, when revisions were made to OMB Circular A–133 (Audits of States, Local Governments, and Nonprofit Organizations) as a result of changes made by the Single Audit Amendments Act of 1996 (Pub. L. 104–156, approved July 5, 1996), HUD developed and issued the necessary guidance to assist program participants in understanding and complying with the changes made by this statute and the revised circular. HUD revised and issued Handbook 2000.04 REV–2 on Consolidated Audit Guide for Audits of HUD Programs.

HUD also issued a notice to all multifamily project mortgagors on the new audit requirements resulting from the statute and legislation (Notice H–98–25, issued April 24, 1998). Another example of detailed assistance is the guidance that HUD prepared and issued on the Annual Financial Data Submission Requirements. This guidance, issued December 9, 1997, details the requirements for electronic submission of annual financial data to HUD by multifamily housing project owners, or their authorized employees or agents. For PHAs, HUD has developed and made available a HUD–GAAP Conversion Guide for PHAs. This guidance document is in the final development stage.

As has been the case in the past, HUD will provide the necessary additional details and documentation, and guidance and technical assistance that entities covered by this rule will need to comply with the uniform financial reporting requirements.

Implementation of the Uniform Financial Reporting Requirements Should Be Delayed for One Year

Several commenters stated that compliance with the uniform financial reporting requirements, which will entail conversion to GAAP and electronic submission, constitute major changes and the start-up dates in the rule are not reasonable. Other commenters suggested that these requirements first be instituted as a pilot or test program before national implementation.

HUD has carefully considered the comments and suggestions regarding the rule's implementation dates and has concluded that, except for the changes made by this final rule, the dates provided in the June 30, 1998 proposed rule should remain applicable. Again, HUD's multifamily housing program participants already report in accordance with GAAP and have been reporting in GAAP for a considerable period of time. HUD acknowledges that the implementation schedule for entities (or individuals) reporting on multifamily housing properties and that have fiscal years ending December 31, 1998, will require conversion to HUD's uniform financial reporting requirements in the middle of an accounting cycle. This conversion, however, is not anticipated to be a difficult transition to make because the changes to be addressed for multifamily property annual financial reports (that are already prepared in accordance with GAAP) are those that primarily result from the issuance of an updated chart of accounts that captures accounting information that is already separately recorded by multifamily housing project owners. Although the conversion changes for entities and individuals are not anticipated to be difficult, HUD has provided in the final rule, as already discussed in this preamble, an extended report submission date for the first year of compliance for those entities (or individuals) that have fiscal years ending December 31, 1998 and are reporting on multifamily housing properties.

With respect to electronic submission, many FHA multifamily program participants already submit reports electronically to HUD. For example, 24 CFR part 208 provides for the electronic transmission of certain required data pertaining to certification and recertification of tenant's eligibility for multifamily subsidized projects. This rule was promulgated in 1993. More recently, HUD published a proposed rule that would require mortgagees that hold or service multifamily mortgages insured by HUD to submit to HUD electronically data on mortgage delinquencies, defaults, and defaults, among other things. This rule published on May 13, 1998 (63 FR 26702) provided a 60-day public comment period, and no public comments were received on the rule.

In the case of PHAs, the rule allows a full fiscal year to convert accounting systems and records to provide the few new or changed accounts and entries necessary to convert to GASB/GAAP and HUD's revised annual reporting requirements. While the lead time is not long for affected PHAs with fiscal years beginning October 1, 1998, HUD's guidelines show that the nature of the changes will not require an extensive break-out or reconstruction of transaction detail, even if the changes are made in the middle of an annual accounting cycle. With respect to electronic submission, PHAs also already submit various reports electronically to HUD. For example, 24 CFR part 908 provides for the electronic transmission of certain required family data for PHAs operating public housing, Indian housing or Section 8 Rental Certificate or Voucher programs.

HUD also reminds entities subject to compliance with the uniform financial reporting requirements that the final rule provides, as did the proposed rule, that HUD may approve transmission of the financial data by tape or diskette if HUD determines that the cost of electronic transmission via the internet would be excessive.

HUD wants the uniform financial reporting requirements to succeed, to assist and benefit HUD's program participants, as well as HUD. HUD will provide the necessary guidance and technical assistance, and as the process gets underway, HUD will carefully consider any circumstances that may arise and may make compliance with these reporting requirements difficult or necessitate additional time in a given situation.

The Content and Format of the Financial Report Should Be Published for Comment

Five commenters requested that the content and format of the financial report be published for advance notice and comment.

HUD will make the content and format of the report available. Again, however, as HUD noted in the proposed rule, the uniform financial reporting requirements do not substantively change the existing annual financial reporting requirements of HUD's housing program participants, or the format in which the information is to be submitted. The rule will result in some changes to the chart of accounts used in financial reporting to HUD, including changes to: streamline or eliminate unnecessary account detail; add some additional accounts required to comply with new GASB/GAAP requirements for PHAs; and update the multifamily housing chart of accounts to more fully capture existing program requirements.

Currently, HUD guidelines on the specific nature of these changes is available from the HUD/REAC web site (http://www.hud.gov/reac/reafin.html). As the HUD/REAC system development effort nears completion, further guidance on specific procedures for reporting formats and electronic submission will be provided.

Uniform Financial Reporting Will Not Assure Comparative Analysis of Performance.

A few commenters stated that HUD's assumption that uniform financial reporting of financial data will facilitate more effective analysis of project operating data is not necessarily correct. The commenters stated that the financial conditions of the projects under review (public housing and multifamily properties) are so different and so any variations are involved in each of these categories, that uniform financial reporting will not achieve the comparative analysis HUD desires.

The rule's primary purpose is to provide for greater uniformity in the accounting principles, account structure, and financial and compliance reporting formats applicable to HUD's housing programs. HUD acknowledges the basic differences between its PHA

and FHA multifamily housing, but believes that the uniform financial report procedures, coupled with new electronic submission requirements, the rule's uniform standards will greatly enhance HUD's ability to perform timely, meaningful comparative analyses of the financial performance and compliance of its housing program participants and portfolio.

The Rule Adversely Impacts Small Entities

Several commenters stated that the changes in reporting requirements proposed by the June 30, 1998 rule would adversely impact small entities.

HUD disagrees with the commenters that the uniform financial reporting requirements will have a significant economic impact on a substantial number of small entities for several reasons. First, for small entities reporting on multifamily properties, these entities are already familiar and reporting in accordance with GAAP accounting. Multifamily chart of account changes primarily pertain to needed updates to better reflect existing rather than new requirements. For small PHAs, HUD has provided a year before reporting in GAAP is required. Second, HUD notes that the Single Audit Act Amendments of 1996 raised significantly the monetary threshold for when an entity that receives Federal assistance is required to have an audit. The threshold was raised from $25,000 to $300,000. This change significantly reduces reporting costs for small entities. Therefore, although small entities must continue to submit an annual financial report to HUD, an audited report is not required. Third, the June 30, 1998 proposed rule although clearly expressing a preference for internet submission of financial reports provides that HUD will approve transmission of financial data by tape or diskette if HUD determined that the cost of electronic internet transmission would be excessive. Fourth, the change made at this final rule stage (the extended report due date for certain entities reporting on multifamily housing properties) also will contribute to reducing any possible disproportionate administrative burden that this rule may have had on small entities. Additionally, to further ease any administrative burden on small entities, and all entities subject to these requirements, HUD will provide submission software, supplemental guidance, training and other technical assistance.

B. Comments on Reporting in Accordance with GAAP

Conversion to GAAP Will Take Longer and Be More Costly than HUD Estimates and Will Not Bring Consistency

Several PHA commenters stated that the conversion to GAAP will take longer and be more costly than HUD estimates. These commenters stated that the conversion of PHA financial statements from the current HUD reporting to a GAAP basis may not be as simplistic as HUD staff foresees; could require significant effort for the auditor and the organizations; and could result in major differences in the financial statement amounts if PHAs are treated as business-type activities rather than governmental entities.

HUD understands PHA concerns about the conversion to GAAP, but believes that these concerns are based on misunderstanding or misconceptions about GAAP. First GAAP standards take into account governmental entities. As noted in the proposed rule, there is ''governmental GAAP''—that is, financial reporting standards established by the Governmental Accounting Standards Board (GASB). These standards are sometimes referred to as GASB GAAP. Second, GAAP standards are not as rigid as some of the commenters may believe. GAAP permits choices among acceptable options for certain accounting transactions. For PHAs, GAAP permits two types of reporting mechanisms, the governmental method and the enterprise methods. The use of either method is acceptable to HUD. Each PHA has the discretion to determine its own method. The guiding criteria should be the type of activities performed by the PHA.

Because the purpose of converting to GAAP is to achieve uniform and consistent financial data from all reporting entities, HUD has selected preferred options for those transactions within the two types of methods (governmental and enterprise) where GAAP allows an entity to choose from more than one method. HUD's PHA GAAP Conversion Guide identifies HUD's preference on the allowable treatment of select accounting issues to provide desired standardization across the HUD-supported portfolio. For example, HUD will prefer that PHA's: accrue all expenses, expense inventory as consumed, report depreciation on fixed assets, and report the accrual of compensated absences. These preferences are all allowable under GASB/GAAP, and under both a governmental or enterprise fund model. Additionally, HUD points out that conversion to GAAP does not require change of recordkeeping.

HUD notes that for PHAs the GAAP conversion process entails only year-end adjustments to convert a PHA's recordkeeping so that information may be reported under GAAP. Compliance with GAAP does not require the wholesale conversion of PHA accounting software in order to meet the rule's implementation date for PHAs, nor does it require PHAs to change their current accounting and recordkeeping systems. PHAs are only required to report this information using GAAP as the accounting basis. Reporting financial information in accordance with GAAP allows for financial consistency among PHAs. It also provides a common mechanism for HUD to fairly and accurately assess the financial condition of each PHA as compared to its peers. Additionally, GAAP reporting presents a more accurate picture of PHA financial condition by accounting and accruing for all liabilities that may exist.

Another commenter stated that the proposed rule mentioned two different standard setting bodies in the proposed rule—FASB and GASB. The commenter noted that FASB exercises jurisdiction over private enterprises and nonprofits while GASB exercises jurisdiction over government. The commenter asked how HUD proposes to maintain consistency in accounting and financial reporting when there is no consistency in the underlying accounting standards.

HUD acknowledges the distinctions between housing entities covered by FASB/GAAP versus GASB/GAAP, but notes that FASB and GASB have been established to be as consistent with each other as feasible given the types of entities each covers. To maintain that consistency, HUD will not be advocating any deviation from the appropriate standards applicable to each housing entity. As noted earlier in this preamble, there are various fund types and reporting options available to entities governed under GASB/GAAP. There are options within those variable bases of accounting which can realize consistency of treatment of the many specific types of transactions or accounting issues.

GAAP Requires the Calculation of Depreciation, Which Is Not Currently Done by PHAs and Benefit of This Information Unclear

Several PHA commenters expressed concern about the introduction of depreciation (a GAAP requirement) into the public housing financial system. The commenters stated that depreciation calculations will increase expenses, and therefore, have an impact

on the balance sheet and income statement.

HUD believes that the reporting of the accumulated depreciation of PHAs assets will better enable HUD to assess a PHA's performance and funding needs. The availability of such information will enable the PHA to operate in a more business-like manner. Recording of depreciation provides each PHA with a systematic allocation method showing the cost of an asset over its useful life. The recording of deprecation permits each PHA to show the directly related consumption of the asset over the periods in which the asset is used. The HUD–GAAP Conversion Guide for PHAs provides guidance and training on a straightforward, simplistic approach to establishing the current depreciated value of fixed assets during the conversion process.

HUD Circular Letter LM–85 Provides an Exception to GAAP Filings

Three commenters stated that under HUD Circular Letter LM–85, accrual based financial statements prepared on the same basis of accounting as a project's tax return are acceptable to HUD provided that the only two differences are the write off (rather than capitalization) of certain interest and taxes incurred during the construction period and the methods and lives of depreciating fixed assets. The commenters stated that this, therefore, provides an exception to the GAAP rule in that it avoids the need for owners and property managers to duplicate certain GAAP and income tax basis records for many projects.

HUD Circular Letter LM–85 was superseded by HUD Handbook changes requiring GAAP-based financial reporting by all multifamily housing program participants. While individual HUD field offices may have inconsistently enforced the existing requirement for GAAP-based financial reporting, one of the objectives of this rule is to ensure compliance with the uniform financial reporting requirements.

Changes to Existing Chart of Accounts Will Create Problems

A few commenters expressed concerns about change to the chart of accounts. The commenters stated that the existing chart of accounts includes surplus accounts that are unique to HUD, and these should not be changed. The commenters also stated that the existing chart of accounts provides for tracking subsidies on a cash basis, and confusion would result if HUD grants and cumulative grants were no longer tracked on a cash basis. One commenter stated that the chart of account will not accommodate recording of transactions under both FASB and GASB. Some commenters expressed concern that the changes to the chart of accounts will be occurring after 1998 transactions already have been recorded. These commenters stated that to meet the implementation deadlines of the proposed rule, they would have to reclassify transactions already recorded. The commenters also stated that there would have to be changes in the computer programs now administered by the private management companies but also in other forms and procedures established by HUD.

HUD does not intend to eliminate the HUD surplus accounts that are currently within the chart of accounts. Additional accounts required to permit conformity with GAAP are being added to the chart of accounts. With respect to subsidies, these can be tracked under GAAP. In fact, reporting of subsidies under GAAP will provide a clearer picture of cumulative HUD grants and will not compromise the integrity of the operating reserve and cash analysis system. HUD also has expanded the chart of accounts for both public and multifamily housing programs, and the respective charts for these programs now contain the accounts needed to fulfill HUD's needs in accordance with the appropriate FASB or GASB requirements. The new accounts needed for PHAs to convert to GASB/GAAP are described in HUD's ''PHA GAAP Conversion Guide.'' With respect to concerns about changes to the chart of accounts after the 1998 reporting year is underway, HUD notes that the revisions to the old chart of accounts for multifamily housing projects were only those necessary to update the chart to reflect already existing requirements. Some of the new accounts capture data previously reported on supplemental compliance data schedules that are being eliminated under HUD's new financial assessment process. Therefore, the changes to the chart of accounts are not anticipated to require any extensive reconstruction or break-out of accounting transactions to implement. HUD has recently developed guidance that describes the specific nature of the new chart of accounts and the basis and preferred treatment of any additions, deletions or other changes. This guidance is available through the HUD REAC web site. On the matter of changes to existing handbooks and forms, HUD Handbook 4370.2 is being revised to introduce the new chart of accounts and new HUD budget worksheets. Other handbooks and forms will be updated as necessary.

Conversion to GAAP Will Be Burdensome to Small Entities

With respect to concerns about the administrative burden of conversion to GAAP, and particularly that such burden that may fall on small entities, these concerns addressed earlier in the preamble under Section III.A. As noted earlier, HUD is allowing a full year before reporting in GAAP will be required (again FHA multifamily program participants are already reporting in accordance with GAAP). Also, given that GAAP takes into account the financial distinctions of governmental entities, and given that GAAP is not as rigid as some commenters may believe, HUD does not believe that the conversion process will be as burdensome as the commenters believe. HUD already has developed, and provided to PHAs as well as posted on the HUD website at www://hud.gov the HUD–GAAP Conversion Guide for PHAs.

C. Comments on Electronic Submission

Electronic Submission Is Administratively Burdensome and Costly

Several commenters, including those who already have converted to GAAP, expressed concern about electronic submission of the financial report via the internet. The commenters stated that although they realize that electronic submission results in significant administrative efficiencies, electronic submission via the internet creates administrative burdens that they believe exceed the burdens of manual submission requirements. A few commenters stated that electronic submission adversely impacts small entities since systems of many small property owners are not electronic and their ability to complete electronic submissions is limited and in some instances non-existent. Other commenters stated that electronic submission will not replace a hard copy report and therefore the benefits for the reporting entities are not that significant. Several commenters also raised concerns that audit costs would increase as a result of electronic submissions because housing authorities and agencies would ask their accountants to handle the electronic submission.

With respect to internet transmission, HUD acknowledges that until recently on-line transmission and on-line use of information was generally limited to large entities. The dramatic growth in

personal computer ownership, however, has enabled smaller entities to access on-line information just as readily as large entities. For those entities without internet capability at their place of business, access is readily available at other business or public locations for reasonable usage fees. Many Federal, State, and local government agencies are a possible source of internet access for those in need of internet capability, including local HUD offices.

There are significant benefits to internet capability for information delivery. Internet capability by allowing for rapid transmission of the data from the reporting entity to HUD, increasing the ability of HUD to analyze the information, and facilitating HUD's response to the reporting entity about the financial information provided. Additionally, use of the internet eliminates the time-consuming paperwork required to manually transmit the financial reports to HUD.

HUD is aware that for some entities, perhaps small entities, there may be an initial administrative burden and cost associated with the new requirement for electronic submission of financial statements. However, as discussed above, the widespread use of personal computers and internet services, should make the administrative burden and cost minimal, and this burden and cost will be offset by the increased efficiency that electronic submission provides for the reporting entity for HUD's overall financial oversight process.

To simplify the electronic submission process, HUD will provide submission software to reporting entities, at no cost, that can be downloaded from the internet. The software provides a template to more easily enable reporting entities to submit their financial report information, and better assures the quality of the data. This user friendly software reduces the electronic submission process to more of a clerical process, as opposed to the time consuming professional accounting services effort envisioned in many of the comments. HUD will provide training with this software and the REAC Customer Service Center will further assist entities in understanding and fulfilling these new requirements. Additionally, the extended report due date for multifamily project owners with fiscal years ending December 31, 1998 should significantly ease the initial administrative burden that occurs in the first year of compliance with the new requirements. The software, the training, the extended report due date are steps that HUD is taking to alleviate concerns over the degree of difficulty and cost associated with the required electronic submission process. While it is true that the electronic submission to HUD may not replace the need to provide a hard copy report to other agencies or organizations for other purposes, more and more organizations are requiring electronic submissions of reporting. As noted earlier, HUD's program participants are already submitting reports electronically to HUD in several areas.

With respect to the impact on small entities, in addition to the reasons just discussed that will minimize any burden or cost associated with internet transmission, HUD reminds the commenters that the rule provides that HUD may consider electronic submission other than through the internet if the cost of electronic submission via the internet would be significant.

How Will Electronically Submitted Information Be Verified and Be Made Secure

A few commenters asked how independent auditors would verify the electronic information.

HUD's Financial Assessment Subsystem will contain internal edit checks to preclude the submission of incomplete or mathematically inaccurate information. Auditors will be able to access the financial audit information submitted to HUD by their clients. Auditors should check the validity of last year's report submissions as part of the current year audit. Furthermore, HUD's REAC will have a quality assurance program to validate audit quality and PHA and multifamily owner data submissions. Suspected occurrences of false submissions will be referred to HUD's Enforcement Center for the pursuit of possible criminal, civil and/or administrative sanctions.

D. Comments on the Financial Report Due Date

Several commenters requested that the report submission date be extended to 90 days or longer. The commenters stated that the report due date that provides for 60-days after the end of the entity's fiscal year is not sufficient. Other commenters stated that the report due date is burdensome for entities who must file under OMB Circular A–133 standards.

HUD believes that the submission due date of 60 days from the end of an entity's fiscal year is a reasonable amount of time. For entities and individuals reporting on multifamily housing properties, this is the standard annual financial report due date found in existing regulatory and contractual agreements governing multifamily housing programs. Since HUD is not substantially changing the multifamily report requirements, additional time is not believed to be warranted, beyond the initial compliance year, as discussed earlier in this preamble. In the case of PHAs, the 60-day submission date gives PHAs an additional 15 days beyond the previous 45-day submission requirement. Additionally, for PHAs, the first year of compliance begins for fiscal years ending September 1999. In all cases, HUD will consider extensions of the report due date for entities submitting their first reports under the uniform financial reporting requirements. Apart from the first reporting year under the uniform financial reporting requirements, requests for extensions of time can be submitted to REAC, but these extensions only will be approved for unusual circumstances beyond an entity's control.

With respect to entities who must file reports under A–133 standards, HUD is not requiring non-profit entities who must comply with A–133 standards to provide all the schedules which are normally prepared and forwarded as a part of these entities' audited financial statements to HUD within 60 days. In accordance with A–133 standards, the audited financial statement itself is not due to HUD until 9 months after the end of an entity's fiscal year. In those cases, owners would still have to submit the required unaudited financial reports within the 60-day period, in accordance with the existing requirements of their HUD regulatory agreement or contract.

E. Other Comments on the Proposed Rule

Compensation for the Costs of Conversion Is Necessary

Several commenters especially non-public housing agencies were concerned that they would not be compensated for the increased costs of conversion to GAAP and in submitting reports electronically.

As discussed earlier in this preamble, the costs of implementing the accounting and electronic submission changes resulting from this rule are not expected to be significant. HUD believes that any additional cost incurred will be offset by corresponding decreases in program participant burdens through greater efficiencies in HUD's overall assessment of the financial condition of HUD public housing and other HUD assisted properties. Costs associated with implementing the new requirements are eligible project expenses under existing program requirements.

The Uniform Financial Reporting Requirements Constitute an Unfunded Mandate

Several commenters stated that the electronic submission requirements constitute an unfunded mandate under the Unfunded Mandates Reform Act (UMRA).

Section 201 of the UMRA requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. HUD has assessed the effects of this rule on housing authorities and other owners and managers of HUD housing. While this rule provides uniform financial reporting requirements for HUD housing, these requirements are not dramatically different from the reporting requirements with which HUD program participants already comply. HUD has determined that the uniform financial reporting requirements will reduce burden after the initial transition year, and this preamble discusses the many ways in which HUD reduced the potential for administrative burden during the first year of compliance. Additionally, the UMRA provides an exemption for entities participating in voluntary Federal programs. Since HUD has assessed the effects of this rule on State, local, and tribal governments, and on the private sector, and since this rule does not include a Federal mandate, HUD has complied with the Unfunded Mandates Reform Act of 1995.

Education and Training by HUD of the New Requirements Are Critical

Several commenters stressed that they wanted HUD to ensure that it would take responsibility in providing education and training of the uniform financial reporting requirements.

HUD acknowledges that it has this responsibility, and already has begun providing guidance on the uniform financial reporting requirements. Initial guidance is already available through the HUD REAC web site or Customer Service Center, and plans are being made by REAC for additional guidance and training of PHAs, project owners, mortgagees, housing industry groups and CPAs.

Information Collection Burden is Understated in Rule

Four commenters stated that they thought that the information collection burden of .75 hours reported in the Paperwork Reduction Act Statement section of the rule was understated.

HUD appreciates the comments in this area, and is reexamining whether the burden is greater than the .75 reported at the proposed rule stage. HUD's decision to develop electronic submission software, which will provide an easy to use submission template, at no cost to housing entities, will have an impact on reducing the reporting burden of electronic submission.

HUD Handbook 4370.2 REV Restricts Business Relationships Between Independent Accountants and Mortgagor

One commenter stated that existing HUD policy in HUD Handbook 4370.2 REV restricts business relationships between the independent accountants and mortgagor, except for the performance of audit, accounting systems work and tax preparation. The commenter stated that HUD should therefore issue a formal interpretation relative to the definition of ''fee accountant'' which is currently defined by HUD or an individual who performs manual or automated bookkeeping services and/or maintains the official accounting records. HUD currently prohibits accountants from performing the audit of the mortgage.

The term ''fee accountant'' is defined in HUD's Consolidated Audit Guide for Audits of HUD Programs (IG 2000.04, REV–2. It is also important to note that an accountant who keeps the books for a specific project is prohibited from performing the audit of a project.

Why Is Reporting Responsibility Imposed on Auditor and Not Owner

One commenter asked why the responsibility is being placed on the auditor to submit the report to HUD.

Since only one commenter asked this question, HUD believes that the proposed rule was clear that the responsibility for the submission of the report is with the owner. Nevertheless, the final rule clarifies that the owner has responsibility for submission of the report to HUD.

HUD Should Reexamine the Applicability of the Uniform Financial Reporting Requirements to Certain Programs

There were several comments suggesting that certain HUD programs should be excluded from the applicability of the uniform financial reporting requirements. One commenter stated that pre-1980 Section 8 projects are outside of the financial reporting requirements. Another commenter stated that audited financial report requirements should not be applied to Section 8 and other HUD housing subsidy programs. One commenter stated that FHA-Insured Properties should be exempt from audited financial report requirements, and another commenter stated that these reporting requirements should not be applied to non-profit sponsored projects.

HUD firmly believes that the uniform financial reporting requirements should apply to as many HUD programs as legal authority provides. As has been stated throughout this preamble, the uniform financial reporting requirements established by this rule do not present a dramatic change from the reporting requirements to which HUD's program participants have been subject to date. Where changes require some time for implementation (conversion to GAAP, electronic submission), HUD is providing the necessary time and technical guidance to assist these entities in making the conversion to GAAP and electronic reporting.

HUD believes that the uniform financial reporting requirements will improve the efficiency and effectiveness of financial reporting by HUD program participants, improve the efficiency and fairness of HUD's evaluation of these reports, and reduce the administrative burden for HUD and covered entities that manual reporting presents.

IV. Regulatory Amendments

New Subpart for Uniform Financial Reporting Standards

This rule creates a new subpart H in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart H consists of one section. Section 5.801(a) describes the entities to which the uniform financial reporting standards will apply. Paragraph (b) of § 5.801 provides that entities covered by subpart H must submit electronically to HUD certain annual financial information, prepared in accordance with generally accepted accounting principles, and in the format prescribed by HUD. In accordance with paragraph (c) of § 5.801, the information must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting entity.

Conforming Amendments in Program Regulations

In accordance with the uniform financial reporting standards, this rule also makes several conforming amendments to HUD's program regulations to reference compliance with the uniform financial reporting standards in 24 CFR part 5, subpart H. HUD is issuing a separate rule regarding

the overall assessment of public housing, in which HUD further addresses the applicability of the uniform financial reporting standards in 24 CFR part 5, subpart H, to the public housing programs.

One of the conforming amendments in this rule is to add a new § 200.36, which refers to the uniform financial reporting requirements in subpart H of part 5. Section 200.36 applies the new financial reporting requirements to all HUD's multifamily mortgage insurance programs, since many of the various program regulations (e.g., 24 CFR parts 207, 213, 220, 221, 231, 232, 234, 241) refer to the cross-cutting requirements in part 200. This rule amends the heading for subpart A of part 200 to clarify that the financial reporting requirement is a continuing eligibility requirement.

Compliance Schedule for Uniform Financial Reporting Requirements

For PHAs, as recipients of assistance under sections 5, 9, or 14, or as contract administrators of the various Section 8 assisted housing programs listed in § 5.801(a) (1) and (2) of the rule, the requirement of electronic submission of GAAP-based financial reports will begin with those PHAs with fiscal years ending September 30, 1999 and later. Again, HUD believes that this compliance schedule will allow sufficient conversion time for PHAs that are not currently using GAAP. Unaudited financial statements will be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report electronically and prepared in accordance with GAAP, in the manner and in the format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with the financial reporting requirements of this rule, but would not be required to do so.

For all other entities to which this rule would apply (''other covered entities''), the requirement of electronic submission of GAAP-based audited financial reports will begin with those other covered entities with fiscal years ending December 31, 1998 and later. The earlier starting date reflects the widespread use of GAAP by other covered entities. Beginning on January 1, 1999 and thereafter, all financial reports submitted to HUD by other covered entities would be required to be submitted in accordance with the requirements of this rule. For the first year of compliance with the uniform reporting requirements, other covered entities with fiscal years ending December 31, 1998 are required to submit electronic, GAAP-based, audited financial reports by no later than April 30, 1999 (120 days after the close of the fiscal year). This extended due date is only for the first year of compliance, and only for those other covered entities with fiscal years ending December 31, 1998. Covered entities with fiscal years ending December 31, 1998 that elect to submit their audited reports earlier than the April 30, 1999 must submit their audited financial reports electronically and prepared in accordance with GAAP, in the manner and format prescribed by HUD. On or after September 30, 1998 but prior to January 1, 1999, other covered entities may submit their financial reports in accordance with this rule, but they would not be required to do so.

The reporting requirements in this rule are not intended to alter the applicability or timing of the audit requirements in the Single Audit Act (as discussed below). HUD intends to issue notices and other guidance on the details relating to the implementation of this rule.

Additionally, to allow for a period of consistent assessment of the financial reports submitted to HUD under this rule for the purpose of making any refinements or necessary adjustments, PHAs covered by this rule will not be allowed to change their fiscal years for their first three full fiscal years following the effective date of this rule.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB approval number by 2535–0107. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Environmental Impact

This rule involves external administrative requirements and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6) and (where this rule would amend existing provisions) 50.19(c)(2), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. As discussed in detail in the preamble to the final rule, there are several factors present that reduce the possibility of any significant economic impact on a substantial number of small entities.

As noted in the preamble, this rule does not create a new reporting requirement. The annual reporting of certain financial information is a preexisting HUD program requirement. This rule standardizes, to the extent possible, the content of the information and the preparation of the information (in accordance with GAAP), and requires electronic submission. HUD anticipates that these changes will bring consistency, simplicity, and reduced administrative burden to the reporting process. For those entities unfamiliar with GAAP, and particularly for any small entities that may be unfamiliar with GAAP, HUD intends to conduct training seminars in order to assist them in their conversion to GAAP. With respect to costs, the audit costs assumed by PHAs and multifamily project owners are a recognized part of operating and administrative expenses, and accordingly, HUD anticipates that

there will be no (or very little) monetary costs incurred. As noted in the preamble, the Federal Housing Commissioner has required GAAP-based accounting for a number of years, and the vast majority of owners already adhere to its tenets. Therefore, any burden involved in conversion to GAAP in FHA programs is anticipated to be minimal. For PHAs, the rule provides a year for before compliance with these reporting requirements must begin.

With respect to electronic submission, although electronic submission via the internet is preferred, the rule provides that HUD will consider submission through tape, diskette or paper if HUD determines that the costs of electronic submission via the internet would be excessive.

In addition to the issues of training and costs, many entities will have up to 9 months to submit audited financial statements in accordance with GAAP (the period of time allowed under the Single Audit Act).

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMBRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. As was discussed earlier in the preamble to this final rule, this rule would not impose a Federal mandate within the definitions provide in section 101 of the UMRA because this rule merely provides for uniform financial reporting requirements that arise from participation in a voluntary Federal program, for which funds are provided through budget authority that is not entitlement authority.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.850—Public Housing
14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
14.852—Public Housing—Comprehensive Improvement Assistance Program
14.855—Section 8 Rental Voucher Program
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
14.857—Section 8 Rental Certificate Program
14.859—Public Housing—Comprehensive Grant Program

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair Housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies) Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart H, consisting of § 5.801, is added to part 5 to read as follows:

Subpart H—Uniform Financial Reporting Standards

§ 5.801 Uniform financial reporting standards.

(a) *Applicability*. This subpart H implements uniform financial reporting standards for:

(1) Public housing agencies (PHAs) receiving assistance under sections 5, 9, or 14 of the 1937 Act (42 U.S.C. 1437c, 1437g, and 1437*l*) (Public Housing);

(2) PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-

Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

(3) Owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program;

(4) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under the following HUD programs:

(i) Section 202 Program of Supportive Housing for the Elderly;

(ii) Section 811 Program of Supportive Housing for Persons with Disabilities;

(iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects);

(iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 et seq.) (Rental Housing Insurance);

(v) Section 213 of the NHA (Cooperative Housing Insurance);

(vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(vii) Section 221(d) (3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(viii) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(ix) Section 231 of the NHA (Housing for Elderly Persons);

(x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(xiv) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk-Sharing Program).

(b) *Submission of financial information.* Entities (or individuals) to which this subpart is applicable must provide to HUD, on an annual basis, such financial information as required by HUD. This financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance;

(2) Submitted electronically to HUD through the internet, or in such other electronic format designated by HUD, or in such non-electronic format as HUD may allow if the burden or cost of electronic reporting is determined by HUD to be excessive; and

(3) Submitted in such form and substance as prescribed by HUD.

(c) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law. For entities listed in paragraphs (a)(3) and (a)(4) of this section and that have fiscal years ending December 31, 1998, the report shall be due April 30, 1999. This extended report due date is only for entities listed in paragraphs (a)(3) and (a)(4) of this section, and only for the first report due under this section.

(d) *Reporting compliance dates.* Entities (or individuals) that are subject to the reporting requirements in this section must commence compliance with these requirements as follows:

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (a)(4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(e) *Limitation on changing fiscal years.* To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following October 1, 1998.

(f) *Responsibility for submission of financial report.* The responsibility for submission of the financial report due to HUD under this section rests with the individuals and entities listed in paragraph (a) of this section.

PART 200—INTRODUCTION TO FHA PROGRAMS

3. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

4. The heading of Subpart A is revised to read as follows:

Subpart A—Requirements for Application, Commitment, and Endorsement Generally Applicable to Multifamily and Health Care Facility Mortgage Insurance Programs; and Continuing Eligibility Requirements for Existing Projects

5. A new § 200.36 is added immediately after § 200.35 to read as follows:

§ 200.36 Financial reporting requirements.

The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

6. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

7. Section 236.1 is amended by revising the heading, by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

* * * * *

(b) The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

8. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

9. In § 266.505, paragraph (b)(7) is revised to read as follows:

§ 266.505 Regulatory agreement requirements.

* * * * *

(b) * * *

(7) Maintain complete books and records established solely for the project and comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

10. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

11. In § 880.601, paragraph (d)(1) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(d) * * *

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

12. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

13. In § 886.318, paragraph (d)(1) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) * * *

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

14. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

15. In § 982.158, paragraph (a) is amended by adding a sentence at the end, to read as follows:

§ 982.158 Program accounts and records.

(a) * * * The HA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

Dated: August 26, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–23420 Filed 8–31–98; 8:45 am]

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September 1, 1998

Part IX

Department of Housing and Urban Development

24 CFR Parts 901 and 902

Public Housing Assessment System; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 901 and 902

[Docket No. FR–4313–F–03]

RIN 2577–AB81

Public Housing Assessment System

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a proposed rule published on June 30, 1998 to provide for the assessment of the physical condition, financial health, management operations and resident services in public housing. The rule also provides for a Troubled Agency Recovery Center to improve poor performers, and an Enforcement Center and possible receivership for agencies that fail to improve performance. Public housing agencies that fail to post significant improvement within a year will be automatically referred to the new HUD Enforcement Center, which will institute proceedings for judicial receivership to remove failed agency management. The purpose of the new Public Housing Assessment System is to enhance public trust by creating a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable, and provides real rewards for high performers and consequences for poor performers. The final rule takes into consideration public comment received on the June 30, 1998 proposed rule.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention William Thorson, Director of Physical Inspection Management, Real Estate Assessment Center, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On June 30, 1998 (63 FR 35672), HUD published a proposed rule that would establish a new system for the assessment of America's public housing. The new Public Housing Assessment System (PHAS) is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS represents a major rethinking of public housing management.

Under the PHAS as proposed on June 30, 1998, HUD evaluates a PHA based on the following indicators: (1) the physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) residents' assessment (through a resident survey) of the PHA's performance. The management indicator of this new assessment system will incorporate the majority of the existing statutory management assessment indicators (the remaining statutory indicators will be part of the other PHAS indicators). Each of these major indicators is comprised of components. To assess the performance of a PHA on the basis of the first two indicators, the Assessment Center will use comprehensive and standardized protocols to conduct physical inspections of public housing properties and to assess the financial condition of PHAs. For the Management Operations Indicator and the Resident Service and Satisfaction Indicator, the Assessment Center will gather and analyze data and information provided by the PHA.

In order to determine a composite score for each PHA, the four indicators of the PHAS will be individually scored and then combined to present a composite score that reflects the overall performance of PHAs for a total of 100 possible points. The 100 points are distributed as follows:

30 total points for the physical condition;

30 total points for the financial condition;

30 total points for management operations; and

10 total points for resident service and satisfaction.

The PHAS, although applicable only to public housing, reflects HUD's new approach, under HUD 2020 Management Reform, to all properties assisted by HUD. HUD intends to assess all HUD-related properties in a manner similar to that under the PHAS, using uniform financial and physical indicators and resident feedback.

An accurate assessment of a PHA's performance is critical because the consequences of that assessment can be significant. For PHAs determined to be high performers, the consequences will be less scrutiny and additional flexibility. For PHAs determined not to be performing well, the consequences will be intensive technical assistance, deadlines for improvement and possible punitive actions for failure to improve during established periods. The approach provided by the PHAS maximizes the best use of public funds by concentrating resources on those PHAs in most need of attention and recognizing outstanding performers. The system is fundamentally designed to provide relevant and verifiable measures that directly relate to PHA performance.

The June 30, 1998 proposed rule provided for the new PHAS to become effective for PHAs with fiscal years ending September 1999 and later. Financial reports due for PHAs' fiscal years ending in September 1999 and later must be prepared on a GAAP basis. The first scores under the new PHAS will be issued not later than December, 1999 for PHAs with FYs ending in September 1999. Thus, PHAs will have at least one year before the new PHAS scores are issued. Until September 30, 1999, PHAs will continue to be scored under the current PHMAP. During this one year transition period, advisory scores for physical condition and financial management may be issued to provide guidance to PHAs. The implementation schedule for inspection of public housing properties and reporting is as described in the following table:

REAL ESTATE ASSESSMENT CENTER (REAC)

[Assessment Periods and Reporting Dates]

REAC assessment results		Financial reporting	Physical inspection	Management operations	Resident survey
Score issued	Period covered fiscal year end (1)	Due date (2)	Inspection dates (3)	Submission due date (4)	Survey dates (5)
12/1999	9–30–99	11–30–99	7/99–9/99	11–30–99	4/99–9/99
03/2000	12–31–99	2–28–2000	10/99–12/99	2–28–2000	10/99–12/99
06/2000	3–31–2000	5–31–2000	1/2000–3/2000	5–31–2000	1/2000–3/2000
09/2000	6–30–2000	8–31–2000	4/2000–6/2000	8–31–2000	4/2000–6/2000
12/2000	9–30–2000	11–30–2000	7/2000–9/2000	11–30–2000	7/2000–9/2000

Notes:

1. The period covered for each indicator will be the PHA's entire fiscal year ending on dates shown above. Once the new PHAS is effective, a PHA cannot change its fiscal year for a period of 3 years.

2. PHAs with fiscal years ending 9–30–99 and later must provide GAAP financial reports. These reports must be provided by electronic submission not later than 60 days after the end of the PHA's FY. Audited GAAP reports (due 9 months after the close of the FY in accordance with the Single Audit Act and OMB Circular A–133) will be used to update and confirm unaudited financial results. If significant differences are noted between unaudited and audited results, scoring penalties will apply. For those PHAs that spend less than $300,000 of Federal funds, HUD cannot require or pay for an audit in accordance with the Single Audit Act. HUD, however, can require and pay for an ''Agreed-Upon Procedures'' report that could be specifically directed at verifying calculations.

3. Physical inspections will be scheduled to approximate the new PHAS calculation dates; i.e. within the final quarter of the PHA's fiscal year.

4. The certifications and supporting documentation required for the Management Operations Indicator will be due 60 days after the end of the PHA's fiscal year.

5 Resident surveys will be required to be conducted during the course of a PHA's fiscal year and will be required to be submitted by a PHA at the time that the PHA submits the certifications required under the Management Operations Indicator.

II. Changes Made to Proposed Rule at the Final Rule Stage

The initial due date for the receipt of public comments on the proposed PHAS rule was July 30, 1998. In response to requests from commenters for additional time to comment on this rule, HUD published a notice on July 30, 1998 (63 FR 40682) extending the deadline for public comments until August 13, 1998. HUD received 776 comments on the proposed rule. The commenters included housing authorities, residents of public housing (whose 670 form letters represented the great majority of the comments), and organizations representing residents or housing authorities. The form letters provided by the residents addressed only the issue of the resident survey proposed in the PHAS rule.

As a result of the public comments and HUD's further consideration of certain issues, the following changes were made to the rule at the final rule stage.

1. A new part 902 is established for the PHAS rule. Since PHAS will not be implemented until October 1, 1999, PHAs will continue to comply with the requirements of the Public Housing Management Assessment Program (PHMAP), and therefore HUD needs to retain 24 CFR part 901 which contains the PHMAP regulations. After PHAS is fully implemented, HUD will issue a final rule to remove 24 CFR part 901.

2. In § 902.7 (§ 901.7 in the proposed rule), a definition of ''Alternative management entity (AME)'' has been added, and the definition of ''deficiency'' has been clarified by including ''sub-indicator'' within its scope.

3. Section 902.25(a) (§ 901.25(a) in the proposed rule) is revised to clarify that the score is based on the relative importance of the individual inspectable areas and the relative severity of the deficiencies observed.

4. Section 902.25(b)(2)(ii) (§ 901.25(b)(2)(ii) in the proposed rule) is clarified to indicate that a majority of the population that resides in the census tracts or census block groups on all sides of the development will be examined to determine if the neighborhood environment adjustment applies.

5. Section 902.50(b) (§ 901.50(b) in the proposed rule) is revised to state that the survey will be ''managed'' rather than ''administered'' by the PHA.

6. Section 902.53(a) (§ 901.53(a) in the proposed rule) is revised in accordance with the preamble discussion at section III.F.7. below, to indicate only the first two components of the survey indicator are awarded points, with the third component being a threshold requirement.

7. In § 902.53(b) (§ 901.53(b) in the proposed rule), the text is modified for clarity and to remove the words ''by the PHA'' following the phrase ''survey results are determined to be altered.''

8. Sections 902.67(b) and 902.71(d) (§§ 901.67(b) and 901.71(d) in the proposed rule), which address the HUB/Program Center's discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, are removed.

9. The requirement in § 902.71(a)(2) (§ 901.71(a)(2) of the proposed rule) for public recognition is made consistent with the rest of the PHAS rule by stating that at least 60 percent of the points available under each of the four PHAS Indicators and an overall PHAS score of 90 are necessary.

10. In § 902.73(g) (§ 901.73(g)), this final rule adds language to clarify that if the TARC determines that it is appropriate to refer the PHA to the Enforcement Center, it will only do so after the PHA has had one (1) year since the issuance of the PHAS score (or, in the case of an RMC, notification of its score from a PHA) to correct its deficiencies. This one-year period includes the 90 days or such other period of time (if less than one year), as described in § 902.73(c)(1).

11. In § 902.75(g) (§ 901.75(g) in the proposed rule), this final rule adds language to clarify that a PHA cannot maintain its troubled status indefinitely; the maximum period of time for remaining in troubled status before being referred to the Enforcement Center is 2 years. This final rule also clarifies in § 902.75(g) that the REAC makes the determination of whether a PHA has made substantial improvement toward a passing PHAS score.

12. Section 902.75(h) is a new subsection, added to clarify that, to the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

13. Section 902.77(b) is new subsection, added to clarify that, to the extent feasible, while a PHA is under a referral to the Enforcement Center, all services to residents will continue uninterrupted.

15. Language is added to § 902.79(b) (§ 901.79(b) of the proposed rule) to clarify the meaning of ''credible source'' for events or conditions constituting a substantial breach or default.

III. Discussion of Public Comments

The public commenters on this rule overwhelmingly commended HUD for its efforts to improve PHMAP, and there was considerable support among the commenters for the new PHAS, as announced in the June 30, 1998 proposed rule. One commenter stated that the proposed PHAS is superior in approach to PHMAP. Another commenter stated that PHAS logically focuses on appropriate operational areas, with the primary emphasis on physical and financial concerns. Several commenters, however, expressed reservations about one more aspects of the new PHAS. The following provides a more detailed discussion of the commenters' concerns as well as a discussion of other issues raised by the public commenters on the June 30, 1998 proposed rule.

A. General Comments

The Public Comment Period for the Rule Was Not Sufficient. Many commenters stated that the 30-day public comment period provided by the June 30, 1998 proposed rule was insufficient. These commenters remarked that a rule of such importance and complexity merited a longer comment period. Several commenters remarked that, rather than reducing the customary 60-day comment period, the proposed rule should have provided 90 days for the submission of comments. Two of the commenters also questioned the consultative process that HUD used to justify the reduced comment period. One of the commenters remarked that ''HUD consulted with a few authorities, but this is the first time more than 3,300 housing authorities have been able to comment'' on the PHAS.

Given the extensive consultative process in the development of the rule, HUD believes that a 30-day public commenter period was sufficient for this rule. Nevertheless, in response to commenters' request, HUD did extend the public comment period through August 13, 1998, to allow additional time for comment. HUD recognizes that although not every PHA was involved in the extensive consultative process that preceded publication of the proposed rule, there was substantial PHA representation and participation in that process over a six month period. HUD also reminds PHAs, residents and other interested parties that although this rule takes effect 30 days after publication in the **Federal Register**, PHAS is not implemented until October 1, 1999. This first year is a transition year, which allows both HUD and PHAs the opportunity to test the new PHAS, for PHAs to continue to offer input and suggestions, and for HUD to consider and make any changes that may be needed before PHAS becomes fully implemented.

In addition, HUD has provided, and will continue to provide, documents and assistance by direct request and over the Internet, such as the 24-hour on-line assistance on the GAAP Conversion Guide at HUD's website (http://www.hud.gov/reac/reafin.html). As the discussion below of the public comments on the individual indicators will demonstrate, HUD will continue to make available all of the information and assistance necessary for PHA compliance with the rule.

Rule is Vague; Lacks Necessary Details. A number of commenters remarked that the proposed rule is too vague and uninformative. These commenters wrote that the lack of specificity of the proposed rule made the submission of meaningful comments almost impossible.

With respect to the details of all of the components of the PHAS, specifically the physical and financial components, HUD notes that traditionally HUD regulations, and indeed other agency regulations, do not contain all the details and processes that are part of these components. A great majority of these are technical or examples of implementation processes. The regulation enunciates the policy, provides the broader requirements (in this case, uniform, enforceable baseline standards), and the details are left to supplemental documents, such as handbooks and guidebooks. These documents allow for a more detailed (and therefore more helpful) description and discussion of the components to be addressed, and the procedures to be followed and the information to be submitted, which include examples and model reports, and which can be corrected and updated easily.

This is the practice that HUD has followed to date, and HUD will continue to follow this practice with the PHAS. HUD already has developed certain guidance in connection with implementation of the PHAS, and has made this guidance available to PHAs for review and any comments they may have. For example, HUD has developed the HUD–GAAP Conversion Guide, which is available at HUD's internet web site at http://www.hud.gov/reac/reafin.html, or by calling the HUD Real Estate Assessment Center's Customer Service Center on 1–(888)–245–4860.

Several commenters requested additional information on the relative weights/points of the four PHAS indicators. Although this information will be contained in the supplementary guidance to be provided, HUD has listed below the *approximate* relative weights/points of the four PHAS indicators, sub-indicators, and components within the sub-indicators:

APPROXIMATE RELATIVE WEIGHTS/POINTS

Indicator/Sub-Indicator/Component	Indc. Pts.	Approx. Pts.
#1, Physical Condition	30	
Site (plus 1 pt. for physical condition and neighborhood environment)		4.5
Building Exterior (plus 1 pt. for physical condition and neighborhood environment)		4.5
Building Systems		6.0
Dwelling Units		10.5
Common Areas (plus 1 pt. for physical condition and neighborhood environment)		4.5
In addition, Health and Safety deficiencies will result in reductions to the total physical inspection score which takes into account the five areas, above, with their approximate relative weights/points.		
#2, Financial Condition	30	
Liquidity		9.0
Net Asset Adequacy		9.0
Days Receivable Outstanding		4.5

APPROXIMATE RELATIVE WEIGHTS/POINTS—Continued

Indicator/Sub-Indicator/Component	Indc. Pts.	Approx. Pts.
Vacancy Loss		4.5
Net Income/Loss		1.5
Expense Management		1.5
Flags:		
No audit opinion (minus 30 pts.)		
Going concern opinion (*)		
Disclaimer of opinion (minus 30 pts.)		
Material weakness/internal control (*)		
Adverse opinion (minus 30 pts.)		
Qualified opinion (*)		
Reportable conditions (*)		
Findings of non-compliance and questioned costs (*)		
Indicator outlier analyses (*)		
(*) Points will be deducted to the extent points remain after initial scoring for the sub-indicator affected by the flag.		
#3, Management Operations	30	
Vacancy Rate/Progress to Reduce		8.0
Vacancy Rate		(4.0)
Unit Turnaround Time		(4.0)
Modernization		6.0
Unexpended Funds		(1.0)
Timeliness of Fund Obligation		(1.5)
Contract Administration		(1.0)
Quality of the Physical Work		(2.0)
Budget Controls		(0.5)
Rents Uncollected		4.0
Work Orders		4.0
Emergency Work Orders		(2.0)
Non-Emergency Work Orders		(2.0)
Inspection of Units and Systems		4.0
Inspection of Units		(2.0)
Inspection of Systems		(2.0)
Security		4.0
Tracking/Reporting Crime-Related Problems		(1.0)
Screening of Applicants		(1.0)
Lease Enforcement		(1.0)
Grant Program Goals		(1.0)
#4, Resident Service and Satisfaction	10	
Survey Results		(5.0)
Level of Implementation/Follow-Up Action Process		(5.0)

Modification of PHAS Indicators Requires Rulemaking. Several commenters objected to the statement in the preamble of the proposed rule that ''HUD reserves the right to add new indicators or components of indicators, or remove indicators or modify indicators of the new PHAS.'' The commenters noted that the preamble to the proposed rule also advised that ''PHAs and the public will be notified of any change in indicators or components through issuance of the appropriate type of notice.'' (*See* 63 FR 35680.) These commenters wrote that any modifications to the indicators would involve substantive issues and require the use of notice and comment rulemaking procedures.

As noted in the preamble to the proposed rule, HUD will provide appropriate notice of any change or notification. Where notice and comment rulemaking is determined necessary, HUD will undertake such rulemaking.

Section 3 Requirements Should Be Part of PHAS. A few commenters suggested that the requirements of section 3 of the Housing and Urban Development Act of 1968 be incorporated in the PHAS. Section 3 requires that economic opportunities generated by certain Federal financial assistance, including public housing, shall be given, to the greatest extent feasible, to low and very low income persons. Since public housing is subject to the section 3 requirements, the commenters suggest that PHA compliance with section 3 be included in the new assessment system.

A PHA's responsibilities with respect to the Section 3 program are specifically addressed in the extensive regulations at 24 CFR part 135. The PHAS assessments are not focused on specific programmatic requirements, but on the overall quality of a PHA's physical, financial, and managerial well-being, and the residents' perception of that quality. At this time, HUD will not include this additional element in its assessment.

PHAS Would Not Represent the First-Ever Assessment of Public Housing. A few commenters took exception to the statement in the preamble to the June 30, 1998 proposed rule that PHAS would provide for the ''first-ever assessment of the physical condition, financial health and resident services in public housing'' (63 FR 35672). The commenters wrote that PHAs regularly inspect the condition of their public housing stock.

HUD agrees that while certain components of the new PHAS are not new, the consolidation of these previously disparate elements into a single assessment undertaken by HUD is new. HUD intends for this new consolidation to result in the overall improvement of PHAs, which will lead to the greater satisfaction of both PHA administrators and residents.

Proposed Rule Would Establish Unfunded Financial Burdens. Two commenters objected to the proposed rule due to the unavailability of the additional funding they believe is necessary for the successful implementation of the new assessment system.

Although the initial implementation of the new assessment system may result in some increased costs, these are not expected to be significant. Under PHAS Indicator # 1 (Physical Condition), HUD will conduct the physical inspection. Therefore, this is neither an administrative or financial burden on PHAs. With respect to reporting in GAAP, HUD is allowing a full year for PHAs to convert to GAAP. Many PHAs already have converted to GAAP, and for those that have not yet converted, HUD already has provided guidance through the HUD–GAAP Conversion Guide and will provide additional training and assistance during the year of transition. HUD also is developing electronic submission software, which will provide an easy to use submission template at no cost to PHAs and other housing entities. HUD also will consider alternative means of submission if electronic reporting is determined to be excessively burdensome or costly. The management components of the PHAS are familiar to PHAs, and will not be a new burden. Additionally, HUD provides a full year of transition before PHAS is implemented. For these reasons, and others discussed later in this preamble, HUD believes that new PHAS will not present an undue financial burden.

Proposed Rule May Exceed HUD's Statutory Authority under PHMAP. Two commenters questioned whether the proposed rule is in violation of the public housing assessment requirements of section 6(j)(1) of the United States Housing Act of 1937 (the 1937 Act). These commenters noted that all seven of the indicators listed in section 6(j)(1) are combined within a single PHAS indicator that is weighted at ''only 30% of the total maximum score allowable under PHAS.'' One commenter noted that the Secretary's general rulemaking authority under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)) cannot be exercised in a manner that is inconsistent with statutory law, and that the proposed treatment of the statutory indicators may violate the statutory assessment requirements established by the 1937 Act.

The PHMAP statutory indicators, which are intended to assess the management performance of PHAs, comprise the entirety of the PHAS Management Indicator. As such, they continue to serve the statutory purpose for which they were established. A good score on the statutory PHMAP management indicators, in which assessment is based on PHA self-certification, is expected to carry over and be reflected in the scores for the physical and financial examinations, which are based on HUD-reviewed data, and in the resident survey, in which the residents' perception of the PHA is manifested. The new PHAS indicators thus serve as a check on the self-certified PHMAP indicators, and amplify, through consistency, the accuracy of the certifications, or, through discrepancy, the certifications' shortcomings, thereby establishing a more solid basis for confidence or intervention. The Department has determined that, rather than undercut the statutory scheme, PHAS will serve to reinforce the accuracy and reliability of (what formerly was called) PHMAP.

Proposed Rule Should Provide for Greater Resident Participation. Three commenters wrote that all major components of the PHAS should reflect the principle and practice of resident participation. One of the commenters suggested that the rule be amended to enforce and protect the right of residents to voluntarily participate in the overall assessment process, and that residents be afforded the opportunity to participate in the assessment process through employment and training created in connection with the assessment work. Other commenters suggested that residents should be permitted to participate in the physical inspection process.

Residents *are* an integral part of the PHAS assessments. An entire PHAS indicator is devoted to a survey of the residents' level of PHA satisfaction. This survey serves as a valuable check on the other PHAS indicators. Residents will also participate in the physical inspection process, which requires the HUD inspectors to visit and inspect individual PHA units.

HUD State Offices Should be Included in Assessment Process. A few commenters wrote that local HUD offices should be provided a role in the PHAS. According to the commenters, such a policy would help to ensure that the HUD officials most knowledgeable about local housing conditions participate in the assessment process.

Local HUD Offices, through the participation of program staff and Community Builders, will work closely with the REAC, TARC, and Enforcement Center in ensuring the reliability and accuracy of the PHAS effort.

The Same Standards Should Not Be Applied To Public Housing and FHA Insured Properties. A few commenters noted a PHA does not have the ability to increase rents and generate more income from its property, and an FHA property has higher total development cost limits, typically resulting in better construction quality. One commenter stated that it is unfair to hold public housing to a standard that it was not designed nor funded to compete with.

The PHAS is not intended to measure competing housing amenities, but to measure and promote a basic level of housing that is decent, safe, sanitary, and in good repair; financially sound; well managed; and which thereby manifests a general level of resident satisfaction. The Department knows that many PHAs, even given their modest resources, can meet and, in fact, exceed this basic level. The unfairness lies in falling below this basic level.

Role of the Assistant Secretary for Public and Indian Housing. Two commenters raised the issue of the involvement of the Assistant Secretary for Public and Indian Housing (PIH) in the PHAS. One commenter stated the PHAS marginalizes the role of the Assistant Secretary, and that it appears that the Assistant Secretary will have no authority with respect to the activities of the REAC or the TARC. Another commenter noted that although the REAC will have the most significant role of the various HUD components in PHAS, the REAC will not be under the jurisdiction of the Assistant Secretary for PIH, or any other Presidential-appointee level official, other than the Secretary, and questioned the accountability of REAC. The commenter also expressed concerns that such arrangement may create internal wars and standoffs over PHA operations within the Department.

First, as with all HUD offices and officials, REAC and the Director of REAC are under the jurisdiction of the Secretary of HUD. Second, HUD expects that its new approach of consolidating discrete, cross-cutting functions such as assessment and enforcement into separate centers will permit HUD's program offices to concentrate on providing better program service. No longer will program staff wear the multiple hats of assistance provider, monitor, and enforcer. The wearing of multiple hats has been one of the major deficiencies of the HUD workforce addressed by the HUD 2020 Management Reform Plan (issued June 26, 1997). For too many years, the HUD workforce has been given schizophrenic mandates. On the one hand, HUD employees were asked to provide

assistance to communities and HUD's housing partners to help them meet their needs. On the other hand, these same employees were asked to police the actions of those same communities and housing partners. The PHAS allows REAC and the Enforcement Center to handle the enforcement obligations of program monitoring, and allows the Office of Public and Indian Housing to target its energies and resources on providing services to the 3,400 housing authorities and 1.4 million families they house. Having said this, HUD is nevertheless aware of the need to keep lines of communication and cooperation open among all of its functions and responsibilities, and expects to do so.

B. Comments on Subpart A—General Provisions

PHAS Components Should Reflect PHA Differences. Several commenters objected to the uniformity of the components that would be established under the PHAS. The commenters stated that the PHAS should factor the geographic, cultural, and other differences between housing authorities. One of the commenters wrote that while a uniform set of standards may be desirable, components should be developed to reflect local variances. Another commenter remarked that there may be great difficulty in comparing the management of PHAs that manage only housing for the elderly or persons with disabilities, to those that manage family developments or both.

As stated earlier in this preamble, the PHAS is intended to measure and promote a basic level of housing. HUD believes the PHAS achieves a basic level on a national basis that will be satisfactory to tenants without making unrealistic demands upon PHAs.

C. Comments on Subpart B—PHAS Indicator #1: Physical Condition

Relationship Between PHAS and HQS is Unclear. Several commenters expressed uncertainty regarding the relationship between the PHAS Physical Condition Indicator and the Housing Quality Standards (HQS). Other commenters asked how differences between the HQS inspection and the REAC inspection would be resolved. One of the commenters wrote that the proposed rule does not clearly define a connection between the new uniform physical condition standards, HQS, and the newly developed HUD computerized inspection protocol software that will assign physical condition scores.

Under PHAS, a new uniform physical condition standard is established in subpart B. This is the standard that HUD will use in assessing the physical condition of a PHA's housing stock.

The previous requirement in PHMAP that PHAs inspect to local codes or the HQS, whichever is more stringent, has been eliminated. Instead, Indicator 3 (§ 902.43(a)(5) of this final rule) requires PHAs to inspect to the same standard as does HUD in Indicator #1. As a result, HQS will no longer be used as the standard for PHAs to inspect public housing units under PHAS. Therefore, there will be no differences between the two standards to reconcile. The new software developed by HUD will reflect all of the inspectable areas and inspectable items reflected in the new standard and capture deficiencies associated with those items.

PHAS Indicators #1 and #3 Should be Consolidated. Two commenters suggested that, since both PHAS Indicators #1 and #3 (Management Operations) require inspection of PHA units, the two indicators should be consolidated. According to one commenter this consolidation would permit the PHA to submit one less certification under the Management Operations indicator. The other commenter remarked that since HUD will conduct its own independent inspection to determine the quality of a PHA's maintenance effort, it appears duplicative to have another score relating to the PHA's own inspection which presumably also is intended to determine the quality of the maintenance effort.

HUD does not agree that Indicators #1 and #3 should be combined or that they are duplicative. While Indicators #1 and #3 both require physical inspections, they do not serve the same purpose. The HUD inspection under Indicator #1 is to determine the basic physical condition of the PHA's portfolio. This will be determined by inspecting a statistically valid sample of the units in the PHA's stock. The PHA will be notified of the deficiencies found in this limited assessment. Alternatively, the PHA inspection under Indicator #3 is a measure of PHA management performance. The inspection is intended to be more comprehensive and will assess each unit to determine the immediate maintenance and modernization and correct identified deficiencies. There is no intent in this rule for HUD to replace the PHA's inherent responsibility as the property owner to maintain decent, safe and sanitary housing, through the inspection of each of its units and the timely correction of deficiencies found.

Notice of Defects. Several commenters remarked that PHAs cannot be expected to cure problems caused by willful resident damage or neglect of which the PHA does not have notice. As one of the commenters wrote: ''A PHA cannot control a resident's housekeeping habits or abilities to correct 'other observable deficiencies'.''

PHAs are required by law and contract to maintain decent, safe and sanitary housing. Nothing in the law or contract exempts the PHA from this responsibility due to resident caused damage. If a PHA is properly managing its properties, including regular annual unit and house keeping inspections, and enforcing lease provisions, the effect of resident caused damage on the overall assessment of the condition of the properties will be minimal.

More Time Required for Implementation. A few commenters requested that PHAs be provided with additional time before implementation of the PHAS Physical Condition Indicator. One commenter wrote that PHAs need the additional time to ensure that they comply with the new standards. This commenter also wrote that a one year test ''of the proposed sampling methodology and survey design will provide needed estimates of the adequacy of the PHAS inspection system.''

Section 902.60(b) of the final rule provides that ''Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.'' In accordance with the implementation timetable published in the preamble of the June 30, 1998 proposed rule (63 FR 35679), physical inspections for PHAS scores to be issued by December 1999 will be conducted during the period July 1999 through September 1999. Before implementation of PHAS, HUD may conduct inspections and issue advisory scores to PHAs. This would enable PHAs to see how they will be assessed under the new rule and make necessary adjustments before HUD conducts inspections which will be reflected in the new PHAS score.

Questions Regarding Statistically Valid Sampling. Several commenters asked what constitutes a ''statistically valid sample'' for purposes of the PHAS physical condition inspection; what methods would be used to select PHA units; and whether HUD would also use samples of areas other than units, or would instead inspect all such areas. One commenter wrote that the inspected sample should reflect the differences in a PHA's housing stock, which may contain both high rise and garden style developments. One of the

commenters supported the random selection of samples from all developments within each PHA jurisdiction. This commenter wrote that physical condition and resident attitudes vary between developments; and that sampling a subset of a PHA's development would not be truly representative of housing conditions and resident attitudes.

The statistically valid sample will be based on inspecting the number of units necessary for estimating the physical inspection score for a property within two percentage points at a 95% confidence level. Units that will actually be inspected will be selected at the time an inspector arrives on site. The new software will contain a ''random unit generator'' that will be used to select units. The inspector will inspect the randomly selected units along with all other components in their associated buildings (e.g., building exterior, building systems, common areas, etc). The inspector will inspect the entire site of the project being inspected.

The sampling methodology does differentiate between those buildings with four or more floors and all other buildings. While it is true that there are differences among developments in physical condition of the units and attitude of the residents, HUD believes that use of the statistically valid sample will result in an accurate assessment of the units in a PHA's stock.

Questions Regarding the Timing of Inspections. Several commenters raised questions regarding the timing of PHAS physical condition inspections. Two commenters wrote that the timing of inspections will have an impact on the outcomes in many climates, and inspections should be adjusted to take into account climate impact on outcomes. Two other commenters noted that under most leases, a PHA must provide notice to its tenants of any inspections, and recommended that HUD take tenant notification into account in scheduling inspections. One commenter asked whether HUD would provide a PHA with ample time to reschedule any postponed inspections or simply use a smaller sample size.

HUD acknowledges that the timing of the inspection could impact the inspection results of certain items (e.g., inspecting heating systems in the summer). It is HUD's intent to schedule inspections to coincide with the end of the PHA's fiscal year so as to provide consistency between the timing of the various components of the assessment. Seasonal problems as described by the commenters are unavoidable. In these cases, HUD would not, for example, expect the PHAs to start the heating plant in the middle of the summer. The inspector would only make visual observations for deficiencies and examine any certificates that the PHA may have obtained under a maintenance contract or city inspection.

HUD anticipates that PHAs will have at least five calendar days advance notice prior to the time of inspection to provide notification to residents. If there are scheduling conflicts, the PHAs and contractors are expected to work together to arrange a mutually agreeable date within the general time frame of the originally scheduled date. HUD does not expect that extended delays in rescheduling (e.g., weeks or months) will be permitted.

Questions Regarding the Cost of Inspections. Several commenters raised questions regarding the cost of the physical condition inspections. Three commenters wrote that if PHAs incur significant new expenses connected with the inspection process, they should be reimbursed in operating expenses. Another commenter wrote in opposition to the requirement that all PHA properties be inspected by an independent HUD inspector. The commenter stated the cost of paying for these private inspections could be better utilized by local housing authorities.

Under PHMAP, PHAs are required to conduct inspections of 100% of the units in their inventory, and no additional operating subsidies are provided as a result of the PHMAP rule. The PHAS rule requires PHAs to use the new physical inspection standard as the minimum physical quality standard in lieu of HQS. PHAs are not required to use the new HUD software. PHAs may continue to inspect using whatever means they are currently using (e.g., their own staff contract inspectors, etc.). As a result, PHAs should not incur significant new costs as a result of the new rule.

With respect to HUD's independent inspection of public housing, HUD has an obligation to ensure that all PHAs are complying with the law and contracts in the provision of decent, safe and sanitary housing. The methodology used by HUD in the past, where only a limited number of PHAs were visited by HUD, was the subject of considerable criticism from Congress, the General Accounting Office, and the HUD Inspector General. The new methodology is intended to address those criticisms and provide credibility to HUD's method of assessing PHA performance.

Questions Regarding Inspector Qualifications. Several commenters raised questions regarding the qualifications of the independent inspectors contracted to perform the physical condition inspections. One commenter noted that PHAs must comply with State and local laws, and asked whether the inspectors will be trained in building and maintenance codes for each State and locality. Another commenter asked how HUD would exercise quality control over the contracted private inspection firms. The commenter also questioned whether PHAs would be provided an opportunity to review and comment on the quality control standards. One of the commenters wrote that the inspectors will need to be able to distinguish between day-to-day maintenance items and deferred maintenance items.

Contractor qualifications include, at minimum, the following: high school education or equivalent; specific technical knowledge in major building trades used in residential construction, including foundations, structures, framing, roofing, plumbing, heating, air conditioning, interiors, insulation and ventilation; general personal computer (laptop) skills including familiarity using Windows 95 (or later versions) software or equivalent environment; and experience, within the past three years, demonstrating sufficient knowledge of multifamily housing and public housing properties. The qualifications also may include experience as a construction inspector of multifamily real estate properties for determining compliance with construction requirements and/or a superintendent of construction for a builder of multifamily properties, or a record of performing acceptable multifamily property inspections.

The new physical inspection standard, as was the case with the HQS, is not intended to be a local code inspection. Instead, the inspection is only intended to determine compliance with the Federal physical standards. It would be impractical to expect the inspector to determine compliance with local codes.

HUD will use its own staff in the REAC to perform Quality Assurance (QA) inspections of work performed by private contractors. The HUD QA inspectors will follow behind contract inspectors within a period of approximately 48 hours and inspect the same properties and units inspected by the contract inspector. HUD will then compare the results of the QA inspector and the contract inspector to determine if the contractor is inspecting using the HUD inspection protocol and software properly. HUD will take appropriate action where it finds problems with the quality of the contract inspector's work.

There will not be a need to distinguish between day-to-day maintenance and deferred maintenance. The condition of the property at the time of the inspection will be recorded regardless of why the condition exists or any plans for correction.

Rating Criteria are Vague. Several commenters wrote that the proposed rule was unclear regarding how the physical condition component would be scored and weighted. These commenters asked that HUD provide a definition of the term ''good repair.''

PHAs will be judged on how well they maintain their properties in the context of the specific inspectable areas and inspectable items identified in the new physical inspection standard. It will be the responsibility of the PHA to maintain all components of each property. HUD does not intend to provide the details of the scoring algorithms at this time. HUD is providing the approximate relative weights/points of the five inspectable areas to give PHAs a general indication of importance of those areas and the direction of how the scores will be derived. HUD plans to constantly analyze the scores and make adjustments to ensure validity. In addition, the relative weights/points may change with some properties because, for example, they do not have common areas. In these cases, the available points will be redistributed among the remaining inspectable areas. PHAs that maintain their properties in decent, safe and sanitary condition will not be significantly adversely affected by HUD's approach.

APPROXIMATE RELATIVE WEIGHTS/POINTS

Inspectable area	Approx. points
• Site (plus 1 pt. for physical condition and neighborhood environment)	4.5
• Building Exterior (plus 1 pt. for physical condition and neighborhood environment)	4.5
• Building Systems	6.0
• Dwelling Units	10.5
• Common Areas (plus 1 pt. for physical condition and neighborhood environment)	4.5

In addition, health and safety deficiencies will result in reductions to the total physical inspection score which takes into account the five areas, above, with their approximate relative weights.

Negative Effect on Resident Surveys. A few commenters expressed concern about the potential negative impact of the physical condition inspections on resident satisfaction surveys. One commenter wrote that the PHAS inspection would cause resident disruption that could be reflected in the resident survey. Another commenter asked whether HUD had considered the effect multiple inspections will have on some residents of public housing.

HUD's independent physical inspection of public housing will not have a direct effect on the resident survey score. The physical inspection score will be derived based on the results of the observations recorded during the physical inspection. The comments obtained by the PHA during its survey of the residents are intended to be used by the PHA management to assist it in assessing its operations and determine where improvements are needed.

HUD considered the effect of multiple inspections on residents, but concluded, as advised by PHAs, that residents are already subject to multiple inspections (e.g., annual unit inspections, housekeeping, preventative maintenance, etc.). Since the purpose of the HUD inspection is to ensure that the resident is living in decent, safe and sanitary housing, it should not pose a major problem for the residents.

Inspection ''Snapshot'' Might be Inaccurate. Two commenters wrote that HUD's inspection would only provide a ''snapshot'' of the property's physical condition. The commenters expressed concern that this one-time snapshot might be misleading. One of the commenters recommended that PHAS allow for any deficiency to be abated or corrected and for the unit to then be reinspected. According to the commenter, this is the current practice under HQS. The commenter also wrote that if uniform physical condition inspections do not allow for such corrections, they might have a significant negative impact on a PHA's score.

All inspections are ''snapshots'' in time. That is the nature of inspections and is no different than any other inspection previously performed by HUD, the PHA or the residential inspection industry at large. As a result, HUD does not agree that the HUD inspection would be misleading. HUD's independent inspection should accurately represent the condition of the property at the time of the inspection. Conversely, HUD believes that it would be misleading to conduct the inspection, allow correction of deficiencies, and then conduct a reinspection of the unit with a resulting higher score as suggested in the comment. PHAs will be provided with the results of the inspection, and it will be the responsibility of PHAs to take any necessary corrective actions at that time. HUD Field Offices will work with PHAs to ensure that corrections are made in a timely manner.

Need for Exit Conferences. A few commenters recommended that HUD conduct post-inspection conferences with PHAs. One commenter stated that these exit conferences would eliminate unnecessary appeals by allowing local authorities to review the results with the inspecting group/auditor.

HUD appreciates the recommendation, but notes that PHAs are required to designate a representative to accompany the inspector during the entire inspection. As a result, the PHA representative will be aware of the inspection and be able to provide any clarifications that may be required during the inspection. The PHA representative will be provided with a notice of life-threatening health and safety deficiencies observed during the inspection. Shortly after the inspection, the PHA should be able to obtain the detailed results of the inspection directly from the HUD web page. The PHAS provides for no appeals of the inspection results. Instead, a PHA may, as provided in the statute, appeal its overall score if the score results in a troubled designation. As a result, HUD does not plan to require formal ''exit conferences.''

Accounting for Lack of Modernization Funding. Several commenters asked HUD to specify how the lack of modernization funding would be taken into account by PHAS. The commenters were particularly concerned about smaller agencies that, according to the commenters, often only succeed in getting emergency items funded.

The purpose of the physical inspection is to determine the condition of the PHA's housing stock. HUD provides an adjustment, as required by statute, for physical condition and neighborhood environment. HUD did not adjust for the lack of past or present funding under PHMAP and does not intend to do so under PHAS as it would misrepresent the assessment of the condition of the PHA's portfolio.

HUD Should Rely on Certain Professional Inspection Certifications. Two commenters wrote that some mechanical and electrical systems could not be satisfactorily inspected visually. The commenters suggested that HUD's contract inspectors should rely on the PHA's records of inspections by appropriate professionals or other qualified inspectors not employed by the PHA. Another commenter wrote that local inspections and certifications

should be sufficient for many of the health and safety systems.

HUD agrees with the commenters, and the inspection software permits the acceptance of certifications from appropriate professionals for such items as elevators, boilers, fire extinguishing equipment, etc.

Need for Comp Grant Waiver. One commenter recommended that HUD grant a waiver of conditions observed in a unit or project element scheduled to be corrected pursuant to an approved Comprehensive Grant (Comp Grant) 5-year plan or otherwise identified in the needs assessment.

HUD believes that adopting this comment would result in a misleading score with respect to the current condition of the property. If the PHA has identified an item(s) for correction in its Comp Grant 5-year plan or a needs assessment, there will be little or no corrective action to be taken by the PHA until such time as the deficiencies are corrected. Once the deficiencies have been corrected and the property is inspected, the resulting score should properly reflect the then current condition of the property.

Comments Regarding Adjustment for Older Housing. Several commenters raised concerns regarding the PHAS adjustment for physical condition and neighborhood environment. These comments included: statements that the three point physical condition adjustment for older housing stock was vague; questions about the kind of documentation that will be necessary to demonstrate eligibility for the three points; concerns that the three-point adjustment that would be provided under the PHAS rule might violate the statutory PHMAP requirements; concerns that giving bonus points for authorities with older units in a state of ill repair penalizes authorities that strive to keep their property in good repair; recommendations that the adjustment should not be limited to three points under the physical condition indicator, but should continue to apply as under PHMAP; and recommendations that HUD should limit the adjustment to those PHAs that have a financially feasible plan for the renovation of the project.

The comments on this adjustment factor reflect that the industry has differing views regarding the statutorily mandated adjustment. HUD believes that it has taken a reasonable approach to implementing this requirement. HUD disagrees that this provision is vague. This PHAS provision is similar in nature to that which was required under PHMAP and will require similar documentation. Since the requirement is statutory, HUD is obligated to permit the adjustment and, therefore, cannot accede to those who object to the adjustment.

HUD has determined that this provision does not violate the statutory requirement. In addition, HUD has limited the adjustment to the physical condition of the property because that is the most appropriate place where the PHA has limited control over ''physical condition and neighborhood environment.'' PHAs have direct control over other areas of the PHAS assessment and the scores in those areas should not be adjusted for ''physical condition and neighborhood environment.''

D. Comments on Subpart C—PHAS Indicator #2: Financial Condition

This Indicator Lacks Necessary Details About the Requirements and the Change to GAAP Will Be Significant for the Vast Majority of PHAs In Terms of Time and Cost, and the Implementation Date Is Not Realistic. A number of commenters raised various concerns about this indicator. Comments on this indicator included statements that: this PHAs indicator provides little more than a conceptual framework with little attention to details; no information has been provided to explain what electronic transmission of financial data means or how this is to be done; the change to GAAP would be significant, burdensome, costly, time-consuming and the implementation date in the rule is not realistic; GAAP will require the education of PHA staff and fee accountants, and the conversion of most PHA accounting software applications; even though the rule states PHAs will not be scored under PHAS until September 30, 1999, giving the appearance of a one year period, the actual implementation for some PHAs will be October 1, 1998, the beginning of the period to be assessed, and this is not a realistic and logical date for implementation; conversion to GAAP should not be required until January 1, 2000, or later.

The GAAP conversion process entails only year-end adjustments to convert the PHA's record-keeping so information may be reported under GAAP. It does not require the wholesale conversion of PHA accounting software in order to meet the mandated schedule. The reporting under GAAP is being required for all PHAs with fiscal years beginning October 1, 1998 and thereafter. Therefore, the first unaudited financial statement information that must be submitted to HUD under a GAAP basis is not due until November 30, 1999. HUD strongly believes that the time frame is sufficient and realistic for all PHAs to be able to convert to GAAP and accordingly report their results. PHAs are not required to change their current accounting and record keeping systems. They are only required to do is to report their information using GAAP as the accounting basis.

As stated in the proposed rule, PHA and industry representatives preferred GAAP accounting as more meaningful and widely accepted. Reporting results under GAAP offers the following benefits: allows for financial consistency among PHAs; provides a common mechanism for HUD to fairly and accurately assess the financial condition of each PHA as compared to its peers; and presents a more accurate picture of PHA financial condition by accounting and accruing for all liabilities that may exist. With respect to costs, additional GAAP-related audit costs will be covered by the PFS.

To facilitate and help each PHA in its conversion, HUD has developed a detailed GAAP Conversion Guidebook that is available on the Internet. It can be accessed at: (http://www.hud.gov/reac/reafin.html). In addition, a help desk (The REAC Service Center) is available to answer any GAAP related questions. A toll free number is provided (1–(888) 245–4860).

The Benefits of GAAP Are Not Clear for PHAs. Other commenters stated that the benefits of converting to GAAP for PHAS are not clear. Comments and questions included the following: allowance for depreciation schedules, required under GAAP accounting, have no value to PHAs and should not be required; guidance relative to the depreciation of assets (including those purchased in prior years) is needed; GAAP may create liabilities against reserves that were not previously considered under HUD's chart of accounts; how will bad debts be uniformly quantified; what will be the impact of conversion on first year expenses for depreciation, vacation and sick leave accruals; must PHAs quantify the present value of a guaranteed ACC; and how will first year paper conversion costs affect PHAs. Commenters also stated that neither PHAs nor HUD can know the effect of conversion to GAAP; that the effect will vary depending on the policies of each authority in the areas of sick leave, annual leave, collection of bad debts, etc. Other commenters asked HUD to explain how it will maintain consistency among PHAs in accounting and financial reporting under governmental accounting.

With respect to depreciation, GASB–GAAP requires depreciation under the Enterprise Method and permits the

recording of depreciation under the Governmental Method. HUD strongly prefers that under both the Governmental and Enterprise methods, each PHA depreciate its fixed assets over their useful lives. HUD prefers that each PHA record depreciation because of the benefits associated with recognizing depreciation. Recording of depreciation provides each PHA with a systematic allocation method of showing the cost of an asset over its useful life. The recording of depreciation permits each PHA to show the directly related consumption of the asset over the periods in which the asset is used. Financial indicators are designed so as not to be impacted by the PHAs decision whether to record depreciation or not to record depreciation. Examples of depreciation of assets is as follows:

National Council on Governmental Accounting Statement (NCGAS) 1, *Governmental Accounting and Financial Reporting Principles*, states that while depreciation expense cannot be recorded in a governmental fund, accumulated depreciation may be reported in the General Fixed Assets Account Group. Reporting accumulated depreciation in the account group is not mandatory. If the governmental unit decides to report accumulated depreciation, follow the conventional accounting standards with respect to acceptable depreciation methods, economic life, and estimated salvage value.

Under NCGAS 1, all depreciable property of an enterprise fund must be depreciated in accordance with GAAP as applied by a commercial enterprise. Depreciation on fixed assets of a proprietary fund must be shown as an expense on its operating statements, with appropriate disclosures in the financial statements.

Depreciation including suggested entries and conversion guidance is explained in depth in the HUD–GAAP Conversion Guide. The GAAP conversion guide also discusses composite depreciation. For practical purposes, property items frequently are grouped and an average life applied to determine depreciation. Groupings may be by year of acquisition, by type (all cars), by classification (all equipment), by location, or by a combination of these ways. Depreciation based on groups that include items with varying lives is referred to as composite depreciation. No gains/losses should be recognized on normal dispositions when this technique is used.

With respect to the chart of accounts, the Chart of Accounts has been revised to reflect additional accounts that may be needed by each PHA. The use of the revised accounts permits each PHA to present a more accurate picture of its financial condition using GAAP.

On the question of bad debts, both the Governmental Method and the Enterprise Method required the development of an allowance for uncollectible accounts receivable. For the Governmental Method, NCGA Statement No. 1, *Governmental Accounting and Financial Reporting Principles*, requires that an allowance for uncollectible accounts be established for potentially uncollectible amounts. For the Enterprise Method, SFAS No. 5, *Accounting for Contingencies*, guides the establishment of the allowance for uncollectible accounts for potentially uncollectible amounts.

To provide for all reasonably anticipated losses inherent in the receivable balances that will not be collected, a PHA must ''establish an allowance for uncollectible (or doubtful) accounts.'' When calculating the size of the reserve, each PHA should consider such factors as the current accounts receivable aging and the historical collection experience. The following provides an example of a calculation methodology:

1. Group the receivables into these categories:

Current receivables
Receivables less than 90 days outstanding, but not current.
Receivables 90—180 days outstanding.
Receivables over 180 days outstanding.

2. Identify all receivables that are known to be uncollectible or that the probability of collection is very low.

3. For those receivables identified in item 2, establish a reserve for the estimated amount that will not be collected.

4. Based on the receivables in the groups shown above in item 1 that were not specifically identified in item 2, establish an overall additional reserve for each category.

Again, this is just an example. The method used by each PHA could change based on its specific circumstances.

With respect to vacation and sick leave accruals, GAAP provides as follows:

Vacation Leave and Other Compensated Absences with Similar Characteristics. Accrue these types of compensated absences as a liability because employees earn these benefits by meeting both of these conditions: (1) The employees' rights to receive compensation are attributable to services already rendered; and (2) it is probable that the employer will compensate employees for the benefits through paid time off OR some other means, such as cash payments at termination or retirements.

Sick Leave and Other Compensated Absences with Similar Characteristics. If paid time off is contingent on a specific event outside the control of the employer and employee (jury duty, for example), other compensated absences have characteristics similar to sick leave. If it is probable that the employer will compensate employees for the benefits through cash payments conditioned on the employees' termination or retirement, accrue a liability as the benefits are earned by the employees

First year experience regarding the impact of converting to GAAP reporting will vary. The recording of GAAP accounts will have an impact on the financial indicator results under GAAP versus PHMAP. This recording of new liabilities and contra assets amounts will be reflected in the first year financial indicator results and the overall score given to each PHA.

With respect to the PHA's ACC, the conversion to GAAP will have an impact on the ACC when the PHA converts to accrual accounting since you accrue receivables and defer revenue in anticipation of the actual receipt of the revenue.

On the matters of the effect of the conversion to GAAP and maintaining consistency in reporting under GAAP, HUD points out that GAAP permits choices among acceptable options for certain accounting transactions. Because the purpose of converting to GAAP is to achieve uniform and consistent financial data from all PHAs, HUD has selected preferred options for those transactions where GAAP allows a PHA to choose from more than one method. For these transactions, HUD strongly encourages PHAs to choose the HUD-preferred option.

PHAs can project in large measure how their financial position will be affected by the major GAAP provisions. HUD has taken into consideration the anticipated effects of converting to GAAP and the reporting of results using GAAP. The scoring mechanism will reflect the adjustment to GAAP.

Clarification of Certain Aspects of GAAP Are Necessary. Other commenters asked specific questions about certain aspects of GAAP or asked for clarification of certain points. The commenters stated that HUD should clarify its position as to what constitutes GAAP because in the proposed rule for Uniform Financial Reporting Standards, HUD refers to GAAP as being prescribed by GASB and FASB but these are two different standard setting bodies with

differing jurisdictions. Another commenter requested that HUD permit the use of Enterprise GAAP. Other commenters stated that GAAP will require PHAs to keep two sets of books.

HUD's rule on Uniform Financial Reporting Standards covered private entities as well as PHAs, and under GAAP, the accounting principles and financial reporting standards are established by the Governmental Accounting Standards Board (GASB) for governmental entities, and by the Financial Accounting Standards Board (FASB) for nongovernmental entities. Since the PHAS rule is only applicable to PHAs, HUD uses the term ''GASB/GAAP'' in this final rule. GASB permits two types of reporting mechanisms, the Governmental Method and the Enterprise Method. The use of either method is acceptable to HUD. In fact, HUD is not requiring one method over the other. Each PHA has the discretion to determine its own method. The guiding criteria should be the type of activities performed by the PHA. That determination will drive which method most accurately provides the reader of the financial statements with a clear understanding of the PHA's operations and financial results.

With respect to bookkeeping, PHAs will not be required to keep two sets of books to comply with GAAP. HUD does not require a change to recordkeeping as part of the GAAP provision. In addition, HUD is revising financial reporting requirements to eliminate obsolete forms and requirements.

HUD Must Clarify the Compensation of the Costs of the Conversion. There were several comments on whether HUD would pay for the software and upgrading of PHA computers for the electronic submission, and the costs of converting their accounting systems to GAAP, or if additional operating subsidy to cover these costs would be provided through PFS ''add-ons.''

Additional GAAP-related audit costs will be covered by the PFS.

The New Financial Reporting Requirements Constitute an Unfunded Mandate. Related to the issue of compensation costs are comments that stated the conversion to GAAP or the requirement to submit financial reports electronically constitute an unfunded mandate.

Additional audit costs, if any, associated with GAAP related audits, will be covered by HUD as a PFS add-on. These additional audit costs, if any, are anticipated to be minimal.

Significant Training, Assistance and Guidance Will Be Necessary to Make the Conversion Work. Commenters asked HUD to clarify what training and assistance HUD would make available to assist with the conversion to GAAP and electronic submission, and when such technical assistance would be available.

The HUD–GAAP Conversion Guide for PHAs, now on the Internet, provides an in depth discussion of GAAP conversion including suggested accounting entries. The Guide includes sample journal entries and suggested GAAP conversion procedures. PHAs that have specific questions not addressed in this Guide, contact the REAC Service Center Help Desk (1–(888)–245–4860) and answers will be provided. HUD is providing 24-hour on-line assistance on the GAAP Conversion Guide at our Web site (http://www.hud.gov/reac/reafin.html). Additionally, industry specialists have developed and prepared a schedule of a comprehensive training program designed to explain how a PHA should convert its records and reporting to GAAP. HUD will supplement this training with its own training program.

Small PHAs Are Largely Not Automated and Will Have Difficulties Complying with the New Reporting Requirements. A few commenters expressed the concern about the impact of this Indicator on small PHAs that may have difficulty complying with the electronic reporting. The commenters asked who will supply and pay for software necessary for electronic submission.

HUD disagrees with the commenters that small PHAs will be adversely affected by PHAs Indicator #2. First, PHAs have a year before reporting in GAAP is required. Second, HUD notes that the Single Audit Act Amendments of 1996 raised significantly the monetary threshold for when an entity that receives Federal assistance is required to have an audit. The threshold was raised from $25,000 to $300,000. This change significantly reduces reporting costs for small entities. Therefore, although small entities must continue to submit an annual financial report to HUD, an audited report is not required. Third, although HUD has clearly expressed a preference for internet submission of financial reports, the rule provides that HUD will approve transmission of financial data by tape or diskette if HUD determined that the cost of electronic internet transmission would be excessive. Additionally, to further ease any administrative burden on small PHAs, and all PHAs, HUD will provide submission software, supplemental guidance, training and other technical assistance.

What Protections Will Be in Place to Protect the Standardized Electronic Format from Viruses, Corruption. Some commenters expressed concern with the use of any standardized electronic format due to the potential of viruses or corruption.

To ensure security against computer viruses, HUD systems scan incoming data for viruses. Similarly, PHAs should ensure that data being transmitted is free of viruses.

Final Rule Should Provide for HUD Confirmation of Receipt of Electronic Report. Other commenters requested that HUD confirm that it has received the electronically transmitted data, and that the data are readable, correct, and accurate. The commenters stated that confirmation should be done quickly so that any transmission problems can be corrected without consequence.

HUD will give PHAs read-only systems access to view their submitted data via the Internet. It is planned that PHAs will receive a written report on HUD's financial assessment within a reasonable period of time.

The Final Rule Should Address PHA Access to the Electronic Report. A few commenters suggested that once a PHA has input adjustments, it should be provided read-only access to the HUD system in order to make the data most useful to it. Access to system data is not addressed in the proposed rule.

A PHA will have read-only access once the data is accepted in the system.

The 60-Day Turnaround Time to Submit Unaudited Statements Is Inadequate. Some commenters stated that the 60-day turnaround time to submit unaudited financial statements after the PHA's fiscal year may not be enough time to prepare a thorough submittal, especially for those PHAs that are converting to GAAP. They stated that PHAs should be given 100 days to submit their unaudited financial statements.

HUD strongly believes that 60 days following the fiscal year-end is sufficient for the preparation and submission of unaudited financial statements. Audited results need not be submitted until 9 months following the close of the PHA's fiscal year-end. HUD encourages each PHA to work with its IPA to develop procedures designed to calculate GAAP entries which will facilitate closing procedures. In addition, HUD suggests that each PHA work with its respective IPA firms developing the specific closing procedures each must use so the required information will be available 60 days following the fiscal year-end close. HUD recommends that this planning process occur early during the fiscal year to facilitate the data gathering and financial reporting methods.

The Financial Standards Should Be Applied to all Programs Administered by PHAs. A few commenters stated that the financial standards should be applied to the public housing entity as a whole, not just certain federal programs. The financial standards should be applied to all programs managed by the PHA, including public housing.

HUD agrees that financial assessment and the resulting financial indicators will be applied to the entity as a whole and not just to each respective Public Housing program. The Supplemental Financial Data Schedule provides a summary of each HUD program and other Federal, State, local or private funding sources.

Final Rule Should Make Clear That a PHA's Financial Reporting Is Limited to Public Housing Programs. Other commenters stated that the final rule should make clear that a housing authority's financial reporting on liquidity and viability will be limited to public housing program operations and will not include the housing authority's non-public housing operations or the Authority's capital programs.

HUD believes that the financial health of the PHA can only be accurately determined by assessing all aspects of the PHA, including non-public housing and capital programs.

How Will the Six Major Components of This Indicator Be Scored? Several commenters asked how each of the six major components of this indicator will be scored, and what weights will each of them have.

To evaluate the financial health of the nation's PHAs, REAC will assess and analyze the GAAP-based financial statements submitted each year. REAC will analyze this information using a specific set of financial indicators that focus on: (1) *Liquidity measurement*—evidence of the PHA's ability to cover its near term obligations; (2) *Viability measurement*—evidence of the PHA's ability to operate using its fund balance without relying on additional funding; (3) *Days receivable outstanding*—measures the PHA's ability to collect its tenant receivables in a timely fashion; (4) *Vacancy loss analysis*—measures the extent to which the PHA is maximizing its revenue from operations; (5) *Expense management per unit*—provides a measure of the PHA's ability to maintain its expense ratios at a reasonable level relative to its peers (adjusted for size and region); and (6) *Net income (loss)*—provides a measure of how the year's operations have affected the PHA's viability.

Financial scores will be determined as follows: (1) *Liquidity measurement*—Adjusted Current Ratio with a maximum score of 9; (2) *Viability measurement*—Number of months operating expenditures in Expendable Fund Balance with a maximum score of 9; (3) *Days receivable outstanding*—Days Receivables Outstanding with a maximum score of 4.5; (4) *Vacancy loss analysis*—Total vacant potential revenue to gross available revenue with a maximum score of 4.5; (5) *Expense management per unit*—Expenses by category divided by total number of units with a maximum score of 1.5; and (6) *Net income (loss)*—Net income (loss) for the year compared to Expendable Fund Balance with a maximum score of 1.5.

Therefore, the maximum score a PHA may receive for its Financial Condition is 30 points. In order to receive a passing score, on the Financial Condition Indicator, a PHA must receive a score of at least 60 percent (60%), or 18 points of the 30 points available.

Why Did HUD Not Adopt a Risk Management Approach Using Two Threshold Indicators on Cash Reserves and Assets Plus an Audit? Two commenters asked why HUD did not rely on a risk management approach using two threshold indicators on cash reserves and assets plus an audit.

HUD believes that additional indicators were needed to ensure a full and fair assessment of PHAs' financial condition and provide a basis to compare each PHA to its peer group. While the two-tiered approach will not be used, point availability is weighted toward the first two indicators since Liquidity and Viability are significant predictors of the overall financial health of a PHA. The remaining four financial indicators provide additional assessment capability when determining the total financial health of a PHA. If a PHA receives high scores on the first two indicators, it is likely that it will receive high marks on the remaining four.

What Additional Components Will Be Used To Identify Waste, Fraud or Abuse. Commenters asked what ''flags'' HUD will use to determine when the ''possibility'' of waste, fraud, or abuse exists, and what types of additional components may be used.

As part of the analysis of the financial health of a PHA including an assessment of the potential or actual waste, fraud or abuse at a PHA, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores. The following is a summary of the types of audit opinions and the number of total financial points that will be deducted if a PHA receives such an audit opinion from its IPA:

Type of flag	Score [1]
Clean opinion	0
No audit opinion	30
Adverse opinion	30
Disclaimer of opinion	30
Qualified opinion	([2])
Going concern opinion	([2])
Material weakness in internal control	([2])
Reportable condition	([2])
Findings of non-compliance and/or questioned costs	([2])
Indicator outlier analyses	([2])

[1] Financial Condition points that will be deducted from the PHA's overall financial score.

[2] If points remain, further deductions can be made dependent upon the specific nature of the information reported under this flag.

Final Rule Should Clarify That if PHA Scores Very High on Liquidity Measure, It Will Not Be Assessed on Remaining Components. A few commenters suggested that if a PHA scores very high on the liquidity measure [Current Ratio and Number of Months Expendable Fund Balance], the PHA should not have to be assessed on the remaining [components of PHAS Indicator #2].

HUD, the industry and those PHAs who participated in the development of this proposed rule strongly preferred the use of all six financial indicators. HUD strongly believes each PHA must be scored on all financial indicators to ensure a full and fair assessment of PHAs' financial condition and provide a basis to compare each PHA to its peer group.

To Calculate Current Ratio, HUD Needs to Better Define Current Assets and Liabilities. Other commenters stated that to calculate the current ratio, HUD will need to better define current assets and current liabilities. They noted that the current HUD chart of accounts does not define these terms nor does it provide the framework to categorize assets or liabilities as current or long term.

The adjusted current ratio is designed to show available unrestricted and unreserved current assets divided by the unrestricted current liabilities. The HUD Chart of Accounts has been revised to reflect new accounts that will help PHA to account for the information needed to perform this calculation. The Financial Data Schedule has also been revised so this information will be reported to HUD through electronic submission.

It Is Not Clear What HUD Means by Expendable Fund Balance; and How Does HUD Propose to Calculate ''Expendable'' Fund Balance in an Enterprise Fund. A few commenters stated that it is not clear if this fund

balance would be equivalent to cash reserve (just cash and liquid investments) or Operating reserve (i.e., working capital). Other commenter noted that the terminology ''expendable'' fund balance generally refers to the undesignated portion of unreserved fund balance in governmental funds such as the general fund or special revenue funds. They stated that under GAAP, most PHAs would likely classify their public housing programs as enterprise funds where fund balance or fund equity is generally comprised of retained earnings and contributed capital. They asked how HUD proposes to calculate the ''expendable'' fund balance in an enterprise fund.

The expendable fund balance is the unreserved and undesignated portion of fund balance (or retained earnings) representing expendable available financial resources. Under both the Governmental Method and the Enterprise Method of reporting, the expendable fund balance (expendable retained earnings for the Enterprise Method) simplistically refers to funds that are unrestricted and unreserved. Expendable fund balance is what is left after subtracting all other fund balances that are either reserved or restricted.

The expendable fund balance is the unreserved and undesignated portion of the fund balance (or retained earnings) representing expendable available financial resources. Under both the Governmental Method and the Enterprise Method of reporting, the expendable fund balance (expendable retained earnings for the Enterprise Method) simplistically refers to funds that are undesignated and unreserved. Expendable fund balance is what is left after subtracting all other fund balances that are either reserved or restricted.

What Does HUD Mean by Liquidity Measurement and Range of Liquidity. A few commenters asked what is meant by the liquidity measurement and noted that there was no mention of a range in regard to liquidity in the proposed rule.

Liquidity measurement refers to a PHAs ability to cover its near term obligations. It will be measured by using the adjusted current ratio that is designed to show available unrestricted and unreserved current assets divided by the unrestricted current liabilities. The HUD Chart of Accounts has been revised to reflect new accounts that will help PHAs to account for the information needed to perform this calculation. The Financial Data Schedule has also been revised so this information will be reported to HUD through electronic submission. The range is not a single amount or score, but a tolerance between acceptable scores as grouped among peers (i.e., PHAs located within the same geographical region having similar characteristics).

The Days Receivable Outstanding Component Is Not a Good Indicator of Financial Health—Does It Take Into Account Notice and Grievance Rights. Some commenters stated that this component [Days Receivable Outstanding] will require extensive tracking and is not a good indicator of financial health. They stated that outstanding receivables are a result of various factors, some of which an agency cannot control, and that adding this factor creates another area where justification for bad results can affect the score. The commenter stated that if an organization is in good financial health, other indicators will clearly and easily point this out, and therefore this indicator should not be included. Another commenter asked whether this component takes into account the regulatory requirements for notice provisions, grievance rights of residents, and the judicial process?

HUD left ''rents uncollected'' due to statutory requirements. However, the old measure is not objectively measurable. It was left to allow PHAs to be measured on a basis each was familiar with. The ''days receivable outstanding'' ratio measures the PHA's ability to collect its tenant receivables in a timely fashion. It is HUD's strong belief that this information is already available to each PHA (or at the minimum, should be available). Since the calculation is done ''Gross'' each PHA should have the ability to control the days receivable outstanding. Any tenant receivable that ages beyond a certain number of days past its due date has to be questioned as to its collectibility.

Discard Tenants Receivable Component; What Is Wrong With Existing Receivables Measures. Some commenters suggested that HUD discard the ''tenants receivables'' component because it would reinstate the objectionable ''Tenant Account Receivables (TARS)'' indicator from the original PHMAP rule. They said that in order to comply with the current PHMAP requirements, PHAs had to rewrite computer software that would distinguish between the different types of receivables (rents, maintenance charges, other charges, etc.). The commenters asked what was wrong with the existing measure?

Under GAAP, the collectible portion of each component within A/R must be determined. Each PHA should develop an allowance that will permit that entity to reflect only the collectible portion of A/R. Tracking days under GAAP is an important measurement tool to estimate the collectible portion of the A/R that should be reported.

Certain State Laws Concerning Tenant Rents May Penalize PHAs under Financial Indicators. One commenter stated that housing authorities in North Carolina are required by State law to apply tenant payments to any rent balance before applying them to other charges that may be older; this leaves old balances on the tenant's accounts; and would penalize such a PHA when other authorities do not have the same legal requirements. The commenter stated that it is likely other States have other restrictions that would affect the PHAs in those areas.

If PHAs in North Carolina are required by State law to apply tenant payments to any rent balance before applying them to other charges that may be older thereby leaving old balances on the tenant's accounts, those PHAs may not be accounting for the tenant payments in conformity with GAAP. HUD suggests that those PHAs check with their IPA for additional guidance.

There Are Several Problems With Vacancy Loss Component. Several commenters stated there were problems with the vacancy loss component. Their comments included the following: it is impossible to define potential rent or compute vacancy loss; vacancy loss has questionable usefulness in public housing—given PHAs' reliance on operating subsidies which continue through normal vacant unit turnover, ''lost rental income'' or ''vacancy loss'' are not useful measures of an agency's financial health; how is potential rent calculated in a system where rent payable is a function of income and not based on unit size, location, condition or other typical market factors; vacancy loss should be eliminated, because rent is unknown until calculated for a specific unit with a specific tenant; PHAs that encourage families to become self-sufficient and move up to private housing may suffer multiple deductions to their PHAS score under two indicators [vacancy loss at § 902.35 (formerly § 901.35) and vacancy rate and turnaround time at § 902.43 (formerly § 901.43)]; the inclusion of the vacancy loss component under financial condition appears redundant—vacancy statistics are already measured under ''management operations,'' and should remain there; and the vacancy loss indicator represents the loss of potential rent due to vacancy, but the proposed rule does not indicate how potential rent loss will be calculated. With respect to this last comment, the

commenter stated that vacancy losses are commonly used in rental projects using contract rents where the amount of loss revenue can be easily calculated. Public housing projects do not use contract rents because rents are based on tenant incomes.

With respect to these comments, HUD points out that the vacancy statistics measured under ''Management Operations'' will look at a formula to assess the reduction in the number of units that are vacant. The unit turnaround time measures the annual average of the total number of turnaround days between the move-out date and the date a new lease takes effect. Vacancy loss measures the loss of potential rental income due to vacancy. The calculation for this indicator is potential rent divided by gross potential rent. The gross potential rent is estimated using the projected average rent contribution that is currently used to calculate operating subsidy through the Performance Funding System. HUD believes that is important to measure whether the PHA is both meeting its mission to house low income families while maximizing revenue obtained from rent.

Comments on Expense Management Component. There were also several comments and questions on the expense management component. Comments included: the proposed rule does not elaborate as to what key expenses will be analyzed or what standard they will be compared to such as budget, prior years or an industry standard; if an organization manages its finances well, the financial statements (which produce the first two indicators) will show this, and therefore how the funds are spent and classified should be left to the organization. With respect to the last comment, the commenter stated that money spent wisely will show in the financial statements and the physical condition of the property; therefore, this indicator should not be included.

HUD believes the use of expense ratios benchmarked against peers of similar size and programs is a valuable measure of efficiency. It permits HUD and PHAs to analyze information. The goal is to determine how efficient a PHA is, expense category by expense category.

The calculation is made by assessing the dollars spent per each unit for certain expense categories. The actual expense categories that will be measured are: administrative salaries; auditing fees; outside management fees; compensated absences; employee benefit contribution; tenant services; water; electricity; gas; fuel; utility labor and other; ordinary maintenance and operations; protective services; insurance; bad debt; extraordinary maintenance; other operating expenditures; HAP payments; and fraud loss.

Comments on Energy Consumption Component. There were also several comments on the energy consumption component and these included the following: the energy consumption component should be measured only if a PHA fails a reserve-related component; what are the details of this component; and there is a point of diminishing returns below which it is not cost effective to do additional conservation measures—if all possible cost-effective measures have already been implemented, the PHA should receive a high rating for this component.

PHAs that have taken the initiative to complete cost effective energy conservation measures should compare favorably to their peers of similar size and region when measured by expense ratios.

Comments on Net Income or Loss Divided by the Expendable Fund Balance Component. Comments on this component included the following: the proposed rule states that the net income/loss divided by expendable fund balance indicator measures how the year's operations have affected the PHA's viability, however, it fails to adequately describe why or how this ratio hopes to accomplish that stated goal; exclude capital and nonroutine expenditures from this component; and the proposed factor of ''Net Income or Loss divided by the Expendable Fund Balance'' is not a valid or useful measure of a PHA's viability and should be eliminated—there are very valid long term planning implications relative to the fluctuations in expendable fund balance, such as accumulating dollars for a major capital activity over several years and then the single year when the event occurs, a major reduction of expendable fund balance shows up. The commenter of this last comment stated that if this ratio is to be used, it should be modified to reflect the results of each of the most recent three years.

Net income (loss) provides a measure of how the year's operations have affected the PHA's viability. It is intended to show how well the PHA has performed this year compared to its peers. The calculation will be made against the Expendable Fund Balance (or retained earnings) which is the unrestricted and unreserved portion of the total fund balance.

Comments on Additional Components That May Be Added to Indicator. A few commenters stated that they were concerned about the authorization to REAC to create additional components and new components should be added after opportunity for notice and public comment. Other commenters asked what determines when additional criteria will come into consideration. Their comments are as follows: any further component, as well as any revisions to components should only be added following appropriate public notice and opportunity for comment; is there a set criterion for additional fraud detection components or will it be customized to the PHA; what determines when the additional criteria will come into consideration; and additional components may be used to detect fraud and may be used to provide a PHA with benchmark information to allow the PHA to measure its own performance against its peers but how are peers determined—by size, type of housing stock, age of the buildings?

HUD understands the concerns about additional components. As part of the analysis of the financial health of a PHA including an assessment of the potential or actual waste, fraud or abuse at a PHA, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores. Please see the discussion concerning what additional components will be used to identify waste, fraud or abuse, above, for a summary of the types of audit opinions and the number of total financial points that will be deducted if a PHA receives such an audit opinion from its IPA. The determination of PHA peers is done by comparing those PHAs with like programs that are similar in size (number of units).

E. Comments on Subpart D—PHAS Indicator #3: Management Operations

HUD Should Allow PHAs to Develop Own Management Performance Standards. A few commenters stated that HUD should allow PHAs to develop their own performance standards, based on local market conditions that can be documented, verifiable, and subject to HUD audit.

Section 6(j) of the U.S. Housing Act of 1937 establishes a method that uniformly assesses the management performance of PHAs. Not only does the PHAS assess a PHA's management performance that will be verified as part of the independent auditor's audit, it also provides for an independent third party assessment of the physical condition of a PHA's housing stock, independent third party assessment of financial operations, and a resident service and satisfaction assessment. REAC was created to effectively and fairly measure a PHA's performance

based on standards that are objective, uniform and verifiable. Standards based on local market conditions would not provide standards that are as uniform as possible.

How Will Management Operations Performance Standards be Weighted and Scored? Several commenters asked how each management indicator be weighted and scored? The commenters also asked for further information about the management indicators and suggested that the final rule should state that the PHMAP methodology, to the extent consistent with PHAS, will be preserved. Another commenter asked whether the definitions, exclusions and exemptions based on the existing PHMAP rule carryover into the new rule for this or any other PHAS indicator.

HUD notes that a listing of the approximate weights/points for each indicator, sub-indicator and component was provided earlier in this preamble. The approximate relative weights/points for the PHAS management operations indicator are listed below. Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on Indicator #3, Management Operations.

APPROXIMATE RELATIVE WEIGHTS/POINTS

Sub-Indicator/Component	Approx. Points
Vacancy Rate/Progress to Reduce	8.0
Vacancy Rate	(4.0)
Unit Turnaround Time	(4.0)
Modernization	6.0
Unexpended Funds	(1.0)
Timeliness of Fund Obligation	(1.5.)
Contract Administration	(1.0)
Quality of the Physical Work	(2.0)
Budget Controls	(0.5)
Rents Uncollected	4.0
Work Orders	4.0
Emergency Work Orders	(2.0)
Non-Emergency Work Orders	(2.0)
Inspection of Units and Systems	4.0
Inspection of Units	(2.0)
Inspection of Systems	(2.0)
Security	4.0
Tracking/Rpt. Crime-Related Problems	(1.0)
Screening of Applicants	(1.0)
Lease Enforcement	(1.0)
Grant Program Goals	(1.0)

The PHMAP methodology, to the extent consistent with PHAS, will be preserved. The definitions and exemptions in the current PHMAP rule will also apply to the PHAS. The need for modifications and exclusions has been significantly diminished in the PHAS because all of the PHAS indicators, sub-indicators and components will be independently verified by the third party independent auditor. Therefore, modifications and exclusions have been eliminated from the PHAS rule. A PHA's certification will be transmitted electronically to the REAC via the internet.

What Does ''Independent Verification'' Mean? A few commenters asked what is meant by the reference to ''independent verification'' and if the reference is to an auditor, what are the guidelines.

The independent auditor will verify all of the sub-indicators and components under the PHAS Indicator #3. The audit guidelines are as published in the OMB A–133 Compliance Supplement, dated May 1998. The PIH compliance supplement is in the process of being revised to reflect the PHAS.

Comments on ''Vacancy Rate/Unit Turn-around'' Component. There were several comments on the vacancy component of the Management Operations Indicator. One commenter stated that unit turn-around should be removed from PHAS. Another commenter stated that because vacancies are included in both Indicator #2, Financial Condition, and Indicator #3, Management Operations, this creates a level of confusion. The commenter asked whether vacancies is a financial concern or a management concern? Another commenter stated that the definition of vacancy rate needs to make clear that units off line are excluded. Other commenters stated that the rule does not state how vacancy/unit turnaround will be calculated. They noted that vacancy/unit turn-around varies with each tenant, and this hurts a PHA's score particularly if the previous tenant did serious damage to the unit. A couple of commenters remarked that the vacancy and unit turn-around indicators conflict with the lease enforcement and ''get rid of the criminals'' policies. They stated that PHAs should have at least one year from the date of eviction to reoccupy the unit without being penalized. Another commenter stated that there should be a management indicator for lease enforcement, and one questioned whether adjustments would be made for the ''One Strike and You're Out'' provisions that are currently in the PHMAP.

With respect to these comments, HUD notes that because unit turnaround time is a statutory factor, the Department cannot arbitrarily drop the assessment of this factor. In order for unit turnaround time to be eliminated, a change would have to be made to the 1937 Act at section 6(j). On the issue of possible duplicativeness of this component, HUD points out that PHAS Indicator #2, Financial Condition, analyzes vacancy loss, e.g., the amount of income lost due to units being vacant. Indicator #3, Management Operations, measures the rate of vacancies over the entire year being assessed. The definition of vacancy rate is the same as in the current PHMAP rule, e.g., the total actual vacancy days divided by the total days available for occupancy. The exemptions that apply to the current PHMAP will also apply to the PHAS. Vacancy rate and unit turnaround will be calculated the same as in the current PHMAP rule. A PHA will be required to certify to unit turnaround time, but it will not be scored on unit turnaround time unless it has less than a grade of C as stated in the current PHMAP rule.

Although unit turnaround time may vary with each resident, a PHA should be able to establish an average unit turnaround time that does not exceed 30 calendar days, which is the norm. Over the fiscal year being assessed, the cases of severe resident damage to a unit should be minimized through the provision of resident orientation, ongoing housekeeping education, prompt eviction due to lease violations and annual inspection of units. In addition, unit turnaround time is the average time it took for all units turned around during the fiscal year being assessed.

On the matter of lease enforcement, HUD believes that one year from the date of eviction to reoccupy a unit is an unreasonable amount of time. The current unit turnaround time component provides for an average of 30 calendar days between the time when a unit is vacated and a new lease takes effect for a grade of C. A PHA should be able to turn a vacant unit around, have a sufficient waiting list of applicants, and sufficient screening and intake procedures to enable it to lease a unit within 30 calendar days.

A management sub-indicator for lease enforcement will be considered as part of possible future changes to the PHAS. In order to make the transition from the PHMAP to the PHAS, it was determined to make as few changes as possible between the current PHMAP and the management operations indicator under the PHAS, but this is a valid comment, and HUD will consider this issue.

Comments on ''Modernization'' Component. Comments on this component are as follows. A few commenters stated that in assessing modernization, quality of physical work should be linked to the broad physical inspection conducted under the

physical condition indicator, and contract administration should be measured during the independent audit. They asked will the ''quality of physical work'' in modernization be done through the physical inspection. Other commenters stated that the physical condition of sites, rather than timeliness of expending modernization funds, should be the measure used to assess success of modernization. A few commenters objected to this indicator if HUD intends to expand the application of the modernization sub-indicator to the HOPE VI and Vacancy Reduction programs. The commenters stated that these programs are not universal but targeted to individual PHA needs and situations; and that the HOPE VI assistance program is a major program, distinct and separate from both the Comprehensive Grant Program and Comprehensive Improvement Assistance Program, which should be reviewed and rated separately under its own indicator.

HUD's response to these questions and concerns is as follows. The quality of the physical work will be examined as part of the annual modernization review of PHAs performed by the HUB/Program Center, with reports issued in accordance with the current PHMAP modernization indicator. PHAs will certify to responses that encompass all five modernization components, and a PHA's certification will be verified by the independent auditor's audit.

All five of the components under sub-indicator #2, modernization, are statutory; therefore, PHAs will be required to certify to this indicator under the PHAS. Sub-indicator #2, modernization, will examine the HOPE VI and Vacancy Reduction Program under components #3, #4 and #5 as in the current PHMAP program.

Comments on ''Rents Uncollected'' Component. Comments on this component are as follows. A few commenters stated that ''rents uncollected'' should be addressed in the Financial Indicator and moved from the Management Indicator. Other commenters stated that suspense accounts (accounts pending write off) should be deducted from rents uncollected. Some commenters stated the standard allowance for bad debts among many industries collecting money from a wide cross-section of incomes is 2%, and it does not seem reasonable to expect the same standard from PHAs that are working with the nation's poorest population as one would expect from institutions that are working with a cross-section of income levels.

Rents uncollected is one of the three basic components of management operations; the other two are vacancies and the condition of the units. Since Indicator #3 examines management operations, it is appropriate that rents uncollected be examined under this indicator. Rents uncollected will be calculated the same as in the current PHMAP rule. In order to make the transition from the PHMAP to the PHAS, it was determined to make as few changes as possible between the current PHMAP and the management operations indicator under the PHAS. HUD believes that PHAs are in the business of providing housing, keeping the units in good repair, and collecting rents due. Although PHAs are working with the nation's poorest population, the rent due by residents is based on a percentage of the resident's adjusted income. The fact that a resident's rent is based on a percentage of the adjusted income total housing cost in and of itself does consider the public housing population.

Comments on ''Work Orders'' Component. There were comments on this component. One commenter stated that evaluation of nonemergency work orders should be dropped. Another commenter stated that the time allowed to complete non-emergency work orders is far too lax. The commenter noted that the current PHMAP allows for up to 25 days to qualify for an ''A'' and this standard should be less than 5 days in order to receive an ''A.''

HUD believes that the response time to non-emergency work orders should be measured under the PHAS, and calculated in the same way as it is measured under the current PHMAP. HUD will consider changes to this sub-indicator as possible future changes to the PHAS. In order to make the transition from the PHMAP to the PHAS, it was determined to make as few changes as possible between the current PHMAP and the management operations indicator under the PHAS.

Comments on ''Annual Inspection of Units'' Component. Comments on this component included the following. A few commenters stated that the new physical condition standards conflict with the traditional annual inspection requirement. They stated that HUD requires PHAs to use HUD's proposed new uniform physical condition standards in performing annual inspections of units and systems, but this is a deviation from HUD's statements in the preamble to the proposed rule on Uniform Physical Condition Standards that the new physical inspection standards would not pre-empt the existing PHA inspection procedures nor the investment PHAs may have made in computer hardware and software to carry out those procedures. HUD should permit PHAS to use their existing inspection systems. Another commenter stated that the inspection indicator should be dropped because this indicator will be measured under the PHAS Indicator #1, Physical Condition. Another commenter asked whether the management inspection was a physical inspection, or HQS inspection?

HUD has no objection if a PHA determines that use of the HUD software for its own purposes is in its best interests. HUD encourages PHAs to use its inspection software when conducting their own annual inspections in order to promote uniformity in inspections, but HUD is not proposing at this time to require PHAs to use HUD's inspection software for two reasons: (1) PHAs may, as a part of their operating procedures, combine other inspections (e.g., housekeeping, preventive maintenance, etc.) with their annual inspection of units; and (2) PHAs may have existing software for operations that may be incompatible with the HUD software. It would be uneconomical and unreasonable to require PHAs to change their existing systems. The REAC will inspect using the HUD software, and PHAS indicator #3 requires a PHA's inspection to utilize the HUD uniform physical inspection standards set forth in subpart B of this part.

HUD believes that the inclusion of this sub-indicator in the PHAS is very important because the PHAS indicator #1 will inspect a statistically valid sample of units and systems, whereas this sub-indicator requires PHAs to inspect and initiate repairs on all occupied units and all systems on an annual basis. This inspection is a management assessment of a PHA's ability to determine the maintenance and modernization needs of its developments. This sub-indicator is assessed by measuring the extent to which a PHA performed a physical inspection of 100% of the units and systems within each development. A PHA must use the HUD uniform physical inspection standards set forth in subpart B of this part. The HQS is no longer used as a standard for inspection of public housing subject to this part.

Comment on ''Security'' Component—Clarify Nature of Security Component. A few commenters stated that the security indicator should not evaluate the PHA's relationship with police or grant performance, and the name should be changed from Security to Applicant Screening and Lease Enforcement.

HUD has determined that changes to this sub-indicator will be considered as

possible future changes to the PHAS. In order to make the transition from the PHMAP to the PHAS, it was determined to make as few changes as possible between the current PHMAP and the management operations indicator under the PHAS.

Resident Services and Satisfaction Should Not Be a Separate PHAS Indicator but a Component of Management Indicator. Several commenters stated that the elimination of PHMAP Indicator #7, Resident Services and Community Building is supported. Other commenters stated that if ''Resident Satisfaction'' is to be a rating factor, it should be included as a component of this indicator, not elevated to the status of a separate indicator.

Because residents are stakeholders in the PHAS process, it was determined that resident service and satisfaction should be elevated to the status of a separate indicator. The opinions of the residents that live in public housing should be considered in the overall operation of a PHA.

F. Comments on Subpart E—PHAS Indicator #4 Resident Service and Satisfaction

Surveys Should Not Be Independent Indicator, but a Component of Management Indicator. Some commenters wrote in opposition to the proposed survey requirement. Two of the commenters stated that, if used at all, this indicator should be included as a component of PHAs Indicator #3 (Management Operations), and only as a pass/fail requirement that each PHA employ some form of resident satisfaction survey on a regular basis.

HUD has determined that residents' opinions of their living conditions are very important to the PHAS assessment process. Therefore, HUD has decided that the resident service and satisfaction indicator will be separate. HUD has designed an initial survey instrument for completion by a statistically valid sample of residents selected by HUD, and HUD anticipates to begin testing the survey instrument in the near future.

Small PHAs Should be Excluded from Indicator #4. Two commenters wrote that PHAS indicator #4 should exclude small housing authorities from issues concerning resident organizations and resident initiative programs, as PHMAP does.

HUD has determined that due to the importance of residents' opinions of their living conditions, small housing authorities will not be excluded from the assessment process, including the assessment of resident service and satisfaction.

PHAs Should be Allowed to Develop Own Surveys. Two commenters recommended that the rule be amended to permit PHAs to design their own resident surveys. One commenter remarked that local PHAs could do a better job designing surveys that take regional and demographic factors into account. The other commenter wrote that PHAs should be allowed to develop surveys in accordance with HUD-established guidelines.

The REAC is responsible for the development of a uniform standard assessment of all PHAs and a Customer Satisfaction Survey to assess residents' living conditions. HUD allowing PHAs to develop individual surveys would create different tools for measuring the physical, financial and management condition of properties, as well as resident satisfaction of living conditions. HUD has determined that there must be a standard measurement tool to compare and score the results of the survey.

Surveys Should Not be Conducted by PHAs. Several commenters objected to PHA-administered resident surveys. Several of the commenters wrote that there is often a lack of trust and forthrightness between a PHA and residents. These commenters remarked that a survey administered by a local or regional resident organization, or an independently administered survey, would be preferable. Another commenter wrote that fear of retaliation will prevent honest answers from being given to a survey administered by the PHA. One commenter suggested that the surveys should be administered and monitored by HUD.

HUD has determined that PHAs will manage the Customer Satisfaction Survey. A resident against whom a PHA is taking retaliation should report such action to HUD's Inspector General Hotline at 1-(800)-347–3735.

Good Management Practices May Produce Unfavorable Ratings. Several commenters remarked that good management practices, such as evictions for failure to pay rent or abide by rules and regulations, may not always translate into popular management practices. These commenters wrote that high-performing PHAs should not be singled out negatively under this indicator for aggressive management. The commenters recommended that such factors should be taken into consideration in computing the score for this indicator.

HUD agrees that good management practices, such as lease enforcement, may not always be viewed by those being evicted with favor. Therefore, this issue will be considered during the refinement of the survey's questions.

Comments on Sample of Residents to Be Surveyed. There were several comments on the sample of residents. Several commenters remarked that the proposed rule did not state what constitutes a statistically significant sample of residents. Some of the commenters recommended that the rule require that survey samples be obtained from all developments in a PHA's jurisdiction. One commenter suggested that the resident samples include a cross-section of tenants that reflects racial, ethnic, economic, age, and length of tenancy characteristics. Another commenter remarked that to conduct a truly valid survey, it is essential that the respondents be pre-identified as actual leaseholders in good standing. Five commenters wrote that PHAs should not be penalized if only a small number of residents respond to the surveys. One of these commenters wrote that a lack of response could indicate that the residents think the PHA is doing a good job. This commenter worried that only dissatisfied tenants might complete the survey. One commenter questioned how resident samples would be drawn in areas (such as Alaska), where a PHA's projects are widely dispersed geographically. The commenter worried about the costs involved if each project must be sampled.

With respect to these comments, HUD responds as follows. HUD has not finalized its decision to use a response rate for measurement at this time. HUD will use a standard proven survey methodology to improve PHAs' response rates. This includes, but is not limited to, providing technical assistance to PHAs by preparing the survey in several languages, providing recommendations to promote the survey process by distributing lead letters, bulletin board communications, and resident meetings.

HUD is in the process of testing the various collection and sampling methods. The sampling process includes testing the survey in a statistically valid sample of developments selected by HUD. The widely dispersed geographical units will be considered during the selection process.

Scoring System Is Vague. Many commenters wrote that the proposed rule was unclear regarding how the resident services and satisfaction component would be scored and weighted. One of the commenters asked whether adjustments would be made for the PHA's size, population density, and social and economic environment.

HUD has determined that the final PHAS rule will only score the first two components as published in the proposed PHAS rule (survey results; and level of implementation/follow-up action process), with a value of five points each. The third component, verification that the survey process was managed in a manner consistent with guidance provided by HUD, will not be scored, but is a threshold requirement. A PHA will not receive any points under this indicator if the survey process is not managed in a manner consistent with the guidance provided by HUD or the survey results are determined to be altered. Section 901.53 is revised accordingly.

Concerns about Objectivity of Surveys. Several commenters expressed concern about the objectivity of the resident surveys. Four of the commenters remarked that in an assessment system designed to be objective, this indicator appears to be entirely subjective, since the rating will be based on resident evaluation or opinion. Another commenter asked whether the reasonableness of the resident comments will be evaluated.

The measurement of residents' living conditions is measuring how residents perceive the performance of management providing the housing services. The opinions of the residents are important. There is an assumption made that if the majority of those surveyed identify the same problem, the problem is most likely a factual problem. The residents' perception plays a key role in responding to the survey questions. However, HUD will not rely on the residents' response alone, but compare it to the other assessment indicators under the PHAS to identify and address other issues.

Data Collection and Verification of Survey Data. Several commenters submitted comments on collection and verification of survey data. Five of the commenters asked about the methods HUD will use to verify the data. Two of the commenters inquired about the format the PHAs would be required to use to maintain data. Another commenter asked that HUD provide greater specificity regarding the records PHAs must maintain to demonstrate that the surveys were distributed and collected properly.

HUD is in the process of testing the various survey data collection methods. A methodology for collecting, verifying and maintaining the survey data will be finalized after the testing of the survey instrument.

Conditions Outside PHA Control. Several commenters wrote that several of the areas to be covered by the survey are outside the control of the PHA. Several of these comments focused on community services provided by entities other than the PHA. For example, two of the commenters remarked that a PHA does not control electric, gas, and water/sewer service works. Other commenters wrote that the survey should not include questions about the effectiveness of the local police department or religious institutions. These commenters remarked that PHA management should not be judged according to the resident's trust of the local Police Department, or of other institutions not controlled by the PHA. Some commenters wrote that there are several aspects of public housing that residents are often dissatisfied with that are beyond the control of the PHA, either due to HUD regulation, prohibitive cost, or in conflict with higher priority needs of other residents. Examples would include the lack of air conditioning in individual units; the definition for rent not having more exclusions from gross income; and the 30% of income formula for tenant payments.

HUD has determined to include questions that will not be scored but used strictly for information purposes. However, HUD will make every effort to finalize the questions within the survey instrument to include elements that are the responsibility of the PHA.

Cost and Administrative Burden Issues. Several commenters expressed concern about the costs and administrative burdens that would be faced by PHAs in conducting the surveys. Two of the commenters wrote that the survey requirement constituted an unfunded mandate imposed on PHAs. Several commenters recommended that HUD reimburse PHAs for the costs of conducting the resident surveys. Four commenters remarked that this indicator amounts to another unfunded mandate on PHAs and further erodes the financial capability of PHAs to carry out day-to-day operations with limited staff and resources.

HUD has determined that if the survey process imposes a financial burden on PHAs, HUD reserves the right to implement other cost-effective methods for implementing the survey process.

Language and Educational Barriers May Affect Survey Results. Five commenters expressed concern that language and educational barriers, such as illiteracy, might skew the survey results. Three of the commenters remarked that the survey would need to be translated to the appropriate language for many residents. These commenters asked whether HUD would supply the PHAs with translated surveys. One of the commenters asked that the final rule provide greater specificity regarding the conduct of surveys with non-English speaking residents and persons with disabilities.

HUD has considered the language barrier concerns associated with the survey process. At this time, HUD plans to offer the survey in at least two languages. Other languages may be considered if a significant portion of the population remains underrepresented by the selected survey languages. HUD is seeking the highest possible response from the selected population. This includes considering methods which will alleviate potential obstacles to survey response.

Points for Resident Satisfaction Indicator Should Be Increased. Many commenters recommended that the 10 points allocated for the resident services and satisfaction indicator be increased. Those commenters recommending specific point values, suggested that 20–25 points would be appropriate for this indicator.

HUD has determined that the 10 points allocated for this indicator is appropriate at this time.

G. Comments on Subpart F—PHAS Scoring

Data Submission Deadlines Should be Extended. Three commenters suggested that HUD extend the 60-day deadline for submission of data set forth in proposed § 901.60 (now § 902.60). One of the commenters wrote that HUD should be open to extenuating circumstances if there is a delay in submitting data by the deadline.

HUD believes that the 60-day data submission deadline is reasonable. Under the current PHMAP rule, PHAs are required to submit certifications within 60 calendar days after fiscal year end (FYE) and are required to submit year end financial statements within 45 calendar days after FYE.

Process for Fair Housing Adjustments of Scores is Unclear. One commenter wrote that HUD should provide additional details regarding the conditions under which PHAS scores can be modified due to a fair housing review. The commenter remarked that proposed § 901.60(e) (now § 902.60(e)) refers to HUD's ability to change scores through reviews and investigations by HUD's Office of Fair Housing and Equal Opportunity (FHEO). The commenter wrote that in the absence of clear criteria, the meaning of this provision is unclear. The commenter also asked whether PHAs would be able to appeal

fair housing related adjustments of their PHAS scores.

Section 902.60(f)(3) refers to data included in the independent audit report or reviews conducted by various HUD offices, including FHEO, where management deficiencies are identified that were not reflected in a PHA's certification submission. For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, if appropriate.

Questions Regarding Appeals Process. Many commenters raised questions regarding the appeals process set forth in proposed § 901.69 (§ 902.69). Several of the commenters recommended that HUD expand the appeals process to include all PHAs, and not just those that are designated as ''troubled.'' One of these commenters wrote that since PHAS will have a much more complex scoring system than PHMAP, there may be greater room for error in the calculation of PHAS scores. The commenter urged that all PHAs be granted the right to appeal PHAS scores. Other commenters suggested that HUD expand the appeals process to permit the appeal of the scores for the individual PHAS components, as well as the overall PHAS score. Two other commenters, however, asked how scores could be disputed or appealed given the vagueness of the proposed rule. Another commenter recommended that the current PHMAP appeals process be incorporated into PHAS. The commenter remarked that appeals are particularly important for PHAs seeking non-HUD financing, since lenders look at assessment scores.

Section 6(j) of the U.S. Housing Act of 1937 provides for the petition for the removal of troubled and mod-troubled designations, and the appeal of a denial of such petition. These appeals are preserved in the PHAS. Since all of the indicators under the PHAS will be verified by independent third parties, the requirement for an extensive appeal process has been greatly diminished. As appropriate, and for purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services.

Board of Review Composition. There were a few comments on the composition of the Board of Review. Two commenters wrote that the Board of Review should include a resident representative. One commenter recommended that, to insure the integrity of the appeals process, HUD should create an independent PHAS Appeals Board, similar to HUD's Board of Contract Appeals and Mortgagee Review Boards.

These comments are noted by HUD. As stated in the proposed PHAS rule, the third member of the Board will be from such other office or representative as the Secretary may designate (excluding, however, representation from the TARCs).

PHAS Scores Should Be Provided to Residents. One commenter recommended that HUD automatically provide all inspection results, resident satisfaction surveys, and PHAS scores to all local resident organizations, at the time they are made available to the PHAs.

The REAC will provide the results of the assessment of the four PHAS indicators, as well as the overall PHAS score to PHAs. At that time, the results of the PHAS assessment becomes public information and will be available to all interested parties. In addition, § 902.63(d) requires a PHA to post a notice of its final score and status in appropriate conspicuous and accessible locations in its offices within two weeks of its final score and status.

PHAs Should Be Notified and Have Opportunity to Review Score Before Issuance. One commenter wrote that prior to issuing and posting a PHA's score, the grade and how it was arrived at should be reviewed with the PHA. Another commenter remarked that the proposed rule did not seem to include a provision regarding PHA notification of its PHAS score.

A PHA's final PHAS score will be issued by the REAC after independent verification of all four indicators. As in the current PHMAP rule, a PHA's PHAS score will be issued without prior review by the PHA. Section 902.63(a) states that an overall PHAS score will be issued by REAC for each PHA 60 to 90 days after the end of the PHA's fiscal year.

Questions Regarding Designation Status. Several commenters raised questions regarding designation status. One of these commenters asked whether a PHA that scores below the threshold on any component would be referred to a TARC. The commenter also asked whether a PHA that does not receive a passing score on any PHAS indicator would be designated as a troubled PHA. Another commenter wrote that the proposed rule did not state whether the PHAS score would be a measure of the PHA's absolute performance, or reflect the PHA's relative performance against other PHAs. The commenter also asked whether PHAs would, for scoring purposes, be divided by factors such as size, age and location. One commenter expressed confusion regarding the definition of ''top performer.'' The commenter asked whether top performers constitute the top 10% of all PHAs, or PHAs with an overall PHAS score of 90% or greater. One commenter expressed concern that the proposed rule would ''debase'' the troubled PHA designation. The commenter wrote that under the proposed assessment system, a housing authority that scores below 60 percent on Indicators 1, 2, or 3 will receive a troubled designation even if the overall score is well over 60. This commenter remarked that this requirement would unfairly force many housing authorities to become troubled. According to the commenter, this designation should be an indication recognized by all that the housing authority has serious problems. The commenter suggested that instead of receiving a troubled designation, a PHA that scores above 60% overall but fails to achieve 60% on indicators 1, 2, or 3 should be referred to for technical assistance rather than some form of punitive action. Another commenter suggested that the rule should make compliance with fair housing laws and regulations a prerequisite to designation as a high performer.

With respect to these comments, HUD notes that § 902.67(a)(3) states that a PHA that achieves a total PHAS score of less that 60%, or achieves a score of less than 60% of the total points available under PHAS indicators #1, #2 or #3 shall be designated as troubled, and referred to the TARC as described in § 902.75.

Under PHAS Indicators #1, #2 and #4, the PHAS score will reflect the PHA's relative performance against other PHAs. Under indicator #3, the PHAS score will be a measure of the PHA's absolute performance. As in the current PHMAP rule, PHAs will not be divided by factors such as size, age or location for scoring purposes.

The term ''top performer'' refers to a high performer PHA. To avoid confusion, HUD has only used the term ''high performer'' in the final rule.

HUD agrees that a PHA that scores below 60% under indicators #1, #2 and #3 has serious problems, and troubled designation is warranted. Referral to the TARC should be viewed as a remedial action rather than a punitive action. If a PHA is referred to the TARC, it will develop a Recovery Plan and MOA in conjunction with the TARC, and receive intense technical assistance to improve the physical condition of the properties, the financial health of the agency, and/or overall management operations.

On the fair housing issue, HUD has determined that changes to the requirements for high performer designation will be considered as possible future changes to the PHAS. In order to make the transition from the

PHMAP to the PHAS, it was determined to make as few changes as possible between the current PHMAP and the management operations indicator under the PHAS.

H. Comments on Subpart G—PHAS Incentives and Remedies

Comments on Incentives for High Performers. Comments on this subject (addressed in § 902.71 of the final rule) are as follows: the rule is vague on incentives; the incentives for high performers are inadequate; how will PHAS incentives differ from PHMAP incentives; physical condition inspections for high performers should be every three years (less frequently than annual); bonus points should be provided on all HUD competitive funding; permit PHAs to establish development-based applicant waiting lists, subject to fair housing requirements; continue the current relief measures provided to high performers which include flexibility in the Comprehensive Grant program (CGP) on maximum percentages allowed for management improvements and administrative costs, and using CGP funds from troubled PHAs to increase the funds available to PHAs that perform well; provide high performers with the option to refuse to renew the lease for those tenants who have lease violations (poor payment history, poor housekeeping habits, evidence of tenant abuse to PHA property, history of causing disturbances in the community, etc.); provide high performers with significantly reduced reporting requirements; permit high performers to use the equity from properties to leverage financing for development purposes; and allow high performers to review income and conduct re-certification on flexible schedules or every two years.

HUD agrees that incentives under the PHAS should be meaningful and reflect high performer designation. HUD intends to consult further with industry groups to develop such incentives.

Clarify Rule's Relationship to Moving to Work Initiative. Since PHAs participating in HUD's Moving To Work (MTW) Initiative have largely been assured freedom from HUD oversight, the applicability of the proposed rule to them needs to be clarified. The incentives proposed for high performers under the rule are the same as those under MTW.

A PHA that is participating in the MTW incentive will receive less oversight from HUD, as will those PHAs that are high performers but not participating in the MTW initiative.

Field Office Discretion to Impose Program Requirement Waived by REAC Should Be Eliminated. A few commenters objected to the provision in §§ 902.67(b) and 902.71(d) that would accord the field office the discretion to impose on a PHA any program requirement that had been waived by REAC as a high-performer incentive. The rule should not provide the field office any mechanism to achieve a back-door nullification of the PHAS process or results.

HUD agrees with this comment, and these sections have been removed from the final PHAS rule.

Comments on Referral to an Area/HUB Program Center. Commenters offered the following comments on the provisions of § 902.73—Referral to an Area HUB/Program Center: what uniform criteria will HUD use to determine which ''standard'' agencies will be required to submit improvement plans? This is vague. HUD should define the deficiencies and make sure they will be applied consistently across the HUBs; where does the authority and expertise lie in the HUBs to make these determinations; is there a link to Central Office PIH; are HUBs reporting to HUD Headquarters, to REAC, or somewhere else; and will HUBs be assigned the task of deciding what PHAs will file Improvement Plans. Another commenter stated that a standard PHA should not be required to submit a corrective action plan for any indicator or component for which it receives a passing score. One commenter stated that the requirement for ''standard performers'' to submit an improvement plan should be based solely on the PHAS scores.

To address these concerns, HUD offers the following. The requirement at § 902.73(a) (§ 901.73(a) in the proposed rule) states that a PHA that receives a total PHAS score of less than 70% but not less than 60% shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. This requirement is similar to the current PHMAP rule which requires an Improvement Plan for any indicator that scored a grade of F. The requirement at § 902.73(b)(2) states that the HUD/Program Center may require, on a risk management basis, a standard performer PHA with a score of not less than 70% to submit within 30 days after receipt of its PHAS score an Improvement Plan. This requirement is similar to the current PHMAP rule which states that a Field Office may require, on a risk management basis, a PHA to submit an Improvement Plan for each indicator that a PHA scored a grade D or E.

The intent of this language in both the PHMAP and PHAS rules is for HUD and PHAs to be proactive regarding potential problem areas, and for HUD to provide technical assistance to a PHA before troubled designation is assigned. Since the local Office has the most frequent contact with the PHAs under its jurisdiction, it is in the best position to make such determinations.

A deficiency is defined in § 902.7 as any PHAS score below 60% of the available points in any indicator or component. This definition has been revised in this final rule to read: any PHAS score below 60% of the available points in any indicator, sub-indicator or component.

HUB/Program Centers report to the Assistant Secretary for PIH. The requirement to submit Improvement Plans is based solely on the PHAS scores, e.g., on a PHA receiving a score of less than 70% but not less than 60%. However, a HUB/Program Center may require, on a risk management basis, a PHA with a score of not less than 70% to submit an Improvement Plan.

Response Time to Correct Deficiencies Is Too Short. A few commenters stated that the response time allowed for an agency to correct any identified deficiency is too short.

HUD believes that 30 days is sufficient time for a PHA to submit an Improvement Plan for the correction of identified deficiencies. Since the deficiencies would have been identified by the PHAS assessment, a PHA should be able to develop a plan to correct identified deficiencies within 30 days. The longer a deficiency is present without corrective action being taken, the worse the deficiency becomes, and the more costly it is to remedy.

Comments on Referral to TARC. Commenters offered the following comments on the provisions of § 902.75—Referral to a HUB/Program Center.

Receivership Determination Should Be Appealable to Assistant Secretary for PIH. A few commenters stated that it appears that the rule mandates receivership for a PHA that does not show ''substantial improvement'' within one fiscal year. At the very least, such a PHA should be permitted to make its case to the Assistant Secretary for Public and Indian Housing, who should be given the final authority under the rule to determine if appointment of a receiver should be sought.

The PHAS proposed rule at § 901.77 states that the Enforcement Center is officially responsible for recommending to the Assistant Secretary for PIH that a troubled PHA be declared in substantial default.

Rule Needs to Address Impact on Tenants When PHA Is Referred to TARC or Enforcement Center. Some commenters stated that the rule does not discuss the implications upon the residents of referral of a PHA to the TARC or the Enforcement Center. Since the residents are the ultimate beneficiaries of the PHA and HUD and HUD's consumers, we expect that HUD would intend to protect their interests and legal rights, but the regulation is silent. The regulation should articulate what will happen to tenants, that all services will continue uninterrupted, and those services which the PHA may have been failing to properly deliver would be restored.

Language has been added to the final PHAS regulation at §§ 902.75 and 902.77 which states that to the extent feasible, all services to residents will continue uninterrupted.

A One-Year Recovery Period Is Not Sufficient. We do not agree that once a PHA is designated as troubled and is referred to a TARC for assistance that the time allotted...is sufficient time for recovery. Due to the severity of need, multiple year solutions may be required and to lock a PHA to one year in the TARC is unrealistic, especially in large troubled PHAs.

Initially, a PHA is afforded one year after the score is issued to the PHA to demonstrate substantial improvement (50% of the points needed to achieve a passing score). If the PHA demonstrates substantial improvement after one year, then the PHA will have an additional year to continue recovery efforts in the TARC.

Recovery Plan Prepared by TARC Should Include a Timetable. One commenter stated that the recovery plan prepared by the TARC should include a timetable.

The proposed PHAS regulation at § 901.75(c)(2) provides for annual and quarterly performance targets for the MOA. Since the MOA is part of the Recovery Plan, the Recovery Plan does include a timetable.

Ten Days to Review Recovery Plan and MOA Are Insufficient. Other commenters stated that ten days for a PHA to review the recovery plan and the MOA is not sufficient and should be extended.

Within 30 days of notification of the designation of a troubled PHA within its jurisdiction, the appropriate TARC will be on-site at the PHA to develop a Recovery Plan. Since the PHA will be involved in the development of both the Recovery Plan and the MOA, a ten day review period is not unreasonable.

Is Process for Developing MOA Between Troubled PHAs and HUD Consistent with PHMAP Statute. A few commenters asked whether the process for developing a MOA between troubled agencies and HUD is consistent with the law? One commenter noted that section 6(j)(2)(B) of the 1937 Act states that ''the Secretary shall provide for an on-site, independent assessment of the management of the agency'' and provides a definition of the independent assessors. The Secretary should seek to enter into an agreement with the troubled public housing agency only after consulting with the assessment team and reviewing its report. The proposed rule appears to be inconsistent with the statute.

The independent assessment will be undertaken by the appropriate TARC, which within 30 days of notification of the designation of a troubled PHA within its area, will deploy an on-site team to develop a Recovery Plan (§ 902.75(a)).

Rule Should Provide More Detail on Credible Source. Two commenters stated that HUD should provide more detail on what or who a credible source might be, and should be clear about what documentation is required.

The proposed regulation did not include examples of a credible source because it may differ in each case. However, language will be added to the final PHAS regulation that gives examples of a credible source, including but not limited to, the Office of Fair Housing and Equal Opportunity, judicial referral, Mayor, etc.

Comment on Resident Petitions for Remedial Action (§ 901.85). One commenter stated that the 20% requirement may be good for larger PHAs, but works against smaller ones.

Although a fewer number of residents is required to equate to the 20% of residents required in order to petition HUD to take remedial action, in accordance with § 902.79(b), HUD is required to advise a PHA of such action, and a PHA will have the opportunity to initiate corrective action, or to demonstrate that the information is incorrect.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0106. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

During the development of the June 30, 1998 proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding continues to apply to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's previous regulations for the assessment of public housing (PHMAP). The new PHAS incorporates the statutory indicators of PHMAP, and adds three additional indicators. One of the new indicators—physical condition—would assess the extent to which PHAs are providing public housing that is decent, safe, and sanitary. Public housing has always been subject to a statutory standard of ''decent, safe, and sanitary.'' This rule simply provides a clear and objective statement of the standard. This indicator also entails an annual independent HUD inspection of public housing, but it does not impose additional inspection requirements upon PHAs. The clarity and consistency of this new indicator provides a fair, accurate, and reliable assessment of the physical condition of the large public housing portfolio. However, since this rule does not alter the statutory standard for physical condition, nor impose additional inspection obligations, the new physical condition indicator will not have a

significant economic impact on a substantial number of small entities.

The second indicator—financial condition—assesses the financial condition of PHAs, requiring them to submit financial reports to HUD electronically and in accordance with GAAP. HUD estimates that electronic submission of financial information will be less burdensome to PHAs, since many PHAs are making more extensive use of automated systems. This rule allows exceptions if the cost of electronic submission will be excessive. GAAP-based accounting reports, which are widely accepted and recognized, are not substantially different than the reports that PHAs previously submitted. A number of PHAs were already required to use GAAP or are otherwise using GAAP, and the majority of the PHAs with which HUD has consulted support the change to GAAP. For those PHAs that were not yet using GAAP, HUD is taking several steps to ease the conversion, including making only simple additions to the current PHA accounting guide and chart of accounts, and providing other conversion guidance and training, particularly to small entities. Increasing the speed of information exchange (through electronic submission) and the consistency and accuracy of the information (through GAAP) will greatly enhance the assessment of a PHA's financial condition. However, this new indicator will not have a significant economic impact on a substantial number of small entities.

The fourth indicator—resident service and satisfaction—entails a new resident service and satisfaction survey. This survey is key to obtaining input from public housing residents, which is an important aspect of assessing public housing. HUD intends that this survey will be conducted through an automated process, and accordingly, will present a minimal administrative burden for PHAs in terms of administering and evaluating the survey. HUD intends to provide the survey format and the electronic reporting format, as well as software specifications. Therefore, this survey will not have a significant economic impact on a substantial number of small entities.

HUD is also seeking to minimize any burden on PHAs by allowing a significant transition period for converting to the new PHAS. PHAs will have at least 1 year before new scores are issued under the PHAS. During that transition period, HUD may issue advisory scores regarding physical condition and financial management to provide guidance to PHAs and to ease the conversion to the new PHAS.

The new PHAS is fundamentally designed to provide relevant and verifiable measures that directly relate to a PHA's performance and that result in an accurate and reliable score. This improved assessment process will allow HUD to target its oversight resources on those PHAs most in need of attention; high-performing PHAs will receive recognition, along with reduced HUD scrutiny and additional flexibility. Since the revised assessment system in this rule does not impose any significant new requirements upon PHAs, and since HUD will assist PHAs in their conversion to the system, this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. The rule will not create any new significant requirements. As a result, the rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR Parts 901 and 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, Chapter IX 901 of title 24 of the Code of Federal Regulations is amended as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

2. In § 901.1, paragraph (c)(1) is designated as paragraph (c)(1)(ii) and a new paragraph (c)(i) is added to read as follows:

§ 901.1 Purpose, program scope and applicability.

* * * * *

(c)(1)(i) The provisions of this part remain applicable to PHAs and RMC/AMEs as described in paragraph (c)(1)(ii) until September 30, 1999.

* * * * *

3. A new part 902 is added to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.
902.1 Purpose and general description.
902.3 Scope.
902.5 Applicability.
902.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

902.20 Physical condition assessment.
902.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
902.25 Physical condition scoring and thresholds.
902.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

902.30 Financial condition assessment.
902.33 Financial reporting requirements.
902.35 Financial condition scoring and thresholds.
902.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

902.40 Management operations assessment.
902.43 Management operations performance standards.
902.45 Management operations scoring and thresholds.
902.47 Management operations portion of total PHAS points.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

902.50 Resident service and satisfaction assessment.
902.53 Resident service and satisfaction scoring and thresholds.
902.55 Resident service and satisfaction portion of total PHAS points.

Subpart F—PHAS Scoring

902.60 Data collection.
902.63 PHAS scoring.
902.67 Score and designation status.
902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

902.71 Incentives for high performers.
902.73 Referral to an Area HUB/Program Center.
902.75 Referral to a TARC.
902.77 Referral to the Enforcement Center.
902.79 Substantial default.
902.83 Interventions.
902.85 Resident petitions for remedial action.

Appendix A to Part 902—Areas and Items to be Inspected

Authority: 42 U.S.C. 1437d(j), 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a comprehensive management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA on the Management Operations Indicator and the Resident Service and Satisfaction Indicator. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first 3 full fiscal years following October 1, 1998.

§ 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. PHAs' adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(2) This part is applicable beginning October 1, 1999.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

§ 902.7 Definitions.

As used in this part:

Adjustment for physical condition (project age) and neighborhood environment is a total of 3 additional points added to PHAS Indicator #1 (Physical Condition). The 3 additional points, however, shall not result in a total point value over the total points available for PHAS Indicator #1 (established in subpart B of this part).

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 902.5(c), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days Receivable Outstanding is Tenant Receivables divided by Daily Tenant Revenue.

Deficiency means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component.

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the indicators and components within the indicator(s), identified as a result of the PHAS assessment when an MOA is not required.

Reduced actual vacancy rate within the previous 3 years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) with the vacancy rate of that fiscal year that is 2 years previous to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous 3 years, the PHA shall retain justifying

documentation to support its certification for HUD post review.

Reduced the average time nonemergency work orders were active during the previous 3 years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) with the average time nonemergency work orders were active in that fiscal year that is 2 years previous to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous 3 years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Vacancy loss is vacant unit potential rent divided by gross potential rent.

Work order deferred for modernization is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in the following year if there are less than 3 months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is maintaining its public housing in a condition that is decent, safe, sanitary and in good repair (DSS/GR), as this standard is defined § 902.23.

(b) *Physical inspection under PHAS Indicator* #1. REAC will provide for an independent physical inspection of, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine compliance with DSS/GR standard.

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 902.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

§ 902.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).

(a) Public housing must be maintained in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of public housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(1) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(6) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(b) Appendix A to this part lists the areas to be inspected and the items in each area to be inspected.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score of the overall condition of the PHA's public housing portfolio that reflects weights based on the relative importance of the individual inspectable areas and the relative severity of the deficiencies observed.

(b) *Adjustment for physical condition (project age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42

U.S.C. 1437d(j)(1)(I)(2)), the physical score for a project will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the project or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA, and to appropriately apply the adjustment.

(1) *Adjustments in three areas.* Adjustments to the PHA physical project score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the project; and

(iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to projects over 10 years old and that have not had substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to projects located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the latest census data.

(3) Adjustment is for physical condition (project age) and neighborhood environment. HUD will adjust the physical score of a PHA's project subject to both the physical condition (project age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by project, to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHAS Certification (which is available from the Department of Housing and Urban Development, HUD Customer Service Center, 451 Seventh Street, SW, Room B–102, Washington, DC 20410; telephone (800) 767–7468), the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a PHA's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective inspectable area(s).

(4) *Scattered site projects.* The Date of Full Availability (DOFA) shall apply to scattered site projects, where the age of units and buildings vary, to determine whether the projects have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the project's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Projects that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the projects and the record of capital improvements, indicating that these particular projects have not received modernization funds.

(iii) PHAs shall also document that in all cases, projects that were exempted for other reasons were not included in the calculation.

(c) *Thresholds.* In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Physical Condition Indicator.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must provide to HUD, on an annual basis, such financial information, as required by HUD. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance;

(2) Submitted electronically in the electronic format designated by HUD; and

(3) Submitted in such form and substance prescribed by HUD.

(b) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator ι2, REAC will calculate a score that relies on the key components of financial health and management as well as audit and internal control flags.

(1) The key components of PHAS Indicator #2 include:

(i) *Current Ratio*—current assets divided by current liabilities;

(ii) *Number of Months Expendable Fund Balance*—number of months a PHA can operate on the Expendable Fund Balance without additional resources; Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources; unreserved and undesignated fund balance;

(iii) *Days Receivable Outstanding*—average number of days tenant receivables are outstanding;

(iv) *Vacancy Loss*—loss of potential rent due to vacancy;

(v) *Expense Management/Energy Consumption*—expense per unit for key expenses, including energy consumption, and other expenses such as utilities, maintenance, security; and

(vi) *Net Income or Loss divided by the Expendable Fund Balance*—measures how the year's operations have affected the PHA's viability.

(2) *Additional components.* Additional components may be used to identify circumstances in which there exists the possibility of higher risk of waste, fraud and abuse. These components will be used to detect fraud and will be used to generate ''flags'' that will signal field staff, Enforcement Center staff, or fraud investigators to take appropriate action. These components will primarily relate to financial management, but may also be used to provide a PHA with benchmarking information to allow the PHA to measure its own performance against its peers.

(b) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Financial Condition Indicator.

§ 902.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, and an additional nonstatutory indicator (security), as provided in § 902.43.

§ 902.43 Management operations performance standards.

(a) *Management operations indicators.* The following indicators will be used to assess a PHA's management operations:

(1) *Management Indicator* #1—Vacancy rate and unit turnaround time. This management indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management Indicator* #2—*Modernization.* This management indicator is automatically excluded if a PHA does not have a modernization program. This management indicator examines the amount of unexpended funds over 3 Federal fiscal years (FFY) old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. All components of this management indicator apply to the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), the HOPE VI assistance, vacancy reduction, and lead based paint risk assessment funding (1992–1995), and any successor program(s) to the CGP or the CIAP.

(3) *Management Indicator* #3—*Rents uncollected.* This management indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management Indicator* #4—*Work orders.* This management indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work order were active, and any progress a PHA has made during the preceding 3 years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(5) *Management Indicator* #5—*PHA annual inspection of units and systems.* This management indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. This management indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management Indicator* #6—*Security.* This management indicator evaluates the PHA's performance in tracking crime related problems in their developments, reporting incidence of crime to local law enforcement agencies, the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any HUD drug prevention or crime reduction grant(s). A PHA may receive credit for performance under non-HUD funded programs if it provides auditable financial and statistical documentation for these programs.

(b) *Reporting on performance under the Management Operations Indicator.* Each PHA will provide to HUD a certification on its performance under each of the management indicators in paragraph (a) of this section. The certifications shall comply with the requirements of § 902.60.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management indicators.

(b) *Thresholds.* In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this PHAS Indicator #3. Further, in order to receive an overall passing score under the PHAS, the PHA

must receive a passing score on the Management Operations Indicator.

§ 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Reporting information on resident service and satisfaction.* The assessment will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

§ 902.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement. One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as: maintenance and repair (i.e., work order response); communications (i.e, perceived effectiveness); safety (i.e., perception of personal security); services (i.e., recreation and personal programs); and neighborhood appearance. The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey. The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD or the survey results are determined to be altered. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if it receives at least 6 points, or 60% of the available points under this PHAS Indicator #4.

§ 902.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first 3 full fiscal years following the effective date of this part (see § 902.1(e)).

(b) *Physical Condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than 60 days after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than 60 days after the end of the PHA's fiscal year.

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for 3 years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date. If all certifications or year-end financial information are not received within 90 days past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators and components certified to, which shall result in troubled and mod-troubled designations.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s) or component(s) shall receive a score of 0 for the relevant indicator(s) or component(s), and its overall PHAS score shall be lowered.

(3) A PHA's PHAS score under individual indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(g) *Management operations assumed by an RMC.* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

§ 902.63 PHAS scoring.

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA 60 to 90 days after the end of the PHA's fiscal year.

(b) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be

scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(c) *Adjustments to the PHAS score.* Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

(d) *Posting and publication of PHAS scores.* Each PHA shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within 2 weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

§ 902.67 Score and designation status.

Designation status corresponding to score. A PHA will be scored with a corresponding designation of status as follows:

(a) *High Performer.* A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard Performer.* A PHA that achieves a total PHAS score of less than 90 percent but not less than 60 percent shall be designated a standard performer. All standard performers must correct reported deficiencies. A standard performer that receives a score less than 70 percent but not less than 60 percent shall be subject to other oversight, as described in § 902.73. A PHA that achieves a score of less than 60 percent of the total points available under PHAS Indicators 1, 2, or 3 shall not be designated a standard performer, but shall be designated a troubled performer, as provided in paragraph (c) of this section.

(c) *Troubled Performer.* A PHA that achieves a total PHAS score of less than 60 percent, or achieves a score of less than 60 percent of the total points available under PHAS Indicators 1, 2, or 3, shall be designated as troubled, and referred to the TARC as described in § 902.75. In accordance with section 6(j)(2) of the 1937 Act, a PHA that receives less than 60 percent of the maximum calculation for the modernization indicator under PHAS Indicator #3 (Management Operations, subpart D of this part) may be subject to the following sanctions: under the Comprehensive Grant Program to a reduction of formula allocation or other sanctions (24 CFR part 968, subpart C); under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR part 968, subpart B); or disapproval of funding under the HOPE VI Program.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal.* A PHA may:

(1) Appeal designation as a troubled agency (including designation as troubled with respect to the modernization program);

(2) Petition for removal of such designation; and

(3) Appeal any refusal to remove such designation.

(b) *Appeal process.* The appeal shall be submitted by a PHA to the REAC within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. An appeal submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

(c) *Consideration of appeal by REAC.* Upon receipt of an appeal from a PHA, the REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate.

(d) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

(1) *Relief from specific HUD requirements.* A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieves an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section, does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

§ 902.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center,

to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70 percent is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator and/or component identified as deficient as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations. An RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator and/or component that was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the TARC for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations. If the TARC determines that it is appropriate to refer the PHA to the Enforcement Center, it will only do so after the PHA has had 1 year since the issuance of the PHAS score (or, in the case of an RMC, notification of its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a TARC.

Upon designation of a PHA as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. The actions to be taken by the TARC and the PHA shall be as follows:

(a) *Recovery plan and MOA.* Within 30 days of notification of the designation of a troubled PHA within its area, the appropriate TARC will deploy an on-site team to develop a Recovery Plan. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a memorandum of agreement (MOA) as described in paragraph (c) of this section.

(b) *PHA review of recovery plan and MOA.* The PHA will have 10 days to review the recovery plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the plan with its area TARC, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by the TARC, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of agreement (MOA).* The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management controls by the TARC, declaration of substantial default and subsequent actions, including referral to the Enforcement Center for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the Enforcement Center; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the

involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* Unless extended by the TARC and documented in the MOA, the maximum recovery period for a troubled PHA is the first full fiscal year following execution of the MOA.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUD/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA does not execute an MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the Enforcement Center, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), *substantial improvement* is defined as 50 percent of the points needed to achieve a passing PHAS score as determined by the REAC. The maximum period of time for remaining in troubled status before being referred to the Enforcement Center is 2 years.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50; 60 is a passing score. The PHA is referred to the TARC. Within 1 year after the score is issued to the PHA, the PHA must achieve a 5-point increase to continue recovery efforts in the TARC. If the PHA fails to achieve the 5-point increase, the PHA will be referred to the Enforcement Center. The maximum period of time for remaining in troubled status before being referred to the Enforcement Center is 2 years.

(h) To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Enforcement Center.

(a) Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 902.75 constitutes a substantial default in accordance with § 902.79 and shall result in referral to the Enforcement Center. The Enforcement Center is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The Enforcement Center shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the Enforcement Center including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) To the extent feasible, while a PHA is under a referral to the Enforcement Center, all services to residents will continue uninterrupted.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g), in its PHAS score in 1 year following issuance of the failed score is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as troubled PHAs, or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but is not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a)

of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

§ 902.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or HUD, and upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Appendix A to Part 902—Areas and Items to be Inspected

AREA: Site

Items:

Fencing and Retaining Walls
Grounds
Lighting
Mail Boxes/Project Signs
Market Appeal
Parking Lots/Driveways
Play Areas and Equipment
Refuse Disposal
Roads
Storm Drainage
Walkways

AREA: Building Exterior

Items:

Doors
Fire Escapes
Foundations
Lighting
Roofs
Walls
Windows

AREA: Building Systems

Items:

Domestic Water
Electrical System
Elevators
Emergency Power
Fire Protection
HVAC
Sanitary System

AREA: Dwelling Unit

Items:

Bathroom
Cell-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

AREA: Common Areas

Items:

Basement/Garage/Carport
Closets/Utility/Mechanical
Community Room
Day Care

Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restroom
Storage
Trash Collection Areas

AREA: Health and Safety

Items:

Air Quality
Electrical Hazards
Elevator
Emergency/Fire Exits
Fire Escapes
Flammable Materials
Garbage and Debris
Ground Fault Interrupters
Handrails
Hazards
Hot Water Heater
Infestation
Lead Paint
Pools and Related Structures
Smoke Detectors

Dated: August 27, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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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.

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

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