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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

RIN 0578–AA20

Conservation Farm Option

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Final rule.

SUMMARY: Section 335 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) amended the Food Security Act of 1985 (the 1985 Act) establishing the Conservation Farm Option (CFO) Program. The Commodity Credit Corporation (CCC) administers the CFO under the supervision of the Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS), with concurrence by the Executive Vice President of the CCC who is the Administrator of the Farm Service Agency (FSA). This final rule describes how CCC will implement CFO as authorized by the 1985 Act, responds to comments received from the public during the comment period, and makes clarifications to improve implementation of the program.

EFFECTIVE DATE: September 29, 1998.

ADDRESSES: This rule may also be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.nrcs.usda.gov; select the 1996 Farm Bill Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Water Issues Team Leader, Conservation Operations Division, Natural Resources Conservation Service; phone: 202–720–3524; fax: 202–720–4265; e-mail: da.smith@usda.gov, Attention: CFO; or Edward Rall, Economic and Policy Analysis Staff, Farm Service Agency; phone: 202–720–7795; fax: 202–720–8261; e-mail: erall@wdc.fsa.usda.gov, Attention: CFO.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) determined that this final rule is significant and was reviewed by OMB under Executive Order 12866. Pursuant to section 6(a)(3) of Executive Order 12866, CCC conducted a benefit-cost analysis. The analysis estimates CFO will have a beneficial impact on the adoption of conservation practices and, when installed or applied according to technical standards, will increase net farm income through a reduction in soil erosion, improved water quality, and wildlife habitat. In addition, benefits would accrue to society through maintenance of long-term productivity, enhancement of the resource base, non-point source pollution damage reductions, and wildlife enhancements. As a voluntary program, CFO will not impose any obligation upon agricultural producers or owners that choose not to participate.

A copy of this analysis is available upon request from Daniel Smith, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

CCC determined through an Environmental Assessment for the Conservation Farm Option Program, dated January 15, 1998, that the issuance of this final rule will not have a significant effect on the human environment. Copies of the Environmental Assessment and the Finding of No Significant Impact may be obtained from Daniel Smith, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0174.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this final rule as not major, therefore, pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, a risk assessment is not required.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to 5 U.S.C. Sec. 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it has been determined by CCC that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to obligate fiscal year 1998 funds which would otherwise be forfeited. Furthermore, if this final publication is further delayed, program implementation will not begin until 2000. Accordingly, this rule is effective upon publication in the **Federal Register**.

Discussion of Program

Background

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127, April 4, 1996) amended the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 et seq.) and established the Conservation Farm Option (CFO) pilot program. Under the 1985 Act, CCC is authorized under CFO to provide direct payment to producers of wheat, feed grains, upland cotton, and rice. Accordingly, other entities, such as groups which coordinate, organize, administer, monitor, and evaluate pilot projects are not eligible for direct CCC payment, although an organization such as that described may be reimbursed by the landowner. Upon a landowner or producer's request, CCC will provide technical support to assist in implementing the provisions of this part. Traditional agricultural conservation programs have provided farmers and ranchers with cost share, land retirement, and wetland restoration payments as incentives to protect and conserve soil, water, and other natural resources. However, participation in several individual programs for which a farmer could be eligible may require more than one conservation plan and contract for the farm or ranch, and it may also require numerous payments throughout the year without an assurance that, in the aggregate, all of the farm's environmental needs are met. Through CFO, CCC provides a single contract, conservation farm plan, and payment for implementation of innovative and environmentally-sound methods for addressing natural resource concerns and results in the consolidation of payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP).

NRCS will provide overall program management and implementation leadership for CFO, including technical leadership for conservation planning and implementation; while FSA will be responsible for the administrative processes and procedures for applications, contracting, program allocations and accounting.

Participation in CFO pilot projects is open to all production flexibility contract holders within an approved pilot project area who are eligible for CRP, EQIP, or WRP, without regard to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. Persons with disabilities who require alternative means for communication of program information should contact USDA's TARGET Center at: (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326W, Whitten Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250–9410 or call (202) 720–5964 (voice or TDD). USDA is an equal opportunity provider and employer.

Overview of the Conservation Farm Option Pilot Program

As specified in the 1985 Act, the CFO program is available to producers of wheat, feed grains, upland cotton, and rice. Additionally, owners and producers must have a farm with contract acres enrolled in CCC's production flexibility contracts established under Title I of the 1996 Act and meet the eligibility requirements in either CRP, EQIP, or WRP in order to participate in the CFO program. Owners and producers accepted into the CFO must enter into 10-year contracts, which may be extended an additional 5 years.

CFO participation is determined in a two step process: First, CCC selects CFO pilot project areas based on proposals submitted by the public; then, CCC accepts applications from eligible producers within the selected pilot project area.

Pilot Projects

CFO pilot projects are intended to address resource problems and needs that are well documented and on a scale that will facilitate the evaluation of the effectiveness of the systems and practices installed, as well as that of the entire program. CCC will select CFO pilot project areas based on the extent that the proposal:

1. Demonstrates innovative approaches to conservation program delivery and administration;
2. Proposes innovative conservation technologies and systems;
3. Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;
4. Ensures effective monitoring and evaluation of the pilot effort;
5. Considers multiple stakeholder participation within the pilot area;
6. Provides additional non-Federal funding; and
7. Addresses conservation of soil, water, and related resources, water quality protection or improvement; wetland restoration and protection; and wildlife habitat development and protection; or other similar conservation purposes.

An interdepartmental committee made up of representatives of several Federal agencies will review the proposals and make recommendations to the NRCS Chief, who is a Vice President of the CCC, based on criteria available to the public in the CFO proposal package. The Chief, NRCS, with FSA concurrence, will select proposals for funding.

CFO proposals may be developed for an individual or group of eligible producers. Individual and groups that desire to coordinate individual producer plan development and implementation activities may submit pilot project proposals. If the proposal is funded, the individual or group will be responsible for providing leadership in the overall local planning effort, including activities such as information delivery, monitoring, evaluation, and coordination with local agencies, States or subdivisions thereof, Tribal, and Federal agencies. However, because authorizing legislation specifies that CFO funds are available only to producers of wheat, feed grains, upland cotton, and rice, entities not meeting this criteria are not eligible for CCC payment. Despite the restriction on CCC funding third parties, producers are not precluded from making a payment to a third party.

Determining Eligibility Within Approved Pilot Project Areas

After selection of pilot project areas, all producers or owners with production flexibility contracts within the project area and who are eligible for either CRP, EQIP, or WRP will be eligible to enroll in the program. The 1985 Act requires eligible producers and owners to prepare a conservation farm plan, which becomes part of the CFO contract. This conservation farm plan can be developed for a portion of the farm or the entire farm. The plan describes all conservation practices, acreage retired, and wetland restoration, or protection practices to be implemented and maintained on acreage subject to contract. The 1985 Act also requires the plan to contain a schedule for the implementation and maintenance of the practices and to comply with highly erodible land and wetland conservation requirements of Title XII of the 1985 Act.

The 1985 Act further requires participants to agree to forgo payments under CRP, EQIP, and WRP. In lieu of these payments, the 1985 Act requires the Secretary to offer annual payments under the contract that are equivalent to the payments the participant would have received had they participated in the CRP, EQIP, or WRP. Because of this

statutory requirement, payments, payment limitations, participant and land eligibility requirements, and practices for CFO are determined utilizing the applicable regulatory provisions under the CRP, EQIP, and WRP. Therefore, this final regulation references the regulations for CRP (Part 1410), EQIP (Part 1466), and WRP (Part 1467) when setting forth the provisions for:

1. Eligible conservation practices,
2. Eligibility to earn land retirement rental payments,
3. Eligible land upon which such practices can be installed and on which such land retirement rental payments can be made,
4. The eligibility requirements for the participant,
5. The payment calculations, and
6. The payments issued to a ''person'' for payment limitation purposes.

For example, the CFO conservation farm plan and contract specify a conservation practice on field 1 similar to those eligible under EQIP, and a land retirement rental payment and conservation practice on field 2 similar to those eligible under CRP. The regulations in Part 1466 for EQIP will be referenced to determine eligible practices, eligible land, participant eligibility, payment, and payment limitation for field 1. Likewise, the regulations in Part 1410 for CRP will be referenced to determine eligible practices, eligible land, participant eligibility, land retirement rental payment and conservation cost-share payment, and payment limitation for field 2. The total payments calculated and limited by the applicable provisions in Parts 1466 and 1410 will be totaled to determine the amount which will be issued for the CFO annual rental payment.

Because the regulations at Parts 1410, 1466, and 1467 could be revised which would require a corresponding revision of this part, the provisions on eligible practices, eligible land, participant eligibility, land retirement rental payment, and conservation cost-share payment, and payment limitation are provided for CFO through references to the regulations for CRP, EQIP, and WRP. CFO is not authorized to acquire easements. Therefore, acreage that is subject to a WRP easement will not be included in the CFO contract and WRP easement payments will not be incorporated into the CFO annual payment. However, CFO will be used to install any reasonable practice needed to restore wetlands, and appropriate adjacent uplands.

Although CCC funds for CFO are not authorized for technical assistance, upon a participant's request, NRCS may provide technical assistance to a participant. Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance, such as conservation planning; conservation practice survey, design, layout, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists. In all situations, NRCS retains approval authority over the technical adequacy of work accomplished by non-NRCS personnel for the purpose of maintaining compliance within CFO.

Ranking and Selecting Applications Within Approved Pilot Project Areas

After a pilot project area has been approved, the NRCS Chief will notify the appropriate group or individual. Once notified, the individual will contact the appropriate NRCS field office to complete the CFO contract. For group proposals, the NRCS Chief will notify the appropriate group sponsor and corresponding NRCS and FSA field offices. Once notified CCC will accept applications throughout the fiscal year. Periodically, as determined by the State Conservationist based on the needs of the pilot project area, applications will be ranked and selected according to selected ranking criteria. Once the applicant is determined to be eligible to participate in CFO, the NRCS designated conservationist will meet with the applicant to calculate the offer index. The offer index will include: an inventory of resources; identification of natural resource problems and concerns; treatment needs; incentive payment levels; and cost-share and land retirement rates that the producer may accept. The applicant may improve his/her offer index by one or more of the following: providing additional environmental benefits without increasing the program costs, or accepting a rate or payment level less than the established rate or payment level. The designated conservationist, in consultation with the local work group, will utilize selected ranking criteria to prioritize applications from the same pilot project area. The designated conservationist, in consultation with the local work group, will rank all applications using criteria that will consider:

1. The degree to which the application is consistent with the pilot project proposal;
2. The environmental benefits that will be derived by applying the conservation practices in the conservation farm plan which will meet the purposes of the program;
3. An estimate of the cost of the planned conservation practices, the program payments that will be paid to the applicant, and other factors for determining which applications may present the least cost to the program; and
4. The environmental benefits per dollar expended.

In creating this criteria, the designated conservationist, in consultation with the local work group will consider the following factors:

(1) Soil erosion;
(2) Water quality;
(3) Wildlife benefits;
(4) Soil productivity;
(5) Conservation compliance considerations;
(6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;
(7) State water quality priority areas; and
(8) The environmental benefits per dollar expended.

The FSA county committee will approve funding in the pilot project area in accordance with the NRCS ranking.

Payments

When enrolling in CFO, the participant enrolls the entire farm, as constituted by FSA. Once enrolled, the individual will forego accepting any future payment, under CRP, EQIP, or WRP on the farm, except for payments earned but not paid before enrollment in CFO.

CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant under CRP, EQIP, or WRP. For example, a practice that is determined eligible under WRP will receive the cost-share rate for that practice in accordance with WRP. The same holds true for land retirement rates under CRP and cost-share rates under both CRP and EQIP. If a participant chooses to acquire a land retirement rental payment and also wishes to install a practice on that particular parcel in which he/she is receiving the land retirement payment, CRP cost-share rates will be utilized. For new technologies and innovations, the cost-share rate received will be equivalent to that received under EQIP. Cost-share rates shall not exceed the total amounts calculated among these three programs. For a practice that is eligible under all three programs, the participant will chose between CRP, EQIP, or WRP to determine what type of cost-share the

participant will receive. Where cost-share payments to a participant exceed 100 percent of the actual cost of the practice, the CCC payments to a participant shall be reduced so that the total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

Cost-share or incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

Transferring from CRP, EQIP, or WRP to CFO

Producers or owners who wish to participate in CFO do not need to be enrolled in CRP, EQIP, or WRP to be eligible for CFO. Producers or owners who are currently enrolled in CRP, EQIP, or WRP must terminate the existing contract(s). Remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless otherwise stated in the conservation farm plan and CFO contract.

In cases where a participant transfers from CRP to CFO, the participant must ensure that net environmental benefits under a CRP contract are maintained or exceeded under the CFO contract. For example, a landowner who was enrolled under CRP may opt to crop retired land acreage, once the acreage is enrolled under CFO. This may be done without liquidated damages, as long as the environmental benefits under the former CRP contract are maintained or exceeded for the whole farm, according to the approved conservation farm plan and CFO contract. Under this scenario, the landowner may forego his CRP rental payment and receive payments for a particular structural or vegetative practice, if applicable.

Analysis of Public Comment

On April 2, 1998, the CCC issued a proposed rule with requests for comments (63 FR 16142). The proposed rule described program administration and program requirements that CCC would use to implement the program. Thirty-three responses, containing nearly 200 specific comments were received during the 60-day comment period. Entities responding included individuals, national conservation organizations, national farm and commodity organizations, national wildlife organizations, State natural resource agencies, State associations, and community development organizations. Changes in this final rule are based on consideration of the comments received. Other minor changes have been made in the text for clarity and to facilitate the application of the regulation.

General Comments

Nine comments were received about the comment period on the proposed regulation and the pilot project proposal application period for 1998. All nine respondents felt the time constraints were limiting. Several of these respondents commented that the application process occurred at an inappropriate time of year, planting season, for prospective participants to provide serious thought into the application process. Respondents also had difficulty obtaining information on the types of practices that would qualify. One respondent commented that the time constraint provided an advantage to existing projects and there was insufficient time to develop new or innovative ideas.

Response: CCC believes that a sufficient length of time was provided; however, in the future, consideration will be given concerning the time of year that the request for proposals is announced.

Both positive and negative comments were received about the general nature of the program. Four respondents had reservations about the program; one respondent was disappointed that the CFO program appeared to be a duplication of existing programs; another questioned the advantage of enrolling acreage in CFO versus the individual conservation programs; and the other two thought the program should offer more flexibility. One commented on the program goals and requested that the program should encourage innovative activities. One supported implementing CFO in a manner consistent with the ''Discussion'' section of the preamble. One indicated the program has the potential to be a true locally led process with opportunities for partners to implement a program without sideboards or constraints imposed by a State Committee.

Response: CCC intends for the CFO program to be a flexible program that offers participants an opportunity to treat all of their natural resource concerns on the farm without limiting planning efforts to certain types of acreage. It enables the participant to achieve the environmental benefits of all the other programs under a single contract and a single conservation farm plan. Although the CFO has these advantages, the CFO program is still subject to the sideboards established in the authorizing language. CCC is required to consider certain provisions in the other programs such as eligible practices, payments the participant would have received under these programs when determining CFO payments, and county land retirement acreage limitations. CCC appreciates these comments, however, these comments do not address language in the regulation. Therefore, changes have not been made in the final regulation as a result of these comments.

Two comments were received regarding agency workload concerns and the lack of NRCS personnel available to handle the additional work created by CFO.

Response: USDA considered these comments; however, it believes that the additional work caused by CFO will be manageable. These comments did not justify a modification to the final rule.

Forms

Twelve comments were received on the application form. Five of these respondents felt the application was difficult to understand, intimidating or frustrating. One of these respondents indicated that although the form was a detriment to the program, they were provided support from USDA staff which enabled the form to be completed. One respondent requested that the application include more details, especially where innovative practices are discussed. One respondent indicated farmers were most frustrated with presenting budget information. These farmers questioned how lump sum payments would be used in determining costs and benefits of the project; how will it impact ranking without providing more information; whether there are project or individual contract limitations; and whether contributions from other sources have to be secured at the time the proposal is written. One respondent commented on the length of time it took to complete the form. It took this respondent twice as long to complete the work as was projected by CCC. Clarification is needed in instructional materials. However, this respondent indicated that the process was beneficial because it forced the producer to articulate the long-range goals for the farm. Two respondents submitted positive comments about the process, citing the

instructional addendum and the availability of the scoring sheet to prospective participants. One respondent recommended CCC determine through a public forum whether a CFO-specific form would be more appropriate.

Response: Although these comments do not directly relate to the provisions in the proposed rule, CCC plans to reexamine the application form, and where necessary revise it, prior to the start of fiscal year 2000, the next time when CCC will solicit the public for CFO pilot project area proposals. CCC believes that monitoring and evaluation of the fiscal year 1998 pilot project areas will assist in making this application form more concise and user-friendly. In addition to revising the application form, CCC will analyze the instructional materials and the application process to determine where it can be improved for the next proposal submission period. The public burden estimate related to completing the form will also be evaluated to determine whether adjustments need to be made.

CFO Interface With Other Conservation Programs

Twenty-two comments were received regarding the relationship between CFO and the CRP, WRP, and EQIP. Ten of these comments simply requested clarification of how the interface between the three programs will be handled. Eight respondents were concerned about the ability to switch from CRP, EQIP, or WRP to CFO and expressed that penalties should not apply. One comment was concerned about whether payment limitations applied, and five sought innovative practices and project designs that may not be permitted under the other conservation programs.

Three respondents commented that CFO could be a positive alternative to CRP; however, one of these warned against creating a program like CRP because of its adverse impacts on certain farmers. For one respondent this comment was due to CRP's impact on persons wanting to lease acreage for agricultural activities; the second respondent wanted CFO to be available to those whose acreage was not accepted into CRP. One respondent recommended that CFO have no impact on WRP 30-year or permanent easements. Two comments were received regarding program payments. One respondent requested that the WRP component of a CFO contract only consider potential cost-share payments and the other requested that CRP payments remain separate from CFO contracts due to the high cost and concern about contract payment limitations.

Response: CCC agrees that the proposed rule provided little information regarding the relationship between CFO and the other conservation programs. Language has been clarified and sections revised throughout the rule to provide clarification regarding the impact of persons offering acreage for CFO when they are already participating in CRP, WRP, or EQIP or when they have land that is eligible for these programs. To clarify, producers or owners who wish to participate in CFO do not need to be enrolled in CRP, EQIP, or WRP to be eligible for CFO.

However, eligible producers or owners, in an approved pilot project area who are currently enrolled in CRP, EQIP, or WRP must terminate such contracts and transfer the remaining practices and land retirement rental payments to a CFO contract. In cases where a participant transfers from CRP to CFO, the participant must ensure that net environmental benefits under a CRP contract are maintained or exceeded under the CFO contract. The landowner is also required to maintain practices that were enrolled under the terminated CRP or EQIP contract, or WRP cost-share agreement. These remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate, unless otherwise stated in the approved conservation farm plan and CFO contract. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless the lifespan of the practice has been extended under the CFO contract.

The CFO authorizing language provides that in exchange for CFO payments, the participant shall not participate in and shall forgo payments under CRP, WRP and EQIP. Therefore, a CFO participant cannot offer to enroll CFO contract acreage in CRP, EQIP, or WRP. Likewise, when the CFO contract is approved any existing CRP or EQIP contract, or WRP cost-share agreement will be simultaneously terminated without penalty. CFO will not impact any acreage subject to a WRP easement nor will this acreage be included in a CFO contract. Payments that have been earned before the CFO contract is approved may be provided to the producer or owner under the terms of that program. Future payments that would have been earned under such contract or agreement will be incorporated into the CFO contract and included in the CFO payment. The CFO authorizing language has no payment limitation. Payment limitation will apply to the extent that the total payments calculated, in accordance with Parts 1466, 1467 and 1410, are limited in the applicable provisions in Parts 1466 and 1410. The payments will be totaled to determine the amount which will be issued for the CFO annual payment.

Third Party Organization Administrative Issues

Sixteen comments were received regarding other organizations performing certain activities under CFO. Eleven respondents requested that CFO provide funding to non-government, non-profit organizations. One of these respondents requested that the final rule add specific authorization for direct funding for group proposals for project planning, education, outreach, conservation farm research design, monitoring, evaluation, and administration. Another recommended 20 percent of a pilot project funds be available to pay for the services of the proposing organization, including non-profits. According to the respondent, CFO will never reach its full potential if only individual farmers apply. Another respondent commented that it is an ''administrative nightmare'' to have after-the-fact subcontracting with each individual participant which results in higher administrative costs. Several comments were related to the role of non-profit organizations and state and local agencies within the context of CFO. While one respondent requested clarification of the role of local non-profit organizations, another comment suggested that USDA should develop incentives for state and field offices to be more proactive in program implementation. One respondent requested that funding be available for information outreach efforts to change behavior and achieve practice adoption.

Response: Under the 1985 Act, CCC is authorized under CFO, to provide direct payment to producers of wheat, feed grains, upland cotton, and rice. Accordingly, other entities, such as groups which coordinate, organize, administer, monitor, and evaluate pilot projects are not eligible for direct CCC payment, although an organization such as that described, may be reimbursed by the landowner.

Program Administration

Fourteen comments were received regarding program administration. One respondent requested general clarification. Three respondents requested that states and local entities be permitted to participate in the process of implementing the program by either contracting through private businesses or by allocating program funds to these organizations through a grant or loan program.

Response: Under the 1985 Act, CCC is authorized under CFO to provide direct payment to producers of wheat, feed grains, upland cotton, and rice. Other entities, such as groups which coordinate, organize, administer, monitor, and evaluate pilot projects are not eligible for CCC payment, although an organization such as that described, may be reimbursed by the landowner.

One comment requested that the role of the Federal-state-local relationship be clarified.

Response: CCC will coordinate with Federal, state, and local agencies where necessary and has attempted to clarify this intent throughout Part 1468. For example, the final rule has clarified that the local work group assists in ranking CFO applications.

One respondent encouraged USDA to integrate and coordinate CFO pilot project areas with state-level recommendations already identified in conservation programs. However, existing rankings of affected watersheds for other farm bill or state programs should not completely supersede local efforts to delineate new watersheds or areas for consideration.

Response: CCC concurs with this philosophy and believes that the participation of the local work group will assist in integrating pilot project areas with state-level recommendations; however, direct proposal submission to the national level will also assist lower state-ranked watersheds to acquire some assistance if that pilot project area meets CFO objectives and requirements.

One comment requested clarification on whether Soil and Water Conservation District (SWCD) cost-sharing programs can be identified as partnership contributions, or if a specific allocation for a specific proposal must be secured.

Response: Soil and Water Conservation District contributions, including technical and cost-share assistance, may be considered partnership contributions. Currently, CCC does not have specific requirements as to the extent that matching funds must be secured from other agencies or organizations.

One comment urges CCC to actively seek to develop cooperative agreements or Memorandums of Understanding (MOUs) at the local, state and Federal levels to ensure compliance with state and Federal regulations for farmers and ranchers to participate. Two responses were received regarding the impact of the Endangered Species Act and other environmental requirements on CFO participants. One respondent indicated that landowners need assurance that the actions they undertake under the CFO which benefit endangered and/or threatened species will not result in penalties during or after the contract period. Without a cooperative agreement between CCC and the U.S. Fish and Wildlife Service (FWS) integrating ''safe harbor'' type assurances into the CFO, or a formal recognition by FWS of CFO plans as habitat conservation plans, landowners will not have adequate legal protection. The other respondent provided that any MOU or agreements should provide reduced liability associated with off-farm environmental degradation or nuisance law suits. This so-called ''safe harbor'' or environmental assurance that incorporates relief from additional regulations and enforcement is necessary to ensure active voluntary participation.

Response: Where local and State people request NRCS to arrange such cooperative agreements to ensure compliance with state regulations, NRCS is authorized to enter into these agreements. However, in situations such as the Endangered Species Act, while CCC is sensitive to its requirements, CCC does not have the authority to provide safe harbor for those wishing to ensure compliance with other Federal regulations, including the Endangered Species Act.

Three comments were received regarding the joint program administration between NRCS and FSA. One respondent indicated the administration provisions are confusing as written; the second respondent did not want joint agency concurrence on environmental issues. The third respondent wanted to know which agency ensures proper administration of the program and what is the role of the Cooperative State Research, Education, and Extension Service (CSREES).

Response: Administration of CFO is shared by the Natural Resources Conservation Service and the Farm Service Agency. NRCS will provide overall program management and implementation leadership for CFO, including technical leadership for conservation planning and implementation, while FSA will be responsible for the administrative processes and procedures for applications, contracting, program allocations and accounting. CCC believes that CSREES will play an instrumental role in assisting with outreach and education both within and outside selected pilot project areas. As a result of these comments, Section 1468.2 has been revised to provide clarification regarding the responsibilities of the agencies involved with implementing the program.

One respondent recommended a new section (f) be added to indicate that NRCS and FSA shall cooperate and make the best use of agency programs that support CFO management and implementation, including, but not limited to programs that support assessment and planning activities.

Response: This recommendation has not been adopted as the regulation is sufficiently flexible to permit this activity.

Definitions

Three respondents requested that the definition of ''conservation farm plan'' be changed. All respondents felt the definition in the proposed regulation does not reflect the most recent information on farm planning. One respondent requested the definition be expanded to indicate that conservation plans should be based on an adequate assessment of conservation needs. The other two respondents requested more extensive changes to reflect participant's resource problems and ecologically based management of the whole farm or ranch.

Response: The definition of conservation farm plan has been altered to match the definition found in NRCS' National Planning Procedures Handbook (NPPH). This has been done in order to create consistency across USDA program boundaries.

One respondent recommended revising the definition of technical assistance to include reference to site-specific assessments.

Response: CCC believes that site-specific assessments are an integral part of the conservation planning process and have been adopted throughout the National Planning Procedures Handbook (NPPH), NRCS' policy manual for conservation planning. According to the NPPH, site-specific assessments are necessary in planning; therefore, any reference to conservation farm plans or conservation planning assumes that a site-specific assessment has been conducted.

One respondent requested that the definition of conservation practices be amended to allow for practices approved by NRCS for experimentation and testing.

Response: NRCS existing standards and specifications for interim practices already permit experimentation and testing; therefore, this recommendation has not been adopted.

One respondent recommended the definition of land management practice be revised to include ''resource conserving crop rotations, cover crop management, and soil organic matter and carbon sink management.''

Response: The sample of land management practices included in the definition was not intended to identify all potential practices. However, CCC adopted this recommendation to ensure users of this regulation understand that the term ''land management practices'' includes resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Ten respondents requested clarification of the term, A innovative technologies.''

Response: A definition of innovative technologies has been included in Section 1468. 3.

Several other comments were received regarding the definitions in the proposed regulation. CCC determined that the definitions of these other terms are sufficiently flexible to meet the needs of the respondent and the program.

Program Requirements

Five respondents requested the requirement that a producer be participating in production flexibility contracts be removed. One of these respondents indicated this requirement would make implementation of CFO on Tribal, allotted or Indian trust land impossible. While another indicated it may adversely impact limited resource and minority farmer's participation.

Response: CCC cannot adopt this recommendation because the CFO authorizing language requires that a producer be participating in the Agriculture Market Transition Program and have a production flexibility contract in order to participate in CFO.

Two respondents recommended subsection (a) be revised to include sustainable agriculture production practices and crop rotation systems.

Response: CCC believes that the term ''conservation practices'' embodies the concept of sustainable agricultural practices. This includes resource-conserving practices, such as crop rotation systems, conservation tillage, and other sustainable agricultural practices.

One respondent requested provisions regarding persons who inherited property or obtained the property as a result of death but did not have a producer interest in the property when eligibility of the program was determined.

Response: The final rule has been revised in section 1468.5 to clarify the eligibility of persons who obtain interest in acreage as a result of death. Under CFO, eligibility requirements mimic the eligibility requirements of CRP, EQIP, and WRP, depending on which program is the source of CFO practices to be implemented.

One respondent recommended the language in subpart (c)(4) be revised to indicate that CCC will consider whether the participant has conducted adequate assessment activities to identify resource needs when considering the acceptability of the plan.

Response: CCC believes that the conservation planning process adequately takes into account assessment activities in identifying resource needs.

One respondent questioned whether CFO participation would preclude participation in any future USDA or other Federal conservation or environmental protection incentive programs and whether producers or owners are foregoing other program by their participation in CFO.

Response: The CFO authorizing language only requires that participants forego participation in the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP) and the Environmental Quality Incentives Program (EQIP) for the term of the CFO contract. Participation in CFO does not necessarily inhibit a person from participating in other USDA programs, such as the Wildlife Habitat Incentives Program, Forestry Incentives Program, etc.

One respondent questioned whether CFO proposals are limited to only pilot areas.

Response: Currently, CFO is authorized as a pilot program in the 1985 Act. As a result, it is limited to pilot project areas. These pilot project areas will test not only practices, but also the program, itself.

This section has been revised throughout the rule for clarity, and therefore no specific references to section numbers have been made.

Innovative Technology

Several comments were received regarding innovative technology. Eight of these respondents indicated the final regulation needs to provide more information about the use of innovative technology. One respondent wanted the innovative technology to have scientific merit and a high chance of success before tax dollars are expended on testing such technology. One respondent indicated that innovative projects cannot be planned in fiscal year 1998. This respondent provided administrative alternatives to solve this issue. Another respondent identified technologies such as remote sensing, satellite and aerial imaging that will offer the ability to identify what plant nutrients are available in crops, identify stress points in a field as well as identify drainage problems in fields. Two respondents recommended that the regulation be revised to indicate that practices need not be eligible under EQIP, CRP, or WRP, as long as they are approved by the NRCS.

One respondent wanted clarification regarding the process for approving innovative technologies. This respondent wanted language added to encourage innovation and to stimulate experimentation and adaptive research and demonstration.

Response: To be considered as an eligible conservation practice, the innovative technology must provide beneficial, cost-effective approaches for participants to change or adopt operations to conserve or improve soil, water, or related natural resources. Innovative technologies and practices are authorized under CFO. Payment for innovative technologies is limited to what would be received under EQIP since EQIP is the only program of the three programs which authorizes innovative technologies. NRCS will authorize, at the state and national level, interim practice standards and cost-share payments for innovative technologies that it deems has an environmental benefit. The policy outlining innovative practices and technology is further clarified in 1468.7.

CFO Pilot Project Areas

Eleven comments were received regarding CFO pilot program area proposals. One respondent provided that as a result of the leadership requirements in the overall planning process, it is doubtful that individual farmers will participate.

Response: CCC disagrees with this comment. One hundred twenty-one applications, covering over 14 million acres were received from farmers or farm groups. Forty-two of these proposals were from individual farmers. CCC believes that had farmers been provided more time to develop proposals, the number of submitted proposals would have grown substantially. This comment is not reflected in the text of the final regulation.

One respondent supported wetland restoration and protection through CFO but expressed concern regarding converting valuable wildlife habitats to wetlands. The respondent requested that the pilot projects include evaluations for the quality of existing habitats that may be destroyed for wetland creation projects.

Response: As outlined in 1468.20, the NRCS designated conservationist will work with the applicant to ensure that wildlife benefits will be accounted for when determining the ranking of the application. CCC believes that the site assessment conducted during the conservation planning process with the participant will give a good indication of what habitats to protect, conserve, or create.

One respondent indicated the small acreage requirement provides a disincentive for group projects.

Response: CFO does not have a maximum acreage requirement in the final rule; however, the CCC process scoring sheet does award points to project areas under 32,000 acres. For areas less than 64,000 acres, which have less than 25 inches per year in annual precipitation or are predominantly forest or rangeland, the acreage points are also awarded. CCC supports this rationale due to limited funds in the initial years; however, as funding increases, CCC anticipates that targeting to larger acreage may become more prevalent. If CCC changes the targeting to larger acreage, CCC will adjust the scoring accordingly.

One respondent recommended a criterion be added to reflect the Scoring Sheet's preference for smaller rather than larger pilot projects or areas.

Response: This comment was considered; however, it was not reflected in the text of the final rule, since the amount of points awarded for each criterion is not specified in the final rule. In any case, the points awarded for size on the CCC–1211 are sufficient and further criteria for size limitations are not necessary.

One respondent indicated that innovative practices need more points in order to be funded.

Response: This comment was considered; however, it was not reflected in the text of the final rule. CCC believes that the points allocated to innovative technologies are sufficient.

One respondent indicated that the 1998 pilot project area response was not reflective of program interest. Program interest was severely comprised by a short timeframe at the worst time of year; lack of access to information and forms at the local level; and disallowing non-NRCS entities to apply for funds despite explicit encouragement to apply.

Response: In the future, CCC will take into consideration the timing of when the request for proposals is announced and ensure that adequate information and forms are provided at the local level. This comment was considered; however, it was not germane to the development of the final rule.

One respondent requested that applications be approved under a continuous sign-up basis.

Response: Once a pilot project area has been approved, CCC will accept applications throughout the year. CCC will rank and select applicants' offers periodically, as determined by the State Conservationist, based on the needs of the pilot project area. This process is clarified in § 1468.20.

One respondent requested that the language in (a)(2) reflect the 7-point criteria found in the ''Discussion of the Program'' section of the proposed regulation.

Response: This recommendation has been adopted.

One respondent recommended that priority be given to proposals that could not be funded by other programs such as CRP, EQIP, and WRP.

Response: This recommendation has not been adopted due to the fact that it may limit USDA's ability to enroll some of the Nation's most environmentally sensitive areas.

Three respondents requested new language be included that would require CCC to evaluate whether the participant has conducted adequate assessment activities to identify resource needs when selecting proposals. Another respondent wanted the regulation to emphasize the necessity for assessment and planning. At a minimum, CCC should reward detailed assessment and planning by those who partake in these activities by enhancing their eligibility for the program.

Response: CCC agrees with the need for adequate assessment and believes that for the most part, the content and quality of the proposals which are received will indicate how much assessment and planning has been conducted.

Five respondents commented on the selection process. Four of these respondents commented on the national process and one requested clarification regarding how applicants in approved pilot areas will be ranked at the national and local levels. Two respondents requested that local and state or other entities with an interest in CFO be permitted to be involved in the review of the proposals. One respondent indicated that the national team review should also include filtering out proposals which are not based on ''sound science or research''. One respondent commented that national reviewers may lack the experience necessary to competently review ''innovative'' proposals. This respondent provided recommendations for obtaining the required experience to make competent recommendations to the selecting official.

Response: Periodically, a request for proposals will be announced in the **Federal Register**. In this request, CCC will solicit proposals from individuals, States, or subdivisions thereof, Tribes, universities, and other organizations to cooperate in the development and implementation of CFO pilot programs. The request for proposals will contain the CFO proposal form, instructions for completion of the CFO proposal form, and the criteria for evaluating proposals. A national interdepartmental team, consisting of representatives from several Federal agencies, will use this published criteria to rank and select the proposals. Consisting of individuals who have a wide variety of expertise, the interdepartmental team will select proposals which meet program guidelines and will provide its recommendations to the NRCS Chief. The Chief, with FSA concurrence, will approve proposals. CCC will utilize a national interdepartmental team to make decisions not only because the size of the interdepartmental team would be too large and cumbersome to be efficient, but also because CCC believes adequate state and local input should be obtained at the local level when group proposals are submitted.

Conservation Plan

Five respondents requested clarification or more specific language regarding conservation planning requirements.

Response: CCC has attempted to clarify planning requirements in Part 1468.9 and in the following response:

A conservation farm plan is a record of a participant's decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS field office technical guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and takes advantage of opportunities, at a conservation management system level. NRCS adopts a nine-step planning procedure process in order to thoroughly assess the value of the

natural resources on the participating acreage. In the nine-step conservation planning process, problems and opportunities are identified; the participant's objectives are determined; resources are inventoried and analyzed; alternatives are formulated and evaluated; decisions are made; the plan is implemented and finally evaluated. This process is a cyclical one which changes as the resource conditions and the participant's objectives change.

Under CFO, a conservation farm plan must meet the objectives of the pilot project area; address the pilot project area's resource concerns; and allow the participant to achieve a cost-effective resource management system, or some portion of that system. While a conservation farm plan that includes all acres on the farm is not required, it is encouraged. Moreover, while a participant is encouraged to develop a resource management system (RMS) that identifies and treats every concern on the farm, a RMS level of treatment is not required. To simplify the conservation planning process for the participant, the conservation farm plan may include Federal, state, Tribal, or local government program or regulatory requirements. The development or approval of a conservation farm plan will not be deemed to constitute compliance with program or regulatory requirements administered or enforced by another agency, unless so indicated by that agency. It is the participant's responsibility to comply with all applicable statutory and regulatory requirements.

Participants are responsible for implementing the conservation farm plan. CCC may accept an existing plan developed for another USDA or CCC program if the conservation farm plan meets the requirements of CFO. When a participant develops a conservation plan for more than one program, the participant will clearly identify the portions of the plan that are applicable to the CFO contract. Previously installed CRP, EQIP, and WRP practices along with their operation and maintenance requirements will also be incorporated into the CFO plan, unless otherwise specified in the conservation farm plan and CFO contract. The conservation farm plan forms the basis of the CFO contract.

One respondent requested that the following language be inserted to 1468.6(a), ''Reflect adequate assessment activities to identify natural resource needs and conservation practices.''

Response: CCC believes that the conservation planning process adequately takes into account assessment activities in identifying resource needs.

One respondent requested that the following words be added to 1468.6(d)(1) ''NRCS should actively pursue assistance in providing services such as site-specific assessments.''

Response: This recommendation has not been adopted. The language as written provides CCC the authority to utilize the services of others.

One respondent requested CCC identify the items that would be included as technical assistance that may be provided by others, including but not limited to: site specific assessments to identify planning needs; conservation planning; conservation practice survey, layout, design and installation; information, education, and training for producers; and training, and quality assurance for professional conservationists.

Response: Upon a participant's request, NRCS may provide technical assistance to a participant. Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance, such as conservation planning; conservation practice survey, design, layout, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists. In all situations, NRCS retains approval authority over the technical adequacy of work accomplished by non-NRCS personnel for the purpose of maintaining compliance within CFO.

Three respondents requested changes to the provision that does not provide funding for technical assistance offered by ''qualified professionals.'' One of these respondents commented that the provision to make participants pay for their own specialized technical assistance is unfair to participants. Group projects would be inefficient since specialized technical assistance could not be provided on a farm-by-farm basis. In addition, some innovative practices could be too technical for NRCS employees.

Response: CCC supports the use of qualified professionals, other than NRCS personnel, to assist in providing technical assistance; however, CCC is not authorized to pay individuals other than those who are actual program participants. As a result, it is up to the participant to utilize and pay for these third-party qualified professionals.

Two respondents requested the final rule differentiate the difference between ''private agribusiness sector'' and ''qualified professionals'' or clarify the term ''qualified professionals'' who provide technical assistance.

Response: The term ''qualified professionals'' indicates professionals employed by either the public or private sector. Private agribusiness indicates those individuals who are employed by the private sector. Throughout Part 1468, CCC will attempt to clarify and differentiate between the two terms.

One respondent encouraged NRCS to limit the amount of time for developing a conservation plan until an applicant is accepted into the program.

Response: CCC shares the concern in limiting the amount of time for developing a conservation farm plan; however, in order to effectively evaluate proposals, CCC believes that a conservation farm plan must be written in order to ascertain resource needs and to rank applications on a fair and equitable basis.

One respondent indicated it would be a major disincentive to voluntary participation if farmers and ranchers could not satisfy all or at least most program requirements and environmental regulations by working with one agency and one plan.

Response: CCC supports the idea of having its conservation farm plans assist farmers and ranchers in meeting environmental regulations; however, it is the Federal, state, and local agencies, not CCC, who determine whether a conservation farm plan meets environmental regulations and program requirements.

Two respondents commented on the confidentiality of CFO plans. One of these respondents noted a discrepancy in the ''Overview'' section of the preamble and Section 1468.21(b)(1) regarding the conservation plan's relationship with the CFO contract. The Overview indicated the conservation farm plan will become part of the CFO contract while section 1468.21(b)(1) provides that only those portions applicable to CFO will be included with the CFO contract. The respondent preferred the language in section 1468.21.

Response: These concerns are reflected in Section 1468.9(h)(2).

One respondent explained that crop rotations are a valuable land management practice and should be encouraged and used as part of the conservation plan. However, there should be flexibility to allow the farmer to contemplate different mixes of crops that could occur over the 10-year contract period.

Response: The conservation planning process and the CFO regulation allow for modifications to the contract. Section 1468.24, Contract Modifications

and Transfers of Land, provides that the participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements. This final rule requires that the conservation farm plan modification be approved by the Conservation District.

Conservation Practices

One respondent would like to see hybrid poplars established as an eligible crop on CFO acres, with rotational harvesting, allowed following the 10-year contract period.

Response: Innovative technology may include vegetative measures such as establishing hybrid poplars. To be considered as an eligible conservation practice under CFO, the innovative technology must provide beneficial cost-effective approaches for the conservation and improvement of soil, water, or related resources. For practices such as the establishment of hybrid poplars, NRCS may authorize, at the state and national levels, interim practice standards and cost-share payments for innovative technologies that it deems has an environmental benefit.

Application for CFO Program Participation

One respondent recommended that when selecting participants, CCC should place emphasis on a watershed or landscape-based pilot project area. One respondent requested CCC to consider the degree to which the application reflects an adequate assessment of conservation needs of a particular farm or ranch, while one respondent recommended the ranking criteria be expanded to include the degree to which the farm plan reflects integrated, site-specific, multiple resource design and strategy.

Response: In selecting pilot project areas, CCC will consider areas that meet the criteria outlined in 1468.4.

Contract Requirements

One respondent recommended USDA encourage continuation of the CFO practices beyond the contract period with some ongoing incentives.

Response: CCC does not have authority to provide incentives to participants beyond the contract period.

One respondent indicated the 10-year contract commitment may discourage some from participating when EQIP agreements can be for 5 years.

Response: Contract duration is established in the authorizing CFO language and cannot be altered by CCC. Therefore, this comment was considered, but rejected in the development of the final rule.

One respondent expressed that whole farm contracts should make whole farm planning efficient and flexible.

Response: CCC supports the concept of a whole farm contract and the whole farm plan; however, while a whole farm plan is encouraged, it is not required for participation in CFO.

One respondent requested clarification regarding the provision that contract participants be required to comply with ''such other terms as the Secretary may require.'' The respondent wanted an indication of what ''other terms'' might mean.

Response: CCC adds this language to ensure that it is not constrained by the regulation if future conditions change. An example of this may be a change in programs that are incorporated into CFO.

Annual Payments

Three respondents commented on the program funding level. These comments were not directed to the proposed rule itself, and therefore were not considered in the development of this final regulation. One respondent liked the overall concept of one payment. One respondent commented that the proposed rule provided limited information on the amount participants could earn for the practices that may be implemented.

Response: Section 1468.23 has been revised to clarify how payments are calculated. The CCC cost-share payment to a participant will be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

Appeals

One respondent recommends that decisions made by the State Conservationist on whether to accept innovative technologies, practices and systems should be appealable.

Response: The decision on whether to accept or reject innovative technologies is appealable. For information on the appeal process, consult 7 CFR Parts 11 and 614.

One respondent expressed that this section needs clarification.

Response: This final regulation adopts as final, the language in section 1468.30 which clarifies the appeal process.

One respondent requested adding an appeal process at the national level for cases where an innovative practice was wrongly denied.

Response: The decision on whether to accept or reject innovative technologies is appealable. For information on the appeal process, consult 7 CFR Parts 11 and 614.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1468 to read as follows:

PART 1468—CONSERVATION FARM OPTION

Subpart A—General Provisions

Sec.
1468.1 Purpose.
1468.2 Administration.
1468.3 Definitions.
1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.
1468.5 General provisions.
1468.6 Practice eligibility provisions.
1468.7 Participant eligibility provisions.
1468.8 Land eligibility provisions
1468.9 Conservation farm plan.

Subpart B—Contracts

1468.20 Application For CFO program participation.
1468.21 Contract requirements.
1468.22 Conservation practice operation and maintenance.
1468.23 Annual payments.
1468.24 Contract modifications and transfers of land.
1468.25 Contract violations and termination.

Subpart C—General Administration

1468.30 Appeals.
1468.31 Compliance with regulatory measures.
1468.32 Access to operating unit.
1468.33 Performance based upon advice or action of representatives of CCC.
1468.34 Offsets and assignments.
1468.35 Misrepresentation and scheme or device.

Authority: 16 U.S.C. 3839bb.

Subpart A—General Provisions

§ 1468.1 Purpose.

(a) Through the Conservation Farm Option (CFO), the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns, water quality protection or improvement; wetland restoration and protection; wildlife habitat development and protection; and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. The Natural Resources Conservation Service (NRCS) may provide technical assistance, upon request by the producer or landowner.

(b) The CCC provides a single contract and annual payments for implementation of innovative and environmentally-sound methods for addressing natural resource concerns for producers of wheat, feed grains, cotton, and rice, resulting in consolidation of

payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program cost-share agreements (WRP), and the Environmental Quality Incentives Program (EQIP). CFO participation is determined through two step process: first, the Chief, with FSA concurrence, selects CFO pilot project areas based on proposals submitted by the public; then CCC accepts applications from eligible producers or owners within the selected pilot project area.

§ 1468.2 Administration.

(a) CFO is carried out using Commodity Credit Corporation funds and will be administered on behalf of CCC by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS will:

(1) Provide overall program management and implementation for CFO;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of pilot project areas;

(3) Establish annual payment rates consistent with EQIP, CRP, and WRP payment rates;

(4) Make funding decisions and determine allocations of program funds, with FSA concurrence;

(5) Determine eligibility of practices;

(6) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance.

(c) FSA will:

(1) Be responsible for the administrative processes and procedures including applications, contracting, and financial matters, such as payments to participants, assistance in determining participant eligibility, and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA will cooperate in establishing program policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

§ 1468.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer or owner in an approved pilot project area who has requested in writing to participate in CFO.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation farm plan means a record of a participant's decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS Field Office Technical Guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and take advantage of opportunities, at a conservation management system level. In the conservation farm plan, the needs of the client, the resources, and Federal, state, Tribal, and local requirements will be met.

Conservation practice means a specified treatment, such as structural, vegetative, or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Farm Service Agency County Committee means a committee elected by the agricultural producers in the county or area, in accordance with Sec. 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The guide contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. A copy of the guide for that area is available at the appropriate NRCS field office.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Innovative technology means the use of new management techniques, specific treatments, or procedures such as structural or vegetative measures used in field trials or as interim conservation practice standards that have the purpose of solving or reducing the severity of natural resource use problems or that take advantage of resource opportunities. Innovative technologies used by program participants must be able to achieve the required level of resource protection.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, wildlife management, resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay, in addition to refunds and other charges, if the participant breaches the contract, and represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on

decisions related to CFO implementation.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to a CFO contract.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State technical committee means a committee established by the Secretary in a state pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.

(a) CCC may periodically solicit proposals from the public to establish pilot project areas in the **Federal Register**.

(b) Pilot projects may involve one or more participants. Each owner or producer within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO. This pilot project area may be a watershed, a subwatershed, an area, or an individual farm that can be geographically described and has specific environmental sensitivities or significant soil, water, and related natural resource concerns. The pilot project area must have acreage enrolled in a production flexibility contract, which is authorized by the Agricultural Marketing and Transition Act of 1996. After these pilot project area proposals are received, the Chief, with FSA concurrence, will select proposals for funding.

(c) CCC will select pilot project areas based on the extent the individual proposal:

(1) Demonstrates innovative approaches to conservation program delivery and administration;

(2) Proposes innovative conservation technologies and system;

(3) Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;

(4) Ensures effective monitoring and evaluation of the pilot effort;

(5) Considers multiple stakeholder participation (partnerships) within the pilot area;

(6) Provides additional non-Federal funding; and

(7) Addresses the following:

(i) Conservation of soil, water, and related natural resources,

(ii) Water quality protection or improvement,

(iii) Wetland restoration and protection, and

(iv) Wildlife habitat development and protection,

(v) Or other similar conservation purposes.

§ 1468.5 General provisions.

(a) Program participation is voluntary.

(b) Participation in the CFO is limited to producers of wheat, feed grains, cotton, or rice who have a production flexibility contract, in accordance with part 1412 of this chapter, on the farm enrolling in CFO and who are eligible for either CRP (7 CFR part 1410), EQIP (7 CFR part 1466), or WRP (7 CFR part 1467).

(c) The participant is responsible for the development of a conservation farm plan for the farm or ranch and may request assistance from NRCS or a third party in writing both the conservation farm plan and installing the practices outlined within the plan. Conservation practices in the conservation farm plan that would have been eligible for payment under CRP, EQIP, or cost-share agreements under WRP are eligible for CFO payment. The provisions for determining eligibility for payment and the calculation of payment under CFO will be similar to those specified for the eligible conservation practices under CRP, EQIP, or cost-share agreements under WRP. For land retirement payments, the CRP payment schedule in effect for the applicable soils at the time the CFO contract is signed will be utilized. CCC will provide annual payments to a participant for such conservation practices as specified in the time schedule set forth in the conservation farm plan.

§ 1468.6 Practice eligibility provisions.

(a) Practices may be eligible for payment under CFO if the conservation practice specified in the conservation farm plan is determined to be an eligible practice, as determined by the Chief, in accordance with:

(1) 7 CFR part 1410 for land retirement rental payments and practices that are eligible under CRP;

(2) 7 CFR part 1467 for wetland restoration or protection practices that are eligible under WRP; or

(3) 7 CFR part 1466 for conservation practices that are eligible under EQIP.

(b) For practices that are installed on retired land, the CRP cost-share rate for practices must be utilized.

§ 1468.7 Participant eligibility provisions.

Participants in the CFO must at the time of enrollment:

(a) Have a production flexibility contract in accordance with part 1412 of this chapter on the farm enrolling in CFO.

(b) Agree to forgo earning future payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program cost-share payments authorized by part 1467 of this chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO for the term of the CFO contract.

(c) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(d) Have control of the land for the term of the proposed contract period;

(1) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.

(2) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written authorization by the landowner to apply the structural or vegetative practice.

(3) If the applicant is a landowner, the landowner is presumed to have control.

(e) Submit a proposed conservation farm plan to CCC that is in compliance with the terms and conditions of the program. To receive payment under the CFO, the participant must also meet the eligibility requirements, as determined by the Chief, in:

(1) 7 CFR part 1410 if the land retirement rental payment and practice determined eligible in accordance with § 1468.6(a);

(2) 7 CFR part 1467 if the wetland restoration or protection practice was determined eligible in accordance with § 1468.6(b), or

(3) 7 CFR part 1466, if the conservation practice was determined eligible in accordance with § 1468.6(c).

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable.

(5) Supply information as required by CCC to determine eligibility for the program.

(6) Comply with all the provisions of the CFO contract which includes the conservation farm plan approved by the local conservation district.

§ 1468.8 Land eligibility provisions.

Land may be eligible for enrollment in CFO, if CCC determines that the farm or ranch is enrolled in a production flexibility contract, authorized by the Agricultural Marketing Transition Act of 1996 and if the land upon which the CFO conservation practice, will be applied is determined to be eligible land as determined by the Chief, in accordance with:

(a) 7 CFR part 1410, if the practice was determined an eligible land retirement rental payment and cost-share practice similar to CRP in accordance with § 1468.6(a);

(b) 7 CFR part 1467, if the practice was determined an eligible wetland restoration or protection practice similar to WRP in accordance with § 1468.6(b); or

(c) 7 CFR part 1466, if the practice was determined an eligible conservation practice similar to EQIP in accordance with § 1468.6(c).

§ 1468.9 Conservation farm plan.

(a) The conservation farm plan forms the basis of the CFO contract. Prior to contract approval, a conservation farm plan must be written and approved. In deciding whether to approve a conservation farm plan, CCC may consider whether:

(1) The participant will use conservation practices to solve the natural resource concerns that will maximize environmental benefits per dollar expended, and

(2) The conservation practice would have been eligible for enrollment in the CRP, EQIP, or under the WRP cost-share agreements.

(b) The conservation farm plan for the farm or ranch unit of concern shall:

(1) Describe any resource conserving crop rotation, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contact period;

(2) Address the resource concerns identified in the CFO pilot project area proposal;

(3) Contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan;

(4) Ensure that net environmental benefits under a CRP contract are maintained or exceeded for the whole farm, as constituted by FSA, when terminating a CRP contract and enrolling in a CFO contract; and

(5) Meet the objectives of the pilot project area.

(c) The conservation farm plan is part of the CFO contract.

(d) The conservation farm plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide or as approved by the State Conservationist.

(e) Participants are responsible for implementing the conservation farm plan in compliance with this part.

(f) Upon a participant's request, the NRCS may provide technical assistance to a participant.

(1) Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CFO contract compliance.

(2) Technical and other assistance provided by qualified personnel not affiliated with NRCS may include, but not limited to: conservation planning; conservation practice survey, layout, design, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists.

(g) All conservation practices scheduled in the conservation farm plan are to be carried out in accordance with the applicable NRCS Field Office Technical Guide. The State Conservationist may approve use of innovative conservation measures that are not contained in the NRCS Field Office Technical Guide.

(h)(1) To simplify the conservation planning process for the participant, the conservation farm plan may be developed, at the request of the participant, as a single plan that incorporates, other Federal, state, Tribal, or local government program or regulatory requirements. CCC development or approval of a conservation farm plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by a non-USDA agency, except as agreed to by the participant and the relevant Federal, state, local or tribal entities.

(2) CCC may accept an existing conservation plan developed and required for participation in any other CCC or USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation farm plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CFO contract. It is the responsibility of the participant to ascertain and comply with all applicable statutory and regulatory requirements.

Subpart B—Contracts

§ 1468.20 Application for CFO program participation.

(a) Any eligible owner or producer within an approved pilot project area may submit an application for participation in the CFO to a service center or other USDA county or field office(s) of FSA or NRCS, where the pilot project area is located.

(b) CCC will accept applications throughout the fiscal year. CCC will rank and select the offers of applicants periodically, as determined appropriate by the State Conservationist. The application period will begin after a pilot project area has been approved.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a pilot project area which consists of more than one owner or producer. NRCS will prioritize applications from the same pilot project area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and designated FSA official, will approve for funding the application in a pilot project area based on eligibility factors of the applicant and the NRCS ranking.

(d) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. An applicant has the option of offering and accepting less than the maximum program payments allowed, offering to apply more conservation practices to the land in order to increase the likelihood of being enrolled. In evaluating the applications, the designated conservationist will take into consideration the following factors:

(1) Soil erosion;

(2) Water quality;

(3) Wildlife benefits;

(4) Soil productivity;

(5) Conservation compliance considerations;

(6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;

(7) State water quality priority areas;

(8) The environmental benefits per dollar expended; and

(9) The degree to which application is consistent with the pilot project proposal.

(e) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1468.21 Contract requirements.

(a) In order for an applicant to receive annual payments, the applicant must enter into a contract agreeing to implement a conservation farm plan. The FSA county committee, with NRCS concurrence, will use the NRCS ranking consistent with the provisions of § 1468.20 and grant final approval of the contract.

(b) A CFO contract will:

(1) Incorporate by reference all portions of a conservation farm plan applicable to CFO;

(2) Be for a duration of 10 years, and may be renewed, subject to the availability of funds, for a period not to exceed 5 years upon mutual agreement of CCC and the participant;

(3) Provide that the participant will:

(i) Not conduct any practices on the farm or ranch unit of concern consistent with the goals of the contract that would tend to defeat the purposes of the contract, or reduce net environmental and societal benefits;

(ii) Refund with interest any program payments received and forfeit any future payments under the program, on the violation of a term or condition of the contract, in accordance with the provisions of § 1468.25 of this part;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, in accordance with the provisions of § 1468.24 of this part;

(iv) Agree to forego participation in CRP, EQIP, and the cost-share agreements under WRP, along with future payments associated with these programs, with regard to the land under the CFO contract;

(v) Supply information as required by CCC to determine compliance with the contract and requirements of the program;

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices in accordance with the provisions of § 1468.22 of this part, and

(5) Include any other provision determined necessary or appropriate by CCC.

(c) There is a limit of one CFO contract at any one time for each farm, as constituted by FSA.

(d) The contract will incorporate the operation and maintenance of conservation practices applied under the contract, including those practices transferred from terminated CRP and EQIP contracts and WRP cost-share agreements. For persons wishing to transfer from CRP, EQIP, or WRP to CFO, practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate, unless otherwise stated in the conservation farm plan.

(e) Acreage that is subject to a WRP easement will not be included in the CFO contract.

(f) Upon completion, the participant must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract.

§ 1468.22 Conservation practice operation and maintenance.

(a) The participant will operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the conservation farm plan. Conservation practices installed before the execution of a CFO contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practice during the lifespan of the practice as specified in the contract to ensure that the operation and maintenance is occurring.

(b) For those persons who are signatories to existing CRP or EQIP contracts, or WRP cost-share agreements, practices will be transferred from EQIP and CRP contracts or WRP cost-share agreements, as agreed upon in the CFO conservation farm plan and CFO contract. Remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless otherwise stated in the conservation farm plan and CFO contract.

§ 1468.23 Annual payments.

(a) CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant for that practice as specified in:

(1) Part 1410 of this chapter, if the practice is a land retirement rental payment or cost-share practice which would have qualified for payment under CRP in accordance with § 1468.6(a);

(2) Part 1467 of this chapter, if the practice is a wetland restoration or protection practice which would have qualified for payment under WRP which was determined eligible in accordance with § 1468.6(b);

(3) Part 1466 of this chapter, if the practice was a conservation practice which would have qualified for payment under EQIP which was determined eligible in accordance with § 1468.6(c);

(b) The maximum amount of annual payments which a person may receive under the CFO for any fiscal year shall not exceed the total of the amounts calculated in accordance with paragraph (a) of this section after being limited as follows:

(1) The payment calculated in accordance with paragraph (a)(1) of this section is limited in accordance with CRP payment limitation provisions set forth in part 1410 of this chapter.

(2) The payment calculated in accordance with § 1467.9(a)(2) of this chapter is not limited.

(3) The payment calculated in accordance with § 1466.23(a)(3) of this chapter is limited in accordance with EQIP payment limitation provisions in § 1466.23(b) of this chapter.

(c) The regulations set forth at part 1400 of this chapter will be applicable in making payment eligibility determinations for CFO and in making person determination as they apply to the limitation of payments determined in accordance with paragraph (b) of this section.

(d) The CCC cost-share payments to a participant shall be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

(e) A landowner or producer that enrolls in CFO and terminates a CRP or EQIP contract or WRP cost-share

agreement will be eligible to receive payments for practices which have been determined, established, or completed by the technical agency under those contracts or agreements. Once the CFO contract is effective, all payments for practices, including any practice transferred from the terminated contract agreement will be made under the CFO contract, except for payments already earned under prior contracts or cost-share agreements.

(f) Payments will not be made to a participant who has applied or initiated the application of a conservation practice for the purposes of CFO prior to approval of the CFO contract.

(g) When requested by the State Conservationist on a case-by-case basis, the Chief may approve, based upon availability of funding, cost share on the reapplication of a practice to replace or repair practice destroyed by unusual circumstances beyond the control of the landowner.

(h) The participant and NRCS must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract before the CCC will approve the payment of any cost-share, incentive, or land retirement payment.

§ 1468.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements and is approved by the conservation district.

(b) The participant may agree to transfer a contract to another eligible owner or operator with the agreement of CCC. The transferee shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract. By agreeing to participate in CFO, CCC may require operation and maintenance of those conservation practices installed under CRP, EQIP, or WRP.

(c) CCC may require a participant to refund all or a portion of any assistance earned under a CRP or EQIP contract, or WRP cost-share agreement that was terminated as a condition of participation in CFO, if the participant sells or loses control of the land under a CFO contract and the new owner or controller does not assume responsibility under the contract.

§ 1468.25 Contract violations and termination.

(a)(1) If it is determined that a participant is in violation of the provisions of this part, or the terms of the contract including portions of the contract that incorporate transferred obligations from CRP or EQIP contracts, or WRP cost-share agreements, CCC will give the participant written notice of a reasonable time to correct the violation and comply with the terms of the contract and attachments thereto, as determined by the FSA county committee, in consultation with NRCS. If a participant continues in violation after the time to comply has elapsed, the FSA county committee may, in consultation with NRCS, terminate the CFO contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the FSA county committee, in consultation with NRCS, that the participant has submitted false information, filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1468.35 of this part, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest, determined in accordance with part 1403 of this chapter. CCC has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract for any reason stated above, before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good-faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract without penalty, if CCC determines that such termination would be in the public interest.

Subpart C—General Administration

§ 1468.30 Appeals.

(a) An applicant or participant may obtain administrative review of an adverse decision made with respect to this part and the CFO contract in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) CCC funding allocations;

(2) Eligible conservation practices;

(3) Payment rates, and cost-share percentages;

(4) Science-based formulas and factor values;

(5) Soils mapping and information; and

(6) Other matters of general applicability.

§ 1468.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1468.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, or as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this right to access.

§ 1468.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the

requirements of the program and may grant relief, to the extent it is deemed desirable, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1468.35 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program; made any fraudulent representation; or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such applicant or participant with respect to CFO contracts.

Signed in Washington, D.C. on September 23, 1998.

Pearlie S. Reed,

Vice President, Commodity Credit Corporation.

[FR Doc. 98–25923 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1726

Year 2000 Compliance: Electric Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule amends the regulations of the Rural Utilities Service (RUS) to state that RUS will make an electric loan only if the borrower's electric system is year 2000 compliant. The interim rule will ensure that RUS-financed projects and RUS financed electric systems meet the year 2000 date changeover without service or revenue disruption.

DATES: This rule is effective September 29, 1998. Comments must be received by RUS or carry a postmark or equivalent by November 30, 1998.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., STOP 1560, Room 4037, South Building, Washington, DC., 20250–1560. RUS requires a signed original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., STOP 1560, Room 4037, South Building, Washington, DC., 20250–1560. Telephone: (202) 720–9545. Facsimile: (202) 690–0717.

SUPPLEMENTARY INFORMATION:

Justification for Interim Rule

It is the policy of the Department of Agriculture that proposed rules relating to public property, loans, grants, benefits, or contracts be published for public comment notwithstanding the provisions of 5 U.S.C. 553, with respect to such rules. However, exemptions are permitted where an agency finds, for good cause, that an opportunity for comments would be impracticable, unnecessary, or contrary to the public interest.

RUS finds that good cause exists to implement this rule without providing a prior opportunity for public comment. Many computers that control electric systems are not programmed to handle the change of date from December 31, 1999, to January 1, 2000. These ''non-compliant'' computers may malfunction on or before January 1, 2000, with potentially widespread and catastrophic results. Computer controlled electric systems could fail causing electric power delivery to consumers and suppliers to be interrupted, and electric system safety could be adversely affected. Examples of potentially vulnerable areas include power plant control systems, transmission and distribution relays, substation metering, load management systems, maintenance and administration systems and billing records. Failure of electric systems could affect public health and safety.

RUS, therefore believes it would be contrary to the public interest to delay the effectiveness of the rule. Through this interim rule, RUS is undertaking to address with its electric borrowers year 2000 compliance issues that may potentially disrupt electric services that are critical to public health and safety. This rule is part of an effort by all USDA Rural Development agencies to address year 2000 readiness and prevent year 2000 problems. For these reasons, RUS determines that publication for advance notice and an opportunity for prior comment is not in the public interest.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034), determined RUS loans and loan guarantees are not covered by this Executive Order.

Executive Order 12866

This 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 (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) In accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

This interim rule does not impose new information collection requirements for the purposes of the Paperwork reduction Act of 1995 (44 U.S.C. Chapter 35). (OMB control number 0572–0032)

Unfunded Mandates

This rule contains no Federal mandate (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends Chapter XVII of Title 7 of the Code of Federal Regulations as follows:

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

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

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

2. In § 1710.112, a new paragraph (c) is added to read as follows:

§ 1710.112 Loan feasibility.

* * * * *

(c) RUS considers a loan to be feasible only if the borrower's electric system is year 2000 compliant, or if the borrower provides RUS with evidence, satisfactory to RUS, that it is taking measures necessary to ensure that its electric system will be year 2000 compliant on or before December 31, 1999. Year 2000 compliant means that product performance and function are not affected by dates before, during, and a reasonable time after the year 2000.

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

3. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

4. In § 1726.20, a new sentence is added at the end to read as follows:

§ 1726.20 Standards and specifications.

* * * The materials and equipment must be year 2000 compliant, as defined in 7 CFR 1710.112 (c).

Dated: September 21, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–26021 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–15–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 722, 723 and 741

Organization and Operation of Federal Credit Unions; Appraisals; Member Business Loans; and Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA is updating, clarifying and streamlining its existing rules concerning member business loans and appraisals for federally insured credit unions, as well as implementing recent statutory limitations regarding member business loans. The intended effect of this rule is to reduce regulatory burden, maintain safety and soundness, and provide an exception for qualifying credit unions from the statutory aggregate limit on a credit union's outstanding member business loans.

DATES: Effective September 29, 1998. Comments must be received on or before November 30, 1998.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Office of General Counsel at the above address or telephone: (703) 518–6540; or David Marquis, Director, Office of Examination and Insurance, at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board adopted its first member business loan rule in April 1987 due to the increased amount of credit union losses attributed to business lending activity. In response to continued losses to credit unions and the National Credit Union Share Insurance Fund (NCUSIF) due to member business loans, the NCUA Board adopted a more restrictive member business loan rule in September 1991. In general, the results of the 1991 revision have been very positive. Nonetheless, experience with the regulation indicated a need for simplification, clarification, and improvement. Therefore, on July 23, 1997, the Board issued proposed amendments to the regulation governing member business loans (Current Section 701.21(h) and Proposed Part 723 of NCUA's Regulations) and appraisals (Part 722 of NCUA's Regulations) with a sixty-day comment period. 62 FR 41313 (August 1, 1997).

The NCUA Board was considering adopting a final member business loan rule in March of this year, when it became apparent that Congress was considering legislation regarding the ability of credit unions to grant member business loans. The NCUA Board decided to defer consideration of a final rule until Congress had acted on this legislation. Since then, the Credit Union Membership Access Act (the Act) was enacted into law on August 7, 1998. Public Law 105–219. Among other things, the Act imposes a new aggregate limit on a credit union's outstanding member business loans. However, the Act also provides for three circumstances where a credit union may qualify for an exception from the aggregate limit.

The NCUA Board has decided to finalize those aspects of the proposed

rule that are not affected by the Act, as well as set forth the procedures for obtaining an exception from the aggregate limit as provided for by the Act. The Board is issuing this rule as an interim final rule because there is no public interest in delaying action on exceptions from the aggregate limit. On the contrary, there is a strong public interest in permitting credit unions to continue to grant, and members to receive, business loans. Therefore, the Board finds it necessary and appropriate to act expeditiously to allow certain credit unions to obtain an exception to continue to grant business loans that would exceed the aggregate loan limit. If this rule is not effective immediately, a number of credit unions and their members could be adversely impacted. Accordingly the Board, for good cause, finds that (1) pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and (2) pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication. Although this rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments, especially on the exception from the aggregate loan limits.

B. Previous Comments and New Statutory Provisions

Thirty-four comments were received. Comments were received from eight federal credit unions, seven state chartered credit unions, ten state leagues, three national credit union trade associations, one bank, four bank trade associations, and one consulting group. Except for the bank and bank trade associations, the commenters were very supportive of the proposal, although most commenters suggested ways to improve the final rule. Two commenters expressed complete support for the proposal.

Section-by-Section Analysis

The proposed amendments were written in a plain English question and answer format. Eight commenters approved of the plain English format but some of these commenters questioned whether a question and answer format would be comprehensive. The commenters expressing doubt requested an additional section of supplementary information.

Four commenters opposed the plain English question and answer format. They believe that using it is not in the best interest of the credit union industry because this format is not comprehensive and would limit the creativity of credit unions in providing business loans to their members. These commenters recommend that the regulation be written in the traditional regulatory style and be supplemented with questions and answers for further clarification of the rule.

The NCUA Board has not received any evidence to indicate any problems with the plain English format. The NCUA Board believes the question and answer format will lessen misunderstandings and is comprehensive and easy to understand. The NCUA Board does not believe a supplementary information section in the final rule is necessary. Therefore, the final rule is written in this format.

NCUA proposed moving the rule from Part 701 to Part 723 of NCUA's Regulations. Five commenters approved placing the member business loan rule in its own Part. The NCUA Board agrees and the final rule will be in Part 723.

Proposed Section 723.1—What is a Member Business Loan?

This section provides a definition of a member business loan. The proposal defined a member business loan as any loan, line of credit, or letter of credit where the borrower uses the proceeds for the following purposes: commercial, corporate, investment property, business venture or agricultural. This definition was slightly different from the current rule in that the proposal deletes the term ''business'' from ''business investment property.'' However, NCUA may no longer define what is a member business loan by regulation because the Act defines the term. Therefore, a member business loan means any loan, line of credit or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose. Section 107A(c)(1)(a) of the Act.

Proposed Section 723.1(b)—Exceptions to the General Rule?

This section sets forth the exceptions to the definition of a member business loan. NCUA proposed to increase the dollar threshold at which the rule applies from $50,000 to $100,000. Fifteen commenters supported the new threshold. Some of these commenters believe the change would help small and low-income credit unions. However, the Act sets forth the applicable exceptions to the definition of a member business loan. The dollar threshold is set at $50,000.

The new regulation sets forth five exceptions that are virtually identical to the exemptions in the current member business loan regulation. The following loans are exempt from the member business loan definition: (1) an extension of credit that is fully secured by a lien on a 1-to-4 family dwelling that is the primary residence of a member; (2) an extension of credit that is fully secured by shares in the credit union making the extension of credit or deposits in financial institutions; (3) an extension of credit that meets the member business loan definition made to a borrower or an associated member that has a total of all such extensions of credit in an amount equal to or less than $50,000; (4) an extension of credit the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the Federal Government or of a State, or any political subdivision thereof; or (5) an extension of credit that is granted by a corporate credit union (as that term is defined by the Board) to another credit union.

Proposed Section 723.2—What are the prohibited activities?

NCUA proposed no substantive changes from the current rule, except to add senior management employees and officials to the provision prohibiting equity agreements or joint ventures. Four commenters agreed with NCUA that senior management employees and officials should be prohibited from receiving income tied to a business loan the credit union makes. Two opposed the proposal.

One commenter believed it would be inconsistent to prohibit non-compensated officials from entering into equity agreements and joint ventures involving business loans while permitting credit unions to make business loans to those officials. However, this commenter agreed with the proposal to extend the prohibition against equity agreements and joint ventures involving business loans to senior management employees as long as NCUA excludes non-compensated officials from the prohibition. The NCUA Board agrees and has incorporated this change into the final rule.

Two commenters believed that the current prohibition on senior management officials receiving business loans should be eliminated. The NCUA Board has not been provided with any convincing reason to eliminate the prohibition. One commenter correctly pointed out that the title to this section should be changed to ''who is ineligible to receive a member business loan.'' This commenter stated that otherwise it would make senior management

employment a prohibited activity. The NCUA Board agrees and has retitled the section accordingly.

Proposed Section 723.3—What are the requirements for construction and development lending?

This section sets forth the requirements for construction and development lending. NCUA proposed no substantive changes to this section from the current rule. NCUA clarified that construction and development loans below the dollar limits, individually and/or in the aggregate, are not considered to be member business loans for the purpose of this rule. Thus, if a member has a construction loan for $40,000, and no other outstanding business type loans, including unfunded business type lines of credit, then the construction loan is not a member business loan. No substantive comments were received on this section. The NCUA Board is adopting this section in final as proposed.

Proposed Section 723.4—What are the other applicable regulations?

This section merely describes the other lending rules credit unions must follow when granting member business loans to the extent they are consistent with this regulation. NCUA proposes no substantive changes from the current rule. One commenter objected to incorporating Sections 701.21(a) through (g) of NCUA's regulations into this regulation. One commenter supported this provision. The NCUA Board has not been provided with any convincing reason to change this section, so it is adopting it in final as proposed.

Proposed Section 723.5—How do I implement a member business loan program?

This section requires the board of directors to adopt business loan policies and review them at least annually. This section also requires the board to use the services of an individual with at least two years direct experience in the type of lending in which the credit union will be engaging. The preamble to the proposal also clarified that NCUA has never required experience with business loans in general but, rather, has required experience with making loans the credit union intends to grant. The preamble also clarified that credit unions need not hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. Credit unions can meet the experience requirement through various approaches. For example, a credit union can use the services of a CUSO, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

Two commenters supported NCUA's clarification that the rule does not require two years experience specifically in business lending. Two commenters did not believe there would be any hindrances in obtaining a staff person with two years relevant lending experience. Two commenters believe it is difficult to find someone who has the relevant experience for every type of commercial loan. One commenter stated that the real issue is having the money to hire such experienced people.

Two commenters recommended eliminating the two-year experience requirement. Two commenters believed NCUA should allow credit unions to address qualifications based on what the credit union desires. One commenter agreed with the new language but believed it is still overly restrictive and represents an attempt to micromanage credit unions.

One commenter appreciated NCUA's clarification that the requirement to retain staff with two years of experience does not mean specific business lending experience. This commenter stated that allowing two years of lending experience to suffice without a specific requirement for business lending experience, coupled with the ability of a credit union to use CUSO services, an employee from another credit union, or a contractor, will remove a business lending impediment for many credit unions.

The NCUA Board believes it is crucial for a credit union to have experienced personnel involved in making decisions regarding business lending. Member business loans require special expertise in virtually all phases of origination and administration. Prior to NCUA's imposition of the experience requirement, a number of credit unions suffered losses from member business loans as a result of poorly structured and administered loans. Most of these problems could have been avoided had the credit union been better informed and prepared through the use of experienced personnel. Therefore, the NCUA Board is continuing to require credit unions instituting member business loan programs to retain personnel with two years of business lending experience.

Two commenters requested that the final regulation contain some of the examples in the preamble to the proposal of proper arrangements such as the use of a CUSO or an employee of another credit union. The Board agrees and the final rule contains examples of how to fulfill the two-year requirement.

Proposed Section 723.6—What must our member business loan policies address?

This section sets forth those items that credit unions must address in their written business loan policies. The proposal adds a new requirement for credit unions to review financial statements. One commenter believed it is overly burdensome to review and analyze the member's entire financial statements instead of reviewing updates. Five commenters did not believe it would be excessively burdensome. After further consideration, the NCUA Board does not see any significant benefit in requiring a review of financial statements on all member business loans. In most cases, a credit union engaging in business lending will ordinarily review the financial statements of its open-end business loans. Therefore, the final rule does not require credit unions to review financial statements.

The proposal also changes the term ''appraisals'' to ''determination of value.'' The wording in the current rule unduly emphasizes member business loans as real estate loans. The proposed wording clarifies that, whether a member business loan is for real estate or non-real estate, credit unions must meet the collateral requirements. The proposal also changes the term ''title search'' to ''determination of ownership'' for the same reason.

One commenter believed the present regulatory distinction between real estate secured business loans and other business loans is often blurred and that the proposed new regulation does little to recognize this distinction. This commenter stated that the terms used in this regulation are more applicable to real estate lending. Another commenter suggested that NCUA consider two distinct classes of member business loans: one for real estate, incorporating underwriting criteria such as higher loan-to-value ratios, owner occupancy standards, lien position requirements, longer loan terms; and one for other types of business loans, with flexible underwriting criteria appropriate to the specific loan. Although there is a distinction between real estate secured business loans and other types of business loans, the NCUA Board believes the stated requirements are necessary for both. The NCUA Board believes the proposed changes in language will be helpful to credit unions in making business loans.

The proposal also clarified that the maturity of a member business loan may not exceed twelve years. The proposal

inadvertently failed to exclude federally insured state chartered credit unions from this requirement as NCUA has consistently done in the past. Nine commenters stated that the twelve-year maturity limit should not apply to state chartered credit unions. NCUA agrees and the final rule permits state chartered credit unions to grant business loans with a maturity limit consistent with state law. Five credit unions requested that the twelve-year maturity limit be increased for federal credit unions. This is currently impermissible for federal credit unions since the Federal Credit Union Act limits such loans to twelve years.

Proposed Section 723.7—What other items must the member business loan policy address?

This section sets forth the remaining issues that written loan policies must address, including loan-to-value ratios and the requirement for the personal liability and guarantee of the member. The proposal increases the second lien limitation from 70% to 80% for collateral ratios. The proposal also clarifies that private mortgage insurance for first liens with a loan-to-value ratio exceeding 80% applies only to real estate loans. Twelve commenters supported the increase in the second lien limitation from 70% to 80%. However, some commenters questioned whether the same stringent loan-to-value ratios would be required for loans on personal properties, vehicles and equipment. They believed that NCUA's approach could hinder the competitiveness of credit unions wanting to provide business loans to their members. One commenter believed the second lien limitation should be increased further while another commenter believed the 70% loan-to-value is adequate. Two commenters believed that credit unions need more flexibility for loan to value ratios. One commenter believed NCUA should allow loan-to-value ratios up to 100%. The NCUA Board believes the specified loan limits are appropriate for member business loans and has incorporated them into the final rule.

One commenter stated that the regulation should be clarified so that the loan-to-value ratios for business loans are applicable only for member business loans. For example, if a business loan for $50,000 is granted on an unsecured basis and if an additional $40,000 is granted to the borrower, only $40,000 would be subject to the loan-to-value limitations. The Board agrees that only that portion of member business loans in excess of $50,000 are subject to the loan-to-value limitations. However, if the two loans are on the same collateral, the loan-to-value limitation will apply to the aggregate amount of the loans. For example, if the credit union makes a loan on a piece of real estate for $40,000 and subsequently makes another $40,000 loan on the same collateral, the loan-to-value limitation will apply to the entire $80,000.

This proposed section would also allow any credit union to seek a waiver from the loan-to-value ratios for a particular business loan program. Five commenters agreed with expanding the waiver provision to permit credit unions that recently initiated member business loan programs to seek an exemption from loan-to-value limitations. The final rule includes this waiver authority from the loan-to-value limitations.

The proposal exempts federally insured credit unions from the loan-to-value ratios with respect to credit card line of credit programs offered to nonnatural persons that are limited to routine purposes normally made under those programs. One commenter supported this proposal. One commenter erroneously believed this section did not apply to federal credit unions.

Proposed Section 723.8—How much may one member or a group of associated members borrow?

This section sets forth the aggregate amount of outstanding member business loans that credit unions may grant to one member or a group of associated members. Unless NCUA grants a waiver, the proposal limits the aggregate amount of outstanding business loans to any one member or group of associated members to 15% of the credit union's reserves (less the Allowance for Loan Losses account) or $100,000, whichever is higher. Six commenters agreed with the 15% threshold although one commenter would delete the dollar threshold. One commenter requested that the 15% limit be increased. The NCUA Board has not been provided with a convincing rationale for raising the 15% limit and is adopting the proposal in final.

The NCUA Board is clarifying how loan participations are treated in regard to business loan limits. In those situations where the credit union sold the participation without recourse, the amount sold would not be included when calculating the 15% limit for a single borrower. However, if the credit union sold the participation with recourse (that is, the selling credit union essentially retains a contingent liability), it would include the amount sold when calculating the 15% limit.

The NCUA Board is also clarifying that the aggregate amount of outstanding member business loans to any one member includes any unfunded commitments.

Proposed Section 723.9—How do I calculate the aggregate 15% limit?

The current rule states that, if any portion of a member business loan is secured by shares in the credit union or a deposit in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by any agency of the federal government or of a state or any of its political subdivisions, such portion is not used in calculating the 15% limit. NCUA proposed no substantive changes to the current rule on the calculation of the 15% limit. Some credit unions have asked NCUA staff whether the partial guarantee by a federal agency includes loans guaranteed by the Small Business Administration. The amount of the loan guaranteed by the Small Business Administration is not used in calculating the 15% limit.

For the purpose of being consistent with proposed section 723.1(b), NCUA proposed to change the term ''financial institution'' in this section to ''federally insured financial institution.'' Since the Act, in setting forth the exceptions to the member business loan definition, does not require the financial institution to be federally insured, NCUA is not adopting this change.

Proposed Section 723.10—What loan limit waivers are available?

The proposal provides for a waiver from: (1) the maximum loan amount to one borrower or associated group of members; (2) loan-to-value ratios; and (3) construction and development lending. Although a number of commenters approved of the waiver provision, twelve commenters specifically questioned whether the waivers apply to individual loans or to a category of loans. The intent of the proposal was to exempt categories of loans. A loan-by-loan waiver would be unworkable and overly burdensome for credit unions and NCUA. The final rule clearly states that the waiver is for a category of loans.

Proposed Section 723.11—How do I obtain an available waiver?

This section describes the information that a credit union must submit to the Regional Director with a waiver request. NCUA proposed no substantive changes to the requirements of the current rule. However, in the interim final rule, the NCUA Board is providing a mechanism for state chartered federally insured credit unions to have the waiver request

processed through the state supervisory authority.

Proposed Section 723.12—What will NCUA do with my waiver request?

This section addresses what the Regional Director must consider in reviewing the waiver request and how the waiver is processed. The proposal increased the number of days from 30 to 60 that a Regional Director must act on a waiver request. It also eliminated the automatic waiver approval if a region does not take action on a request within the specified timeframe. Twelve commenters believed that the number of days NCUA should have to process the waiver should be limited to 30 days and the automatic waiver provision should be reinstated. A few commenters requested that NCUA have less than 30 days to approve or disapprove the request. One commenter asked that NCUA clarify whether there are any time limits once a waiver has been approved. The NCUA Board is extending the number of days the agency has to process the waiver to 45 days (from the receipt from the federal credit union or the state supervisory authority) and has restored the automatic waiver approval if a region does not take action on a request within the specified timeframe. Any waiver is revocable in NCUA's sole discretion. If a waiver is revoked, loans granted under the waiver authority are grandfathered.

Proposed Section 723.13—What options are available if the Regional Director denies our waiver request or a portion of it?

Under the current rule, a credit union may appeal the denial of its waiver request by the Regional Director to the NCUA Board. NCUA proposed no substantive changes to this area and no substantive comments were received. The Board is adopting this section in final as proposed.

Proposed Section 723.14—How do I reserve for potential losses?

Consistent with the current rule, this section addresses the criteria for determining the classification of loans. NCUA proposes no substantive changes to the loan classification. However, NCUA proposes to move the current Appendix of Section 701.21(h) to this proposed section. No substantive comments were received on this section. The Board is adopting this proposed section in final.

Proposed Section 723.15—How much must I reserve for potential losses?

This section provides a schedule a credit union must use to reserve for classified loans. NCUA proposes no substantive changes to this schedule from the current rule. However, NCUA clarified the meaning of this section by stating that this is the minimum amount when establishing the reserve percentage. One commenter opposed the mandatory reserve requirement. The Board believes the current requirement is working well and is retained as proposed.

New Section 723.16—What is the aggregate member business loan limit?

The Act imposes a new aggregate limit on a credit union's outstanding member business loans (including any unfunded commitments) of the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Net worth is all of the credit union's retained earnings. Retained earnings normally includes undivided earnings, regular reserves and any other reserves. If a credit union currently has business loans that exceed the aggregate loan limit and does not qualify for an exception, it has until August 7, 2001 to reduce the total amount of outstanding member business loans or below the aggregate loan limit. Furthermore, an insured credit union that is undercapitalized may not make any new business loans until such time the credit union becomes adequately capitalized as required by the prompt corrective action provisions of the Credit Union Membership Access Act of 1998.

New Section 723.17—Are there any exceptions to the aggregate loan limit?

The Act sets forth three exceptions to the aggregate limit: (1) credit unions that have a low-income designation or participate in the Community Development Financial Institutions program; (2) credit unions that have a ''a history of primarily making member business loans,'' or (3) credit unions that were chartered for the purpose of primarily making member business loans.

A credit union that does not currently have a low-income designation and is seeking to determine whether it qualifies should contact its regional director or the appropriate state supervisor. The Board is defining ''a history of primarily making member business loans'' as either (1) member business loans that comprise at least 25% of the credit union's outstanding loans (as evidenced in a call report for 1998 or any of the three prior years); or (2) member business loans comprise the largest portion of the credit union's loan portfolio. For example, if a credit union makes 23% member business loans, 22% first mortgage loans, 22% new automobile loans, 20% credit card loans and 13% other real estate loans, then the credit union would be considered as meeting the primarily making business loan standard. For determining the categories of loans the credit union should use loan categories that are similar to those set forth in the call report such as: unsecured credit card loans/lines of credit; all other unsecured loans/lines of credit; new vehicle loans; used vehicle loans; total first mortgage loans; total other real estate loans; total member business loans. NCUA estimates that less than 70 credit unions, out of a total of 11,125 federally insured credit unions, will qualify for either of these exceptions.

An exception may also be granted for credit unions that were chartered for the purpose of primarily making member business loans. It is up to the credit union to provide sufficient documentation to demonstrate it meets this exception. Due to the nature of federal chartering it is unlikely that many federal credit unions will qualify for this type of exception. Furthermore, the NCUA Board is seeking comment on how it can more fully define credit unions that were ''chartered for the purpose of * * * primarily making business loans'' for the purpose of the exception.

A credit union that does not qualify for an exception must immediately stop making business loans that will exceed the aggregate loan limit. Credit unions that, in good faith, believe they qualify for an exception can continue to make new member business loans as long as they have applied for an exception.

New Section 723.18—How do I obtain an exception?

To obtain the exception, a federal credit union must submit documentation to the Regional Director, demonstrating that it meets the criteria of one of the exceptions. The regional director will process requests for exemptions expeditiously for federal credit unions. Although NCUA believes most exceptions will be granted in 1998 it is possible for a credit union to qualify in the future. For example, a credit union that receives a low-income designation in the year 2001 could apply for and receive an exception on that basis.

A state chartered federally insured credit union must submit documentation to its state regulator to receive the exception. Although effective when granted by the state regulator, the state regulator should forward its decision to NCUA.

The exception does not expire unless revoked by the regional director for a

federal credit union or by the state regulator for a federally insured state chartered credit union. If an exception is revoked, loans granted under the exception authority are grandfathered.

If an exception request is denied for a federal credit union, it may be appealed to the NCUA Board within 60 days of the denial by the regional director. A federal credit union can continue to make business loans until the NCUA Board decides the appeal.

Proposed Section 723.16—What are the recordkeeping requirements?

This proposed section, consistent with the current rule, requires a credit union to identify member business loans separately in its records and financial reports. NCUA proposed no substantive changes to this requirement from the current rule. Four commenters believed that this recordkeeping would be burdensome and unnecessary. NCUA believes it is important for credit unions as well as NCUA to be able to monitor business lending activity. Therefore, the Board is not making any changes to this section in the final rule, except to renumber it as Section 723.19.

Proposed Section 723.17—What additional steps do federally insured state chartered credit unions have to perform?

In the preamble to the proposal, the Board stated that it believes it is important for state supervisory authorities to remain aware of, and involved in, member business loan activities in federally insured state chartered credit unions. This new section would require federally insured state chartered credit unions to obtain written approval for a waiver from their state supervisory authority prior to submitting the waiver request to NCUA. Three commenters questioned why NCUA believes it is necessary to have this section. The commenters asked what would happen if a state had no policy on waivers and declined to rule on the waiver. These commenters believed this provision simply makes it more difficult for a state chartered federally insured credit union to obtain a waiver and that it makes little sense to restrict state chartered credit unions in such a manner.

It appears that some of the commenters believed the waiver process was on a loan-by-loan basis instead of a category loans. The NCUA Board still believes it is important for state supervisory authorities to be involved in waivers from the member business loan rule. Therefore, Section 723.11 requires a federally insured state chartered credit union to process its waiver request through the state supervisory authority. The NCUA Board believes the state supervisory authorities will expeditiously process this request and there will only be a minimal increase in time in processing waivers from state chartered federally insured credit unions. NCUA will not approve a waiver request that the state supervisory authority has not forwarded to NCUA or a request that the state supervisory authority recommends denial.

Proposed Section 723.18—How can a state supervisory authority develop and implement a member business loan regulation?

As in the current rule, the proposal allows a federally insured state chartered credit union to obtain an exemption from NCUA's member business rule so that a state supervisory authority can enforce the state's rule instead of NCUA's rule. The NCUA Board must approve the state's rule before a federally insured state chartered credit union is exempt from NCUA's member business loan rule. To provide better guidance to the states, the proposal identifies the minimum requirements that they must address for a rule to be approved by the NCUA Board. One commenter opposes the application of NCUA's member business rule to federally insured state chartered credit unions and requests that it be eliminated for them. Past practice has indicated the importance of this rule being applied to state chartered federally insured credit unions. However, the NCUA Board recognizes the concerns of the state supervisory authorities and the interim final rule modifies this section to demonstrate that the NCUA Board in reviewing a state's rule is concerned, as insurer, with the safety and soundness issues presented by the rule and not whether the language of the rule is virtually identical to NCUA's rule.

Three commenters questioned whether the adoption of the revised rule by NCUA automatically means a state's rule is no longer ''substantially equivalent.'' Because of the new statutory requirements of the Act, no state rule is currently approved for use by federally insured state chartered credit unions. Therefore, states must seek a new determination from NCUA.

Three commenters encouraged the NCUA Board to allow more flexibility in the interpretation of what is ''substantially equivalent'' where safety and soundness can be maintained. In making its determination to approve a state's rule, the Board is primarily concerned with safety and soundness considerations, and that is why the minimum standards for such a determination are set forth in the regulation.

Because proposed section 723.17 is deleted from the final rule, this section is renumbered as Section 723.20.

Proposed Section 723.19—Definition

NCUA proposed a general definition section at the end of the rule. This section clarified the loan-to-value ratio by including terminology that requires the inclusion of unfunded commitments and/or lines of credit when determining the aggregate sum. Six commenters believed NCUA should require credit unions to include unfunded commitments and/or lines of credit in the aggregate sum to determine loan-to-value ratios. One commenter disagreed. The NCUA Board is adopting in final the proposal to include unfunded commitments and/or lines of credit in the aggregate sum for loan-to-value determinations since this is the total amount that the credit union agreed to loan to the borrower. However, this section in the final rule is numbered section 723.21.

Miscellaneous

One commenter requested that the preamble or final regulation state that credit scoring is permitted to assist in determining the credit worthiness of a business loan applicant. Although not stated in the regulation, we note that credit scoring that complies with equal credit opportunity laws is permitted in evaluating the credit worthiness of a business loan applicant.

Part 722—Appraisals

Certain loans as specified in Section 722.3(a) do not require an appraisal. In addition, the NCUA Board proposes a waiver process from the appraisal requirement where the appraisal requirement is an unnecessary burden. Eight commenters supported the waiver appraisal provision, although there was some confusion on whether it applied to a loan program or individual loans. The intent of the proposal was to apply to a loan program. The final rule reflects that the waiver applies to a loan program. Three commenters objected to having a waiver process. The NCUA Board does not believe that a waiver process will have a negative effect on the safety and soundness of credit unions.

C. Other Reductions in Regulatory Burden

Under the current rule, all loans, lines of credit, or letters of credit that meet the definition of a member business loan must be separately identified in the

records of the credit union and be reported as such in financial and statistical reports required by the NCUA. NCUA believes that this information is already collected, and readily available, through the 5300 Call Report. The current requirement imposes an unnecessary burden on credit unions and, therefore, the NCUA Board is deleting this monitoring requirement.

The current rule requires credit unions to provide periodic disclosures to credit union members on the number and aggregate dollar amount of member business loans. NCUA believes the language is ambiguous and does not serve any true safety or soundness issue or concern. Therefore, the NCUA Board is deleting this requirement.

Current § 701.21(c)(5) references the member business loan section. Due to the proposed change to the member business loan rule numbering system, NCUA is updating § 701.21(c)(5) to reference the appropriate sections of the final rule.

D. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The final member business loan rule would reduce existing regulatory burdens. In addition, most small credit unions do not grant member business loans. Therefore, the NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The reporting requirements in part 723 have been submitted to the Office of Management and Budget for approval and the OMB number will be published as soon as it is received by NCUA. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number will be displayed in the table at 12 CFR Part 795.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule, as does the current rule, applies to all federally insured credit unions, including federally insured state chartered credit unions. However, since the final rule reduces regulatory burden, NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

Congressional Review

The Office of Management and Budget has determined this is not a major rule.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Mortgages, Reporting and recordkeeping requirements, Surety bonds.

12 CFR Part 722

Appraisals, Credit, Credit unions, Reporting and recordkeeping requirements, State-certified and State-licensed appraisers.

12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 23, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR chapter VII be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.21 [Amended]

2. Section 701.21 is amended in paragraph (c)(5) by revising ''§ 701.21(h)(1)(i)'' to read ''§ 723.1 of this chapter'' and ''§ 701.21(h)(2)(ii)'' to read ''§§ 723.8 and 723.9 of this chapter.''

3. Section 701.21(h) is removed and reserved.

PART 722—APPRAISALS

4. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 3339.

5. Section 722.3 is amended by removing ''or'' at the end of paragraph (a)(7), by removing the period at the end of paragraph (a)(8)(ii) and adding ''; or'' in its place, and by adding a new paragraph (a)(9) to read as follows:

§ 722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(9) The regional director has granted a waiver from the appraisal requirement for a category of loans meeting the definition of a member business loan.

* * * * *

6. Part 723 is added to read as follows:

PART 723—MEMBER BUSINESS LOANS

Sec.

723.1 What is a member business loan?
723.2 What are the prohibited activities?
723.3 What are the requirements for construction and development lending?
723.4 What are the other applicable regulations?
723.5 How do you implement a member business loan program?
723.6 What must your member business loan policy address?
723.7 What are the collateral and security requirements?
723.8 How much may one member, or a group of associated members, borrow?
723.9 How do you calculate the aggregate 15% limit?
723.10 What loan limit waivers are available?
723.11 How do you obtain a waiver?
723.12 What will NCUA do with my waiver request?
723.13 What options are available if the NCUA Regional Director denies our waiver request, or a portion of it?
723.14 How do I reserve for potential losses?
723.15 How much must I reserve for potential losses?
723.16 What is the aggregate member business loan limit for a credit union?
723.17 Are there any exceptions to the aggregate loan limit?
723.18 How do I obtain an exception?
723.19 What are the recordkeeping requirements?
723.20 How can a state supervisory authority develop and enforce a member business loan regulation?
723.21 Definitions.

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.1 What is a member business loan?

(a) *General rule.* A member business loan includes any loan, line of credit, or

letter of credit where the borrower uses the proceeds for the following purposes:

(1) Commercial;

(2) Corporate;

(3) Other business investment property or venture; or

(4) Agricultural.

(b) *Exceptions to the general rule.* The following is not a member business loan:

(1) A loan fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;

(2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(3) Loan(s) to a member or an associated member which, when added together, are equal to or less than $50,000;

(4) A loan where a federal or state agency (or its political subdivision) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or

(5) A loan granted by a corporate credit union to another credit union under part 704 of this chapter.

§ 723.2 What are the prohibited activities?

(a) Who is ineligible to receive a member business loan? You must not make a member business loan to the following:

(1) Any member of the board of directors who is compensated as such;

(2) Your chief executive officer (typically this individual holds the title of President or Treasurer/Manager);

(3) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager);

(4) Your chief financial officer (Comptroller); or

(5) Any associated member or immediate family member of anyone listed in paragraphs (a)(1) through (4) of this section.

(b) Equity agreements/joint ventures. You may not grant a member business loan if any additional income received by the credit union, senior management employees, or any member of the board of directors who is compensated as such, is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

§ 723.3 What are the requirements for construction and development lending?

Unless the Regional Director grants an exemption, loans granted for the construction or development of commercial or residential property are subject to the following additional requirements.

(a) The aggregate of all construction and development loans must not exceed 15% of reserves, (excluding the Allowance for Loan Losses account). To determine the aggregate, you may exclude any portion of a loan:

(1) Secured by shares in the credit union;

(2) Secured by deposits in another federally insured financial institution;

(3) Fully or partially insured or guaranteed by any agency of the federal government, state, or its political subdivisions; or

(4) Subject to an advance commitment to purchase by any agency of the federal government, state, or its political subdivisions;

(b) The borrower must have a minimum of 35% equity interest in the project being financed; and

(c) The funds may be released only after on-site, written inspections by independent, qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

§ 723.4 What are the other applicable regulations?

The provisions of § 701.21(a) through (g) of this chapter apply to member business loans to the extent they are consistent with this part.

§ 723.5 How do you implement a member business loan program?

The board of directors must adopt specific business loan policies and review them at least annually. The board must also utilize the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. Credit unions do not have to hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

§ 723.6 What must your member business loan policy address?

At a minimum, your policy must address the following:

(a) The types of business loans you will make;

(b) Your trade area;

(c) The maximum amount of your assets, in relation to reserves, that you will invest in business loans;

(d) The maximum amount of your assets, in relation to reserves, that you will invest in a given category or type of business loan;

(e) The maximum amount of your assets, in relation to reserves, that you will loan to any one member or group of associated members, subject to § 723.8;

(f) The qualifications and experience of personnel (minimum of 2 years) involved in making and administering business loans;

(g) A requirement to analyze and document the ability of the borrower to repay the loan;

(h) Receipt and periodic updating of financial statements and other documentation, including tax returns;

(i) A requirement for sufficient documentation supporting each request to extend credit, or increase an existing loan or line of credit (except where the board of directors finds that the documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies). At a minimum, your documentation must include the following:

(1) Balance sheet;

(2) Cash flow analysis;

(3) Income statement;

(4) Tax data;

(5) Analysis of leveraging; and

(6) Comparison with industry average or similar analysis.

(j) The collateral requirements must include:

(1) Loan-to-value ratios;

(2) Determination of value;

(3) Determination of ownership;

(4) Steps to secure various types of collateral; and

(5) How often the credit union will reevaluate the value and marketability of collateral;

(k) The interest rates and maturities of business loans;

(l) General loan procedures which include:

(1) Loan monitoring;

(2) Servicing and follow-up; and

(3) Collection;

(m) Identification of those individuals prohibited from receiving member business loans.

§ 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans must be secured by collateral as follows:

Lien	Minimum loan to value requirements
All	LTV ratios cannot exceed 95%.
First	You may grant a LTV ratio in excess of 80% only where the value in excess of 80% is covered through: for real estate member business loans, acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union (where available); insurance or guarantees by, or subject to advance commitment to purchase by, an agency of the federal government; or insurance or guarantees by, or subject to advance commitment to purchase by, an agency of a state or any of its political subdivisions.
First	LTV ratios up to 80%.
Second	LTV ratios up to 80%.

(b) Borrowers, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) or those where the Regional Director grants a waiver, must provide their personal liability and guarantee.

(c) Federally insured credit unions are exempt from the provisions of paragraphs (a) and (b) of this section with respect to credit card line of credit programs offered to nonnatural person members that are limited to routine purposes normally made available under those programs.

§ 723.8 How much may one member, or a group of associated members, borrow?

The aggregate amount of outstanding member business loans (including any unfunded commitments) to any one member or group of associated members must not exceed the greater of:

(a) 15% of the credit union's reserves (excluding the Allowance for Loan Losses account); or

(b) $100,000; or

(c) An amount approved by the credit union's Regional Director.

§ 723.9 How do you calculate the aggregate 15% limit?

(a) *Step 1.* Calculate the numerator by adding together the total outstanding balance of member business loans to any one member, or group of associated members. From this amount, subtract any portion:

(1) Secured by shares in the credit union;

(2) Secured by deposits in another federally insured financial institution;

(3) Fully or partially insured or guaranteed by any agency of the Federal government, state, or its political subdivisions;

(4) Subject to an advance commitment to purchase by any agency of the Federal government, state, or its political subdivisions.

(b) *Step 2.* Divide the numerator by all reserves, excluding the Allowance for Loan Losses account.

§ 723.10 What loan limit waivers are available?

In addition to an individual waiver from the personal liability and guarantee requirement, you also may seek a waiver for a category of loans in the following areas:

(a) Loan-to-value ratios;

(b) Maximum loan amount to one borrower or associated group of borrowers; and

(c) Construction and development loan limits.

§ 723.11 How do you obtain a waiver?

To obtain a waiver, a federal credit union must submit a request to the Regional Director. A state chartered federally insured credit union must submit the request to its state supervisory authority. If the state supervisory authority approves the request, the state regulator will forward the request to the Regional Director. A waiver is not effective until it is approved by the Regional Director. The waiver request must contain the following:

(a) A copy of your business lending policy;

(b) The higher limit sought;

(c) An explanation of the need to raise the limit;

(d) Documentation supporting your ability to manage this activity; and

(e) An analysis of the credit union's prior experience making member business loans, including as a minimum:

(1) The history of loan losses and loan delinquency;

(2) Volume and cyclical or seasonal patterns;

(3) Diversification;

(4) Concentrations of credit to one borrower or group of associated borrowers in excess of 15% of reserves (excluding the Allowance for Loan Losses account);

(5) Underwriting standards and practices;

(6) Types of loans grouped by purpose and collateral; and

(7) The qualifications of personnel responsible for underwriting and administering member business loans.

§ 723.12 What will NCUA do with my waiver request?

Your Regional Director will:

(a) Review the information you provided in your request;

(b) Evaluate the level of risk to your credit union;

(c) Consider your credit union's historical CAMEL composite and component ratings when evaluating your request; and

(d) Notify you of the action taken within 45 calendar days of receiving the request from the federal credit union or the state supervisory authority. If you do not receive notification within 45 calendar days of the date the request was received by the regional office, the credit union may assume approval of the waiver request.

§ 723.13 What options are available if the NCUA Regional Director denies our waiver request, or a portion of it?

You may appeal the Regional Director's decision in writing to the NCUA Board. Your appeal must include all information requested in § 723.11 and why you disagree with your Regional Director's decision.

§ 723.14 How do I reserve for potential losses?

Non-delinquent loans may be classified based on factors such as the adequacy of analysis and supporting documentation. You must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(a) *Substandard.* Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(b) *Doubtful.* A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain

important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans.

(c) *Loss.* Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

§ 723.15 How much must I reserve for potential losses?

The following schedule sets the minimum amount you must reserve for classified loans:

Classification	Amount required
Substandard ..	10% of outstanding amount unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.
Doubtful	50% of the outstanding amount.
Loss	100% of the outstanding amount.

§ 723.16 What is the aggregate member business loan limit for a credit union?

The aggregate limit on a credit union's outstanding member business loans (including any unfunded commitments) is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Net worth is all of the credit union's retained earnings. Retained earnings normally includes undivided earnings, regular reserves and any other reserves.

§ 723.17 Are there any exceptions to the aggregate loan limit?

There are three circumstances where a credit union may qualify for an exception from the aggregate limit. The three exceptions are:

(a) Credit unions that have a low-income designation or participate in the Community Development Financial Institutions program;

(b) Credit unions that were chartered for the purpose of primarily making member business loans and can provide documentary evidence; or

(c) Credit unions that have a history of primarily making member business loans, meaning that either member business loans comprise at least 25% of the credit union's outstanding loans (as evidenced in a call report for 1998 or any of the three prior years) or member business loans comprise the largest portion of the credit union's loan portfolio. For example, if a credit union makes 23% member business loans, 22% first mortgage loans, 22% new automobile loans, 20% credit card loans, and 13% total other real estate loans, then the credit union meets this exception.

§ 723.18 How do I obtain an exception?

To obtain the exception, a federal credit union must submit documentation to the Regional Director, demonstrating that it meets the criteria of one of the exceptions. A state chartered federally insured credit union must submit documentation to its state regulator. The state regulator should forward its decision to NCUA. The exception does not expire unless revoked by the state regulator for a state chartered federally insured credit union or the Regional Director for a federal credit union. If an exception request is denied for a federal credit union, it may be appealed to the NCUA Board within 60 days of the denial by the Regional Director. Until the NCUA Board acts on the appeal, the credit union can continue to make new business loans

§ 723.19 What are the recordkeeping requirements?

You must separately identify member business loans in your records and in the aggregate on your financial reports.

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

(a) The NCUA Board may exempt a federally insured state chartered credit union from NCUA's member business loan rule, if, NCUA approves the state's rule for use for state chartered federally insured credit unions. In making this substantial equivalency determination, the Board is guided by safety and soundness considerations and reviews whether the state regulation minimizes the risk and accomplishes the overall objectives of NCUA's member business rule in this part. Specifically, the Board will focus its review on the definition of:

(1) A member business loan;

(2) Loan to one borrower limits;

(3) Written loan policies;

(4) Collateral and security requirements;

(5) Construction and development lending; and

(6) Loans to senior management.

(b) To receive NCUA's approval of a state's members business rule, the state supervisory authority must submit its rule to the NCUA regional office. After reviewing the rule, the region will forward the request to the NCUA Board for a final determination.

§ 723.21 Definitions.

For purposes of this part, the following definitions apply:

Associated member is any member with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

Immediate family member is a spouse or other family member living in the same household.

Loan-to-value ratio is the aggregate amount of all sums borrowed, outstanding balances plus any unfunded commitment or line of credit, from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

Reserves are all reserves, including the Allowance for Loan Losses and Undivided Earnings or surplus.

PART 741—REQUIREMENTS FOR INSURANCE

7. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766 and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.203 [Amended]

8. Section 741.203 is amended in paragraph (a) by revising ''§ 701.21(h)'' to read ''part 723.''

[FR Doc. 98–25959 Filed 9–28–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–108–AD; Amendment 39–10802; AD 98–20–35]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all IAI, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, that currently requires repetitive inspections of the trim actuator of the horizontal stabilizer to verify jackscrew integrity and to detect excessive wear of the tie rod, and replacement of the actuator or tie rod, if necessary. That AD also provides for optional terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the trim actuator of the horizontal stabilizer due to failure of the jackscrews, which could result in reduced controllability of the airplane.

DATES: Effective November 3, 1998.

The incorporation by reference of certain publications was approved previously by the Director of the Federal Register as of April 10, 1998 (63 FR 11106, March 6, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–05–09, amendment 39–10370 (63 FR 11106, March 6, 1998), which is applicable to all IAI, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, was published in the **Federal Register** on August 5, 1998 (63 FR 41737). The action proposed to continue to require repetitive inspections of the trim actuator of the horizontal stabilizer to verify jackscrew integrity and to detect excessive wear of the tie rod, and replacement of the actuator or tie rod, if necessary. The action also proposed to require accomplishment of a previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 295 airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 98–05–09 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $70,800, or $240 per airplane, per inspection cycle.

The new replacement that is required by this AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $49,500 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $14,673,300, or $49,740 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10370 (63 FR 11106, March 6, 1998), and by adding a new airworthiness directive (AD), amendment 39–10802, to read as follows:

98–20–35 Israel Aircraft Industries (IAI), Ltd.: Amendment 39–10802. Docket 98–NM–108–AD. Supersedes AD 98–05–09, Amendment 39–10370.

Applicability: All Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the trim actuator of the horizontal stabilizer due to failure of the jackscrews, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of Paragraphs (a) and (b) of AD 98–05–09

(a) Perform an inspection of the trim actuator of the horizontal stabilizer to verify jackscrew integrity and to detect excessive wear of the tie rod, in accordance with Commodore Jet Service Bulletin SB 1121–27–023, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1121, 1121A, and 1121B series airplanes); Westwind Service Bulletin SB 1123–27–046, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1123 series airplanes); or Westwind Service Bulletin SB 1124–27–133, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1124 and 1124A series airplanes); as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated 6,000 or more total flight cycles, or on which the horizontal trim actuator has accumulated 2,000 or more flight cycles, as of April 10, 1998 (the effective date of AD 98–05–09, amendment 39–10370): Inspect within 50 flight hours after April 10, 1998. Repeat the inspection thereafter at intervals not to exceed 300 flight hours (for Model 1121, 1121A, 1121B, and 1123 series airplanes); or 400 flight hours (for Model 1124 and 1124A series airplanes); as applicable.

(2) For airplanes that have accumulated less than 6,000 total flight cycles, and on which the horizontal trim actuator has accumulated less than 2,000 total flight cycles, as of April 10, 1998: Inspect at the time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For Model 1121, 1121A, 1121B, and 1123 series airplanes: Inspect within 300 flight hours after April 10, 1998. Repeat the inspection thereafter at intervals not to exceed 300 flight hours.

(ii) For Model 1124 and 1124A series airplanes: Inspect within 400 flight hours after April 10, 1998. Repeat the inspection thereafter at intervals not to exceed 400 flight hours.

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace the actuator or tie rod, as applicable, in accordance with Commodore Jet Service Bulletin SB 1121–27–023, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1121, 1121A, and 1121B series airplanes); Westwind Service Bulletin SB 1123–27–046, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1123 series airplanes); or Westwind Service Bulletin 1124–27–133, dated August 14, 1996, or Revision 1, dated May 28, 1997 (for Model 1124 and 1124A series airplanes); as applicable.

New Requirements of This AD

(c) Within 18 months after the effective date of this AD, replace the trim actuator of the horizontal stabilizer with a modified trim actuator with modified jackscrew assemblies (part number 21164–362 and –363 for Model 1121, 1121A, and 1121B series airplanes; part number 21164–360 and –361 for Model 1123 series airplanes; or part number 21164–360 and –361 for Model 1124 and 1124A series airplanes), in accordance with Commodore Jet Service Bulletin SB 1121–27–025, dated December 22, 1997 (for Model 1121, 1121A, and 1121B series airplanes); Westwind Service Bulletin SB 1123–27–047, dated September 1, 1997 (for Model 1123 series airplanes); or Westwind Service Bulletin SB 1124–27–136, dated September 1, 1997 (for Model 1124 and 1124A series airplanes); as applicable. Accomplishment of this replacement terminates the repetitive inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

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

(f) The actions shall be done in accordance with the following Westwind and Commodore Jet service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
Westwind, SB 1124–27–133, August 14, 1996	1–6	Original	August 14, 1996.
Westwind, SB 1124–27–133, Revision 1, May 28, 1997	1–4	1	May 28, 1997.
	5, 6	Original	August 14, 1996.
Westwind, SB 1123–27–046, August 14, 1996	1–6	Original	August 14, 1996.
Westwind, SB 1124–27–046, Revision 1, May 28, 1997	1–4	1	May 28, 1997.
	5, 6	Original	August 14, 1996.
Westwind, SB 1124–27–136, September 1, 1997	1–3	Original	September 1, 1997.
Westwind, SB 1123–27–047, September 1, 1997	1–3	Original	September 1, 1997.
Commodore Jet, SB 1121–27–025, December 22, 1997	1–3	Original	December 22, 1997.
Commodore Jet, SB 1121–27–023, August 14, 1996	1–6	Original	August 14, 1996.
Commodore Jet, SB 1121–27–023, Revision 1, May 28, 1997.	1–4	1	May 28, 1997.
	5, 6	Original	August 14, 1996.

The incorporation by reference was approved previously by the Director of the Federal Register as of April 10, 1998 (63 FR 11106, March 6, 1998). Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 27–97–09–02, dated September 4, 1997.

(g) This amendment becomes effective on November 3, 1998.

Issued in Renton, Washington, on September 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25776 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–17–AD; Amendment 39–10806; AD 98–20–38]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (Raytheon 200 series airplanes. This AD requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD was prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon 200 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 8, 1998 (63 FR 31131). The NPRM proposed to require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

The NPRM was the result of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew.

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

Comment Disposition

The commenter proposes that the FAA change the proposal to require revising the Abnormal or Emergency Procedures section of the AFM instead of the Normal Procedures section of the AD. The commenter states that, since the Raytheon 200 series airplanes are not certificated for operation in icing conditions, operation outside of the airplanes certificated limits would be an abnormal condition.

The FAA concurs. For previous AD's concerning this subject on other airplane models, the FAA has approved alternative methods of compliance to allow the owners/operators the option of revising the Abnormal Procedures Section or Emergency Procedures Section of the AFM, or the Normal Procedures section of the AFM. The FAA will change the final rule to include the provision of revising the Abnormal Procedures or Emergency Procedures Section of the AFM as an AMOC to the requirement of revising the Normal Procedures Section of the AFM.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for addition of the above-referenced AMOC and minor editorial corrections. The FAA has determined that this addition and these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 1,600 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

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

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that

continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–20–38 Raytheon Aircraft Company: Amendment 39–10806; Docket No. 98–CE–17–AD.

Applicability: The following airplane models, all serial numbers, certificated in any category.

Models

200 (A100–1 (U–21J)); 200C; 200CT; 200T; A200 (C–12A) or (C–12C);A200C (UC–12B); A200CT (C–12D), (FWC–12D), (RC–12D), (C–12F), (RC–12G), (RC–12H), (RC–12K), or (RC–12P); B200; B200C (C–12F), (UC–12F), (UC–12M), or (C–12R); B200CT; and B200T.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''The Following Weather Conditions May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) As an alternative method of compliance to the actions required by paragraph (a)(2) of this AD, revise the Abnormal Procedures Section or Emergency Procedures Section of the AFM instead of the Normal Procedures section of the AFM. Insert the information presented in paragraph (a)(2) of this AD into the applicable AFM section.

(c) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment becomes effective on November 4, 1998.

Issued in Kansas City, Missouri, on September 22, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25955 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–38]

Amendment to Class E Airspace; Trenton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Trenton Municipal Airport, Trenton, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAPs) to serve Trenton Municipal Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 18 and GPS RWY 36 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 18 and GPS RWY 36 SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–38, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 18 and GPS RWY 36 SIAPs to serve the Trenton Municipal Airport, Trenton, MO. The amendment to Class E airspace at Trenton, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet ore more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–38.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Trenton MO

Trenton Municipal Airport, MO
(Lat. 40°05′01″ N., long. 93°35′27″ W.)
Trenton NDB
(Lat. 40°04′49″ N., long. 93°35′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Trenton Municipal Airport and within 2.6 miles each side of the 006° bearing from the Trenton NDB extending from the 6.4-mile radius to 7.4 miles north of the NDB and within 2.6 miles each side of the 172° bearing from the Trenton NDB extending from the 6.4-mile radius to 7 miles south of the NDB.

* * * * *

Issued in Kansas City, MO, on September 9, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25737 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–42]

Amendment to Class E Airspace; Wellington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Wellington Municipal Airport, Wellington, KS. A review of the Class E airspace area for Wellington Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the geographic coordinates of the Airport Reference Point (ARP) is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates.

DATES: *Effective date:* 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 5, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–42, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 65106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Wellington, KS. A review of the Class E airspace for Wellington Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, the Class E airspace area includes a minor revision to the geographic coordinates of the ARP. The amendment at Wellington Municipal Airport, Wellington, KS, will provide additional airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designated listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area

on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–42.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Wellington, KS

Wellington Municipal Airport, KS
(Lat. 37°19′28″ N., long. 97°23′14″ W.)
Wellington NDB
(Lat. 37°19′26″ N., long. 97°23′22″ W.)
Wichita VORTAC
(Lat. 37°44′43″ N., long. 97°35′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Wellington Municipal Airport and within 2.6 miles each side of the 007° bearing from Wellington NDB extending from the 6.3-mile radius to 7.4 miles north of the airport and within 4.4 miles each side of the 159° radial of the Wichita VORTAC extending from the 6.3-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on September 8, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25738 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–41]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Ulysses Airport, Ulysses KS. A review of the Class E airspace area for Ulysses Airport indicates its does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–41, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for

the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Ulysses, KS. A review of the Class E airspace for Ulysses Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Ulysses Airport, KS, will provide additional airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no averse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–41.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 Far 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Ulysses, KS [Revised]

Ulysses Airport, KS
(Lat. 37°36′06″ N., long. 101°22′22″ W.)
Ulysses NDB
(Lat. 37°35′51″ N., long. 101°22′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Ulysses Airport and within 2.6 miles each side of the 304° bearing from Ulysses NDB extending from the 6.9-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on September 3, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25739 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–40]

Amendment to Class E Airspace; Pittsburg, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Pittsburg, Atkinson Municipal Airport, Pittsburg, KS. A review of the Class E airspace area for Pittsburg, Atkinson Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

In addition, the Class E airspace area is revised to indicate a minor revision to the Airport Reference Point (ARP) coordinates, and is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates.

DATES: *Effective date:* 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–40, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Pittsburg, KS. A review of the Class E airspace for Atkinson Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, the Class E airspace area is amended to indicate the revised ARP coordinates. The amendment at Atkinson Municipal Airport, Pittsburg, KS, will provide additional controlled airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998 and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–40.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Pittsburg, KS [Revised]

Pittsburg, Atkinson Municipal Airport, KS
(Lat. 37°26′52″ N., long. 94°43′36″ W.)
Pittsburg NDB
(Lat. 37°26′32″ N., long. 94°43′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Atkinson Municipal Airport and within 2.6 miles each side of the 345° bearing from Pittsburg NDB extending from the 6.6-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on September 2, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25740 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–39]

Amendment to Class E Airspace; Great Bend, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Great Bend Municipal Airport, Great Bend, KS. A review of the Class E airspace area for Great Bend Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–39, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Great Bend, KS. A review of the Class E airspace for Great Bend Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Great Bend Municipal Airport, KS, will provide additional airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.0F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be

published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–39.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Great Bend, KS [Revised]

Great Bend Municipal Airport, KS
(Lat. 38°20′40″N., long. 98°51′33″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Great Bend Municipal Airport and within 4 miles each side of the 303° bearing from Great Bend Municipal Airport extending from the 6.9-mile radius to 15.6 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on September 2, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25741 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–37]

Amendment to Class E Airspace; West Plains, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at West Plains Municipal Airport, West Plains, MO. The FAA has developed a VHF Omnidirectional Range (VOR) Runway (RWY) 36 Standard Instrument Approach Procedure (SIAP) to serve West Plains Municipal Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new VOR RWY 36 SIAP in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the VOR RWY 36 SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 10, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–37, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a VOR RWY 36 SIAP to serve the West Plains Municipal

Airport, West Plains, MO. The amendment to Class E airspace at West Plains, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–37.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward form 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 West Plains, MO [Revised]

West Plains Municipal Airport, MO
(Lat. 36°52′41″N., long. 91°54′10″W.)
Hutton VOR/DME
(Lat. 36°52′17″N., long. 91°54′00″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of West Plains Municipal Airport and 8 miles west and 4 miles east of the 196° radial of the Hutton VOR/DME extending from the VOR/DME to 10 miles south of the Hutton VOR/DME.

* * * * *

Issued in Kansas City, MO, on August 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25742 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–36]

Amendment to Class E Airspace; Wichita Mid-Continent Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Wichita Mid-Continent Airport, Wichita, KS. A review of this

Class E airspace area for Wichita Mid-Continent Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, included in this document are: a minor revision to the Airport Reference Point (ARP for Colonel James Jabara Airport; a minor revision to the coordinates for AUBRA Waypoint; the Wichita Mid-Continent Localizer and coordinates for Runway (RWY) 1L; and the McConnell Air Force Base Localizer and coordinates for RWY 1L. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, revise the ARP coordinates for Colonel James Jabara Airport, revise the coordinates for AUBRA Waypoint, add the Wichita Mid-Continent Localizer and coordinates for RWY 1L, and add the McConnell Air Force Base Localizer and coordinates for RWY 1L.

DATES: Effective date: 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 4, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–36, 601 East 12th Street, Kansas, City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Wichita Mid-Continent Airport, KS. A review of the Class E airspace for Wichita Mid-Continent Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, included in this document are: a minor revision to the Airport Reference Point (ARP) for Colonel James Jabara Airport; a minor revision to the coordinates for AUBRA Waypoint; the Wichita Mid-Continent Localizer and coordinates for Runway (RWY) 1L; and the McConnell Air Force Base Localizer and coordinates for RWY 1L. The amendment at Wichita Mid-Continent Airport, KS, will provide additional airspace for aircraft operating under IFR, comply with the criteria of FAA order 7400.2D, revise the ARP coordinates for Colonel James Jabara Airport, revise the coordinates for AUBRA Waypoint, add the Wichita Mid-Continent Localizer and coordinates for RWY 1L, and add the McConnell Air Force Base Localizer and coordinates for RWY 1L. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–36.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in

the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 20854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The Incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7900.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Wichita Mid-Continent Airport, KS

Wichita Mid-Continent Airport, KS
(Lat. 37°39′00″N., long. 97°25′59″W.)
Wichita Mid-Continent Localizer Runway IL
(Lat. 37°39′48″N., long. 97°25′59″W.)
McConnel Air Force Base Runway 1L
(Lat. 37°37′23″N., long. 97°16′03″W.)
McConnel Air Force Base Localizer Runway 1L
(Lat. 37°37′07″N., long. 97°15′47″W.)
Cessna Aircraft Field
(Lat. 37°38′55″N., long. 97°15′02″W.)
Augusta Municipal Airport
(Lat. 37°40′44′18″N., long. 97°04′40″W.)
Colonel James Jabara Airport
(Lat. 37°44′51″N., long. 97°13′16″W.)
AUBRA Waypoint
(Lat. 37°55′18″N., long. 97°11′41″W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Wichita Mid-Continent Airport and within 4 miles west and 5 miles east of the Mid-Continent Airport ILS localizer course to Runway 1L extending from the airport to 13 miles south of the airport and to 7.4 miles north of the airport and within a 7.0-mile radius of the McConnell AFB ILS Runway 1L localizer course extending from the AFB to 11.2 miles south of the AFB and within 2.6 miles each side of the 110° bearing from the Cessna Aircraft Field extending from the field to 12.6 miles east of the field and within a 6.4-mile radius of the Augusta Municipal Airport and within a 6.5 mile radius of the Colonel James Jabara Airport and within 1.8 miles each side of a line extending from the Colonel James Jabara Airport to the AUBRA Waypoint extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on September 8, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25743 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–9]

Establishment of Class E Airspace; Villa Rica, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Class E airspace at Villa Rica, GA. A Global Positioning System (GPS) Runway (RWY) 10 Standard Instrument Approach Procedure (SIAP) has been developed for Stockmar Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) within a 6.3-mile radius of the Stockmar Airport is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 7, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Villa Rica, GA, (63 FR 42290). This action provides adequate Class E airspace for IFR operations at Stockmar Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Villa Rica, GA. A GPS RWY 10 SIAP has been developed for Stockmar Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Stockmar Airport.

The FAA is determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Villa Rica [New]

Stockmar Airport
(Lat. 33°45′23″N, long. 84°53′05″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.3-mile radius of Stockmar Airport.

* * * * *

Issued in College Park, Georgia, on September 18, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–25871 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29344; Amdt. No. 1892]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorproation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 18, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 907 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective upon Publication*

FDC date SIAP	State	City	Airport	FDC No.	SIAP
08/20/98	GA	Atlanta	Fulton County Airport—Brown Field.	8/5919	ILS Rwy 8 Amdt 15C...
09/02/98	MD	Westminster	Clearview Airpark	8/6250	VOR or GPS–A Amdt 3...
09/02/98	NJ	Pittstown	Alexandria	8/6249	VOR or GPS Rwy 8 Amdt 1...
09/03/98	AK	Kenai	Kenai Muni	8/6285	VOR Rwy 19 Amdt 16...
09/03/98	AK	Kenai	Kenai Muni	8/6286	VOR/DME Rwy 1 Amdt 5...
09/03/98	AK	Kenai	Kenai Muni	8/6287	ILS Rwy 19 Amdt 6...
09/03/98	AK	Kenai	Kenai Muni	8/6288	GPS Rwy 19 Orig...
09/03/98	AK	Kenai	Kenai Muni	8/6289	GPS Rwy 1 Orig...
09/03/98	OH	Wapakoneta	Neil Armstrong	8/6277	LOC Rwy 26 Amdt 3A...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6292	Converging ILS Rwy 17C, Amdt 4...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6293	ILS Rwy 18R, Amdt 5...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6294	Converging ILS Rwy 13R, Amdt 4...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6295	Converging ILS Rwy 17R, Amdt 5...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6296	Converging ILS Rwy 18L, Amdt 3...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6299	ILS Rwy 31R, Amdt 9...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6300	Converging ILS Rwy 18R, Amdt 3A...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6301	Converging ILS Rwy 31R, Amdt 3A...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6302	Converging ILS Rwy 35L, Amdt 1...
09/03/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6306	Converging ILS Rwy 36L, Amdt 3A...
09/03/98	TX	Fort Worth	Fort Worth Alliance	8/6297	ILS Rwy 16L, Amdt 4...
09/03/98	TX	Fort Worth	Fort Worth Alliance	8/6298	ILS Rwy 34R, Amdt 3...
09/09/98	NE	Norfolk	Karl Stefan Memorial.	8/6427	ILS Rwy 1, Amdt 4A...
09/09/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6420	Converging ILS Rwy 35C, Amdt 4...
09/09/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6421	Converging ILS Rwy 36R, Amdt 1A...
09/09/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6422	ILS Rwy 35C, Amdt 6A...
09/10/98	AK	Atqasuk	Atqasuk Edward Burnell Sr. Memorial.	8/6461	GPS Rwy 6, Orig...
09/10/98	FL	Ormond Beach	Ormond Beach Muni	8/6457	Radar-1, Amdt 2A...
09/10/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6470	NDB or GPS Rwy 17R, Amdt 7...
09/10/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl.	8/6471	NBD or GPS Rwy 35C, Amdt 9...

FDC date SIAP	State	City	Airport	FDC No.	SIAP
09/11/98	LA	Slidell	Slidell	8/6493	VOR/DME or GPS Rwy 18, Amdt 3...
09/11/98	LA	Slidell	Slidell	8/6494	NDB Rwy 18, Amdt 1A...
09/16/98	IL	Belleville	Scott AFB/Mid-America.	8/6603	GPS Rwy 14R, Orig...
09/16/98	IL	Belleville	Scott AFB/Mid-America.	8/6615	ILS Rwy 14R, Orig-B...

[FR Doc. 98–25874 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29343; Amdt. No. 1891]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this

amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on September 18, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 8, 1998*

Tampa, FL, Vandenberg, GPS RWY 18, Amdt 1
Tampa, FL, Vandenberg, GPS RWY 23, Orig
Terre Haute, IN, Terre Haute International-Hulman Field, VOR/DME RNAV RWY 32, Amdt 8
Lakeview, MI, Lakeview Airport-Griffith Field, VOR/DME RWY 9, Orig
Albermarle, NC, Stanly County, LOC RWY 22L, ORIG–E, CANCELLED
Albermarle, NC, Stanly County, ILS RWY 22L, ORIG
Charlotte, NC, Charlotte/Douglas Intl, LOC BC RWY 23, Amdt 10A, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 23, ORIG
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RNAV RWY 23, ORIG, CANCELLED
Athens/Albany, OH, Ohio University, LOC RWY 25, Amdt 3A, CANCELLED
Athens/Albany, OH, Ohio University, ILS RWY 25, Orig
Columbia, SC, Columbia Metropolitan, ILS RWY 11, Amdt 14
Grand Prairie, TX, Grand Prairie Muni, VOR/DME RWY 35, Orig
Grand Prairie, TX, Grand Prairie Muni, GPS RWY 35, Orig
Seattle, WA, Seattle-Tacoma Intl, ILS RWY 16L, ORIG
Seattle, WA, Seattle-Tacoma Intl, ILS/DME RWY 34R, Amdt 1

** * * Effective November 5, 1998*

Liberal, KS, Liberal Muni, VOR/DME OR GPS RWY 17, Amdt 3
Chester, SC, Chester Muni, NDB RWY 35, Orig

** * * Effective December 3, 1998*

Borrego Springs, CA, Borrego Valley, GPS RWY 25, Orig
Dunnellon, FL, Dunnellon, GPS RWY 23, Orig
Tupelo, MS, Tupelo Municipal-C D Lemons, GPS RWY 18, Orig
Tupelo, MS, Tupelo Municipal-C D Lemons, GPS RWY 36, Orig
Missoula, MT, Missoula International, GPS–D
Missoula, MT, Missoula International, GPS RWY 11, Orig
Plattsmouth, NE, Plattsmouth Muni, NDB RWY 34, Amdt 4
Plattsmouth, NE, Plattsmouth Muni, GPS RWY 16, Orig
Plattsmouth, NE, Plattsmouth Muni, GPS RWY 34, Orig
Crosby, ND, Crosby Muni, GPS RWY 30, Orig
Lewisburg, WV, Greenbrier Valley, VOR RWY 4, Orig
Lewisburg, WV, Greenbrier Valley, NDB RWY 4, Amdt 5
Lewisburg, WV, Greenbrier Valley, ILS RWY 4, Amdt 8
Lewisburg, WV, Greenbrier Valley, VOR RWY 22, Orig

Note: The FAA published an Amendment in Docket No. 29328, Amdt. No. 1888 to Part 97 of the Federal Aviation Regulations (63 FR 49002; dated September 14, 1998) under § 97.23 effective October 8, 1998, which is hereby amended by rescinding the following procedures:

Boise, ID, Boise Air Terminal/Gowen Field, VOR/DME OR TACAN RWY 10L, Orig
Boise, ID, Boise Air Terminal/Gowen Field, NDB RWY 10L, Orig

[FR Doc. 98–25873 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Streptomycin Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Contemporary Products, Inc. The ANADA provides for the use of streptomycin oral solution in drinking water for the treatment of nonspecific infectious enteritis in chickens and for the treatment of bacterial enteritis in swine and calves.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Contemporary Products, Inc., 3788 Elm Springs Rd., P.O. Box 6067, Springdale, AR 72766–6067, filed ANADA 200–197 that provides for the use of streptomycin oral solution in drinking water for the treatment of nonspecific infectious enteritis in chickens and for the treatment of bacterial enteritis in swine and calves.

Contemporary Products, Inc.'s ANADA 200–197 is approved as a generic copy of Veterinary Services, Inc.'s NADA 065–252. ANADA 200–197 is approved as of August 3, 1998, and the regulations are amended in 21 CFR 520.2158a to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Contemporary Products, Inc., is not currently listed in the animal drug regulations as the sponsor of an approved application. At this time, 21 CFR 510.600(c)(1) and (c)(2) are amended by adding a new listing for the sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) 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.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Contemporary Products, Inc.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''055462'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * *	*
Contemporary Products, Inc., 3788 Elm Springs Rd., Springdale, AR 72764–6067	055462
* * * * * *	*

(2) * * *

Drug labeler code	Firm name and address
*	* * * * * *
055462	Contemporary Products, Inc., 3788 Elm Springs Rd., Springdale, AR 72764–6067
*	* * * * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2158a [Amended]

4. Section 520.2158a *Streptomycin sulfate oral solution* is amended in paragraph (b) by removing the phrase ''No. 033008'' and adding in its place '' Nos. 033008 and 055462''.

Dated: August 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–25904 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Fujisawa USA, Inc., to American Pharmaceutical Partners, Inc.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Fujisawa USA, Inc., Deerfield, IL 60015–2548, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 100–840 (Chorionic Gonadotropin) to American Pharmaceuticals Partners, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160. Accordingly, the agency is amending the regulations in 21 CFR 510.600 and 522.1081 to reflect the transfer of ownership. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Fujisawa USA, Inc., because the firm is no longer the sponsor of any approved NADA's, and by alphabetically adding a new listing for American Pharmaceuticals Partners, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Fujisawa USA, Inc.,'' and by alphabetically adding an entry for ''American Pharmaceutical Partners, Inc.,'' and in the table in paragraph (c)(2) by removing the entry for ''000469'' and by numerically adding an entry for ''063323'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * *
American Pharmaceuticals Partners, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160	063323
* * *	* * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * *
063323	American Pharmaceuticals Partners, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160
* * *	* * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1081 [Amended]

4. Section 522.1081 *Chorionic gonadotropin for injection; chorionic gonadotropin suspension* is amended in paragraph (a)(2)(ii) by removing ''Nos. 000469 and 058639'' and adding in its place ''Nos. 058639 and 063323''.

Dated: August 27, 1998.

Margaret Ann Miller,

Acting Director, Office of New Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–25909 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ketamine Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Lloyd, Inc. The ANADA provides for veterinary prescription use of ketamine hydrochloride injection in cats for restraint or as an anesthetic and in subhuman primates for restraint.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Lloyd, Inc., 604 W. Thomas Ave., P.O. Box A, Shenandoah, IA 51601–0130, filed ANADA 200–055 that provides for veterinary prescription use of VetaKet™ ketamine hydrochloride injection, intramuscularly, in cats for restraint or as sole anesthetic agent for diagnostic or minor, brief surgical procedures that do not require skeletal muscle relaxation and in subhuman primates for restraint.

Lloyd, Inc.'s ANADA 200–055 ketamine hydrochloride injection is approved as a generic copy of Fort Dodge Animal Health's NADA 45–290 Vetalar® (ketamine hydrochloride injection). The ANADA is approved as of August 3, 1998, and the regulations are amended in 21 CFR 522.1222a(c) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers La., rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) 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.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1222a [Amended]

2. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c) by removing ''and

059130'' and by adding in its place ''059130, and 061690.''

Dated: August 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–25910 Filed 9–28–98; 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; Narasin and Bacitracin Methylene Disalicylate with Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma Inc. The supplemental NADA provides for using approved narasin, bacitracin methylene disalicylate (BMD), and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds.

EFFECTIVE DATE: September 29, 1998

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of supplemental NADA 140–852 which provides for combining approved Monteban® (45 grams per pound (g/lb) narasin), BMD® (10, 25, 30, 40, 50, 60, or 75 g/lb bacitracin methylene disalicylate), and 3–Nitro® (45.4, 90, or 227 g/lb roxarsone) Type A medicated articles to make Type C medicated broiler chicken feeds. The Type C medicated broiler chicken feed containing 54 to 72 g/t narasin, 50 g/t bacitracin methylene disalicylate, and 22.7 to 45.4 g/t roxarsone is used for prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The Type C medicated broiler chicken feed containing 54 to 72 g/t narasin, 100 to 200 g/t bacitracin methylene disalicylate, and 22.7 to 45.4 g/t roxarsone is used for prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

The supplemental NADA is approved as of July 29, 1998, and the regulations are amended by adding 21 CFR 558.363(a)(6), (d)(1)(viii), and (d)(1)(ix) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of Type A medicated articles to make Type C medicated feeds as provided in supplemental NADA 140–852 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 (a) 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558 —NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.363 is amended by adding paragraphs (a)(6), (d)(1)(viii), and (d)(1)(ix) to read as follows:

§ 558.363 Narasin.

(a) * * *

(6) To 046573: 45 grams per pound with 10, 25, 30, 40, 50, 60, or 75 grams per pound bacitracin methylene disalicylate and 45.4, 90, or 227 grams per pound roxarsone, paragraphs (d)(1)(viii) and (d)(1)(ix) of this section.

* * * * *

(d) * * *

(1) * * *

(viii) *Amount per ton*. Narasin, 54 to 72 grams, and bacitracin methylene disalicylate, 50 grams, with roxarsone, 22.7 to 45.4 grams.

(A) *Indications for use*. For prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(B) *Limitations*. For broiler chickens only. Feed continuously as sole ration. Withdraw 5 days before slaughter. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdose or lack of water intake may result in leg weakness or paralysis. Narasin as provided by 000986, bacitracin methylene disalicylate and roxarsone by 046573 in § 510.600(c) of this chapter.

(ix) *Amount per ton*. Narasin, 54 to 72 grams, and bacitracin methylene disalicylate, 100 to 200 grams, with roxarsone, 22.7 to 45.4 grams.

(A) *Indications for use*. For prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(B) *Limitations*. For broiler chickens only. Feed continuously as sole ration. Withdraw 5 days before slaughter. Do

not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdose or lack of water intake may result in leg weakness or paralysis. Narasin as provided by 000986, bacitracin methylene disalicylate and roxarsone by 046573 in § 510.600(c) of this chapter.

Dated: August 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–25913 Filed 9–28–98; 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; Bacitracin Methylene Disalicylate and Decoquinate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma Inc. The NADA provides for using approved bacitracin methylene disalicylate (BMD) and decoquinate Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1600.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Drive, P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–102 that provides for combining approved BMD® (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) BMD), and Deccox® (6 percent decoquinate) Type A medicated articles to make Type C medicated feeds for broiler chickens containing 4 to 50 grams per ton (g/t) BMD and 27.2 g/t decoquinate. The Type C medicated broiler feed is used for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima*, and *E. brunetti*, and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of August 3, 1998, and the regulations in 21 CFR 558.76(d)(3) and the table in 21 CFR 558.195(d) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(2) 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by adding paragraph (d)(3)(xviii) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xviii) Decoquinate as in § 558.195.

3. Section 558.195 is amended in the table in paragraph (d) by adding an entry under ''27.2(0.003 pct)'' before the entry for ''Bacitracin 10 to 50'' to read as follows:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
27.2 (0.003 pct)				
*	*	* *	* *	*
	Bacitracin 4 to 50	Broiler chickens; for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. mivati*, *E. acervulina*, *E. maxima*, and *E. brunetti*, and for increased rate of weight gain and improved feed efficiency.	Do not feed to laying chickens; feed continuously as sole ration; bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.	046573
*	*	* *	* *	*

Dated: August 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–25911 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 98N–0520]

Medical Devices; Establishment Registration and Device Listing for Manufacturers and Distributors of Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain regulations governing establishment registration and device listing by domestic distributors. These amendments are being made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food and Drug Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedures for notice and comment, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws the direct final rule.

DATES: The regulation is effective February 11, 1999. Submit written comments on or before December 14, 1998. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If FDA receives any significant adverse comment, FDA intends to withdraw this final rule by publication of a document in the **Federal Register** within 30 days after the comment period ends. These provisions of FDAMA became effective on February 19, 1998.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20857, 301–594–4699.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115). Section 213(b) of FDAMA made the following changes to section 510(g) of the act (21 U.S.C. 360(g)) regarding domestic distributor registration and device listing:

1. FDAMA amended section 510(g) of the act to add a new paragraph (g)(4) to provide that the registration and listing requirements of section 510 of the act do not apply to distributors who act as ''wholesale distributor,'' and who do not manufacture, repackage, process, or relabel a device.

2. FDAMA also added a definition of ''wholesale distributor'' to section 510(g) of the act. A ''wholesale distributor'' is defined as ''any person (other than the manufacturer or the initial importer) who distributes a device from the original place of manufacture to the person who makes the final delivery or sale of the device to the ultimate consumer or user.''

Section 213 of FDAMA became effective on February 19, 1998, and FDA is implementing the statute as of that date. FDA is issuing this direct final rule to amend certain existing regulations to conform to amendments made by FDAMA to section 510(g) of the act.

II. Amendment Highlights

Section 807.3 (21 CFR 807.3) has been amended to incorporate the new definitions of distributor and wholesale distributor provided in amended section 510(g) of the act.

FDA is also amending § 807.3(g) to add a definition for ''initial importer,'' because ''initial importer'' is excluded from the definition of wholesale distributor established by FDAMA.

Sections 807.20 and 807.22 (21 CFR 807.20 and 807.22) have been amended to implement the changes made by FDAMA to section 510(g) of the act. These amendments to 21 CFR part 807 exempt distributors of domestic or imported devices from the requirement of establishment registration and device listing. Section 807.20 is further amended to clarify that initial importers of devices continue to be subject to registration and listing.

Sections 807.3, 807.20, and 807.22 have been amended to conform the activities requiring registration with the changes made by FDAMA. Prior to FDAMA, all distributors were required to register and list. Amended section 510(g) of the act exempts wholesale distributors from registration and listing and defines a ''wholesale distributor'' as any person, other than the manufacturer or initial importer, who distributes a device from the original place of manufacture to the person who makes the final delivery or sale of the device to the ultimate consumer or user. The amendments to §§ 807.3, 807.20, and 807.22 reflect the changes made by FDAMA.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as making noncontroversial amendments to an existing regulation. The rule incorporates amendments to section 510(g) of the act made by FDAMA and FDA anticipates no significant adverse comment. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing, elsewhere in this issue of the **Federal Register**, a companion proposed rule to amend certain existing regulations governing establishment registration and device listing by domestic distributors. The companion proposed rule is substantively identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule of December 14, 1998. If the agency receives any significant adverse comment, FDA intends to withdraw this final rule by publication of a document in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment

process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the Administrative Procedure Act (5 U.S.C. 552 *et seq.*). If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends. FDA intends to make the direct final rule effective February 11, 1999.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

V. Analysis of Impacts

FDA has examined the impact of this direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulatory action is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies applicable statutory requirements imposed by FDAMA. Because the rule exempts certain distributors from registration and device listing, it may permit more small competitors to enter the marketplace. The agency certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

VI. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VII. Submission of Comments

Interested persons may, on or before December 14, 1998, submit to the Dockets Management Branch (address above) written comments regarding this rule. This comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered comments regarding the proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and the direct final rule will be considered comments on the proposed rule.

List of Subjects in 21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 807 is amended as follows:

1. The part heading for part 807 is revised to read as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

2. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

3. Section 807.3 is amended by revising paragraphs (d)(2) and (g), and by adding paragraph (s) to read as follows:

§ 807.3 Definitions.

* * * * *

(d) * * *

(2) Initial importation of devices manufactured in foreign establishments; or

* * * * *

(g) Initial importer means any importer who furthers the marketing of a device from a foreign manufacturer to the person who makes the final delivery or sale of the device to the ultimate consumer or user, but does not repackage, or otherwise change the container, wrapper, or labeling of the device or device package.

* * * * *

(s) Wholesale distributor means any person (other than the manufacturer or the initial importer) who distributes a device from the original place of manufacture to the person who makes the final delivery or sale of the device to the ultimate consumer or user.

4. Section 807.20 is amended by revising paragraph (a)(4), by redesignating paragraph (d) as paragraph (c) and paragraph (c) as paragraph (d), respectively, and by adding paragraph (c)(3) to read as follows:

§ 807.20 Who must register and submit a device list.

(a) * * *

(4) Acts as an initial importer;

* * * * *

(c) * * *

(3) Acts as a wholesale distributor, as defined in § 807.3(s), and who does not manufacture, repackage, process, or relabel a device.

* * * * *

§ 807.22 [Amended]

5. Section 807.22 *How and where to register establishments and list devices* is amended in paragraph (c) by removing the words ''distributor'' and ''distributors'' each time they appear

and by adding in their place the words ''initial importer'' and ''initial importers'', respectively.

Dated: July 15, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–25796 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–131–FOR; State Program Amendment No. 95–13]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to regulations pertaining to the definition of ''affected area,'' submittal of underground mining operation plans, and the standards for prime farmland restoration by surface and underground coal mining operations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: agilmore@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Proposed Amendment

By letter dated March 6, 1998 (Administrative Record No. IND–1597), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to the required program amendment at 30 CFR 914.16(n), 914.16(p), and 914.16(gg) and at its own initiative.

OSM announced receipt of the proposed amendment in the April 6, 1998, **Federal Register** (63 FR 16725), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 6, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified a concern relating to a technical error at 310 IAC 12–3–78(a)(2), underground mining and postmining land use. Also, at 310 IAC 12–0.5–6, definition of ''affected area,'' OSM identified a concern relating to the exemption criteria in subsection (b). OSM notified Indiana of these concerns by letter dated July 1, 1998 (Administrative Record No. IND–1616).

By letter dated July 17, 1998 (Administrative Record No. IND–1618), Indiana responded to OSM's concerns by stating that the editorial error at 310 IAC 12–3–78(a)(2) would be corrected as an errata. Indiana also provided clarification that all the criteria at 310 IAC 12–0.5–6(b) will be used to determine if a road is exempt from the definition of ''affected area.'' Because no substantive revisions were made to the amendment, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. *310 IAC 12–0.5–6(a).* Indiana amended 310 IAC 12–0.5–6(a) by replacing the terms ''an'' and ''a'' with the term ''any'' to refer to sites and areas which would be considered ''affected areas.'' This is consistent with the use of the term ''any'' in the counterpart Federal definition of ''affected area'' at 30 CFR 701.5. The Director finds that the revisions satisfy the requirement placed on the Indiana program at 30 CFR 914.16(n) and that Indiana's revised language at 310 IAC 12–0.5–6(a) is no less effective than language found at 30 CFR 701.5. Therefore, the Director is approving the revisions and removing the required amendment.

2. *310 IAC 12–0.5–6(b) and (c).* Indiana added language at 310 IAC 12–0.5–6(b) identifying the criteria for exemption of roads included in the affected area. Subsection (b)(1) requires that the road be ''designated as a public road pursuant to the laws of the jurisdiction in which it is located.'' Subsection (b)(2) requires that the road be ''maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction.'' Subsection (b)(3) requires that the road has ''substantial (more than incidental) public use.'' Subsection (b)(4) requires that ''the extent and the effect of mining-related uses of the road by the permittee does not warrant regulation as part of the surface coal mining and reclamation operation.'' Subsection (c) requires the director to determine on a case-by-case basis whether a road satisfies the requirements at 310 IAC 12–0.5–6(b) based on the mining related use of the road and consistent with Indiana's definition of ''surface coal mining operations.''

The language at subsections (b)(1), (b)(2), and (b)(3) is substantively the same as language found in the Federal definition at 30 CFR 701.5. OSM suspended its definition of ''affected area'' at 30 CFR 701.5 insofar as it might limit jurisdiction over roads covered by the definition of ''surface coal mining operations'' (51 FR 41952, November 20, 1986). OSM's revised road rules were published on November 8, 1988, 53 FR 45192. In finalizing those rules, OSM declined to add a reference to ''affected area'' to the definition of road on the basis that the definition of ''affected area'' as partially suspended no longer provides additional guidance as to which roads are included in the definition of surface coal mining operations. At the same time, OSM declined to expressly exclude public roads from the definition of road. The preamble stated that OSM is concerned that roads constructed to serve mining operations not avoid compliance with performance standards by being deeded to public entities, but it was not OSM's intent to automatically extend

jurisdiction into the existing public road network. Instead, jurisdiction decisions are to be made by the regulatory authorities on a case-by-case basis. Indiana intends to continue to use the definition of ''affected area'' in determining which roads are subject to jurisdiction. The provisions at 310 IAC 12–0.5–6(b)(4) and (c) clarify when a public road will be regulated and adequately addresses the concerns OSM expressed in the November 8, 1988, preamble (53 FR 45192) regarding public roads. The Director finds that Indiana's definition of ''affected area'' is no less effective than the Federal regulations concerning jurisdiction over public roads and is consistent with the Federal definition of ''affected area.'' Therefore, the Director is approving 310 IAC 12–0.5–6(b) and (c).

3. *310 IAC 12–3–78(a).* Indiana amended 310 IAC 12–3–78(a) to require underground permit applications to ''contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC–14–34 can be accomplished by the applicant.'' Subdivisions (1) and (2) of 310 IAC 12–3–78(a) outline the minimum elements of the required description. The Director finds that the language at 310 IAC 12–3–78(a) is substantively the same as that found at 30 CFR 784.11. Therefore, the Director approves the amendment.

4. *310 IAC 12–3–78(b).* Indiana added language at 310 IAC 12–3–78(b) requiring applicants for underground coal mining and reclamation permits to submit descriptions, plans, and drawings for all support facilities within the proposed permit area. The Director finds that Indiana's language at 301 IAC 12–0.5–6(a) is substantively the same as the Federal language found at 30 CFR 784.30. Therefore, the Director approves the amendment.

5. *310 IAC 12–5–98(d)(1).* Indiana added language at 310 IAC 12–5–98(d)(1) that requires the soil profile be determined by the U.S. Soil Conservation Service. The Director finds that the revision satisfies the requirement placed on the Indiana program at 30 CFR 914.16(p), and that Indiana's revised language at 301 IAC 12–5–98(d)(1) is no less effective than the Federal language at 30 CFR 785.15(c)(1)(ii). Therefore, the Director is approving the revision and removing the required amendment.

6. *310 IAC 12–5–145.5.* Indiana added a provision at 310 IAC 12–5–145.5 to require the director to use ''any prime farmland soil-reconstruction specifications promulgated as rules by the United States Soil Conservation Service for Indiana'' in order to carry out his or her responsibilities under 310 IAC 12–3–98 and 310 IAC 12–4. The Director finds that this provision satisfies the requirement placed on the Indiana program at 30 CFR 914.16(gg) and that Indiana's requirement at 301 IAC 12–5–145.5 is no less effective than the Federal language at 30 CFR 823.4. Therefore, the Director is approving Indiana's rule and removing the required amendment.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment. By letter dated April 30, 1998 (Administrative Record No. IND–1605), the Indiana Coal Council (ICC) responded that while the Federal regulation at 30 CFR 823.4 does not state that the regulatory authority may use any promulgated United States Soil Conservation Service prime farmland soil-reconstruction specifications as rules, the language at 310 IAC 12–5–145.5 is still not substantively different from the Federal rule. ICC points out that a U.S. District Court for the District of Columbia ruled that the SCS soil reconstruction specifications required by SMCRA qualify as rules and therefore must be subject to public review. Further, the Court noted that OSM agreed and advised SCS to publish its proposed standards for public review. ''Therefore the effect of the additional language in the proposed Indiana rule is simply to conform the substance of the rule to the Federal rule as interpreted by the Office of Surface Mining and the courts.'' ICC believes the amendment should be approved.

OSM agrees that the language at 310 IAC 12–5–145.5 conforms to the judicial and agency interpretation of 30 CFR 823.4. Furthermore, the language used at 310 IAC 12–5–145.5 is identical to the language required at 30 CFR 914.16(gg). The Director is approving the revision.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. By letter dated April 17, 1998 (Administrative Record No. IND–1604), the U.S. Fish and Wildlife Service responded that it has no comments on IN–131–FOR.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. 1600). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. 1600). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the amendment as submitted by Indiana on March 6, 1998.

The Director approves the regulations as proposed by Indiana with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by

section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will 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.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 6, 1998	September 29, 1998	310 IAC 12–0.5–6(a) through (c); 12–3–78(a) and (b); 12–5–98(a), (c) and (d); and 12–5–145.5.

3. Section 914.16 is amended by removing and reserving paragraphs (n), (p), and (gg).

[FR Doc. 98–25979 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–218–FOR; Amendment Number 61]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Ohio regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment provides that areas reclaimed following the removal of temporary structures that are part of the sediment control system, such as sedimentation ponds and diversions, are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. The amendment also authorizes as a husbandry practice, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed, that does not restart the revegetation responsibility period. The amendment is intended to improve operational efficiency of the Ohio program.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220 Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program

amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61 concerning augmentative practices. OSM announced receipt of this amendment in the April 1, 1993, **Federal Register** (58 FR 17173) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993. Since no one requested an opportunity to provide testimony at a public hearing, no hearing was held.

By letter dated June 11, 1993 (Administrative Record No. OH–1888), Ohio submitted additional revisions to this proposed amendment (ProgramAmendment Number 61R). OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on July 21, 1993. On August 16, 1993 (58 FR 43261), OSM approved most of the proposed amendment, but deferred decision on Ohio Administrative Code (OAC) 1501:13–9–15(F)(5), (6), and (7) concerning nonaugmentative practices.

OSM reopened a public comment period on September 15, 1993 (58 FR 48333) for the provisions OAC 1501:13–9–15(F)(6) and (7) as originally submitted on February 11, 1993, and revised on June 11, 1993, with regard to removal of sedimentation ponds and associated areas. The comment period closed on October 15, 1993. This notice also included similar proposed revisions to the Kentucky and Illinois regulations as well as a discussion of OSM's proposed policy concerning restart of the revegetation responsibility period upon removal of required sedimentary control structures. Subsequently, in the May 29, 1996, **Federal Register** (61 FR 26792), and in the October 22, 1997 **Federal Register** (62 FR 54765) OSM approved similar proposed revisions to the Colorado and Illinois regulations (respectively), based on the adoption of the proposed OSM policy published on September 15, 1993 (58 FR 48333).

By letter dated April 14, 1998 (Administrative Record Number OH–2175–00), Ohio submitted revised language of the Program Amendment #61R. Subsection OAC 1501:13–9–15(F)(4)(c) provides for practices that will not be considered augmentative when the practice and the rate of application is an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice. Subsection (F)(5) provides for the nonaugmentative repair of areas that held required sediment control structures. Subsection (F)(6) provides the minimum time that vegetation established or reestablished under subsections (F)(4)(c) and (F)(5) must have been seeded prior to a request for Phase III bond release.

On April 29, 1998 (63 FR 23405), OSM reopened the public comment period and solicited comments on the proposed provisions submitted on April 14, 1998. The comment period closed on May 29, 1998. No one requested an opportunity to testify at a public hearing, so none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments.

OAC 1501:13–9–15(F)(4)

Existing subsections OAC 1501:13–9–15(F)(4)(c) and (d) have been redesignated subsections (d) and (e), respectively, and new subsection (c) has been added to read as follows.

(c) Reseeding and adding soil amendments when necessary to repair damage to land and/or established permanent vegetation, that is unavoidably disturbed in order to meet the reclamation standards of this chapter, provided that:

(I) The damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan, inappropriate reclamation practices on the part of the permittee, or the lack of established permanent vegetation; and

(II) The total acreage of repaired areas under paragraphs (F)(4)(b) & (c) of this rule does not exceed ten percent of the total land affected, with no individual area exceeding three acres.

As amended, subsection 1501:13–9–15(F)(4)(c) authorizes as a husbandry practice that does not restart the revegetation responsibility period, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed. The Federal regulations at 30 CFR 816.116(c)(4) provide for the approval of such husbandry practices provided that such practices can be expected to continue as part of the postmining land use, or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.

In its submittal of this amendment, Ohio asserted that if land is damaged for any reason, careful management of that land would dictate that the damage is repaired. Repair of most damage to land involves a disturbance to established vegetation or ground cover. Once vegetation or ground cover is disturbed or destroyed, normal maintenance practice would be to replace the established vegetation through seeding, sodding, or some other practice necessary to reestablish the damaged vegetation.

Ohio further stated that it has been its experience that many reclaimed sites will experience some type of damage to established vegetation at some point during the period of extended responsibility period. Examples of such damage would include erosion, small slips, channel erosion, unauthorized access, landowner tillage, and settlement. This damage is not normally a result of failure of vegetation or inadequate vegetation practices, and the degree of damage varies from site to site. In fact, the proposed amendment requires that the damage not be caused by a lack of planning, design, or implementation of the mining and reclamation plan, inappropriate reclamation practices on the part of the permittee, or the lack of established permanent vegetation. Further, Ohio asserted that it is proposing reasonable size limitations on the repairs that can be made that will not restart the revegetation responsibility period. In addition, all vegetation cover and productivity standards must be met, and any repaired areas must meet a maintenance period of at least one year after repaired areas are seeded before final bond release. These additional standards, the State asserts, will ensure that all vegetation is successful prior to bond release.

The Director agrees that, considering the limitations provided for by Ohio as to cause of the damage to land and size, the proposed husbandry practice is reasonable, and that repair of the damage as explained by the State is a normal husbandry practice in Ohio. The Director also concurs with the State's assertion that to achieve bond release, all the Ohio program's vegetation cover and productivity standards must be met. Therefore, the Director finds that proposed OAC 1501:13–9–15(F)(4) is not inconsistent with SMCRA section 515(b)(20)(A) and no less effective than the Federal regulations at 30 CFR 816.116(c).

OAC 1501:13–9–15(F)(5)

Subsection OAC 1501:13–9–15(F)(5) has been amended to provide that

reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or initial seeding of areas upon which the sediment control system was located and subsequently removed will not restart the period of extended responsibility for revegetation success.

In the past, OSM has either disapproved or taken no action on proposed State program amendment provisions that would have specified that areas reclaimed following the removal of siltation structures and associated diversions are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. In response to this program amendment and similar recent program amendments from other States, and to concerns raised by other parties, OSM has reconsidered its position on this issue.

a. OSM's Policy Concerning the Term of Liability for Reclamation of Temporary Sediment Control Facilities

Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence ''after the last year of augmented seeding, fertilizing, irrigation, or other work'' needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area.

As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until 2 years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039; September 26, 1983). Indeed, given the Federal regulation that prohibits removal of sediment ponds until two years after the last augmented seeding, restarting the five year responsibility period when a sediment pond is removed would result in the responsibility period being a minimum of seven years in all cases. This is clearly not consistent with the five year minimum period mandated by SMCRA at section 515(b)(20)(A).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA since (1) the lands involved are small in size and widely dispersed and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

The above discussion of the rules in 30 CFR Part 816, which applies to surface mining activities, also pertains to similarly or identically constructed section in 30 CFR Part 817, which applies to underground mining activities.

b. Comparison of Ohio's Proposed Provision OAC 1501:13–9–15(F)(5) with OSM's Policy Clarification

Ohio proposes to allow, as a nonaugmentative practice, the reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or for initial seeding of areas upon which the sediment control system was located and subsequently removed. Ohio's reference to areas that have been unavoidably disturbed in the course of gaining access for removal of sediment control structures is interpreted by OSM to include those roads necessary for maintenance of sediment ponds, diversions, and reclamation areas. However, such roads would not include haul roads or other primary roads which should either have been removed upon completion of mining or approved to be retained for an approved postmining land use.

Since the Ohio provision is limited to sediment control structures and to areas unavoidably disturbed to gain access to those sediment control structures this provision is consistent with the OSM policy stated above. As interpreted in the policy statement above, the removal of sediment ponds and related structures is a nonaugmentative practice that does not restart the five-year responsibility period. Therefore, the Director finds that proposed OAC 1501:13–9–15(F)(5) is not inconsistent with SMCRA section 515(b)(20)(A) and no less effective than the Federal regulations at 30 CFR 816.116(c).

OAC 1501:13–9–15(F)(6)

Subsection OAC 1501:13–9–15(F)(6) has been amended to provide that for the purposes of paragraphs (F)(4)(c) and (F)(5) of this rule, permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for Phase III bond release.

As discussed above, the Federal regulations provide that sediment ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality. Therefore, when the sediment control structures are removed, the surrounding drainage area has already been effectively revegetated. Following this, the entire revegetated area (or increment thereof), including the reclaimed area where the sediment control structure was located, is subject to the full Ohio program requirements concerning final inspection for bond release. The same is true for areas that have been repaired under approved husbandry practices. That is, the proposed 12-month criterion in no way reduces or eliminates any of Ohio's standards for reclamation success for bond release. The Director believes that the 12-month criterion should be sufficient to establish a permanent and diverse vegetative cover as is required by SMCRA section 515(b)(19), especially since the lands typically involved will be small in size, widely dispersed, and surrounded by revegetated lands.

Therefore, the Director finds that the proposed provision at OAC 1501:13–9–15(F)(6), as it pertains to OAC 1501:13–

9–15(F)(4)(c) and (F)(5) is not inconsistent with SMCRA section 515(b)(19) and can be approved.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment and OSM's proposed policy.

Comments were received from the Kentucky Coal Association, the North Dakota Public Service Commission, the Ohio Mining and Reclamation Association, the Buckeye Industrial Mining Co., the R&F Coal Company, the Lignite Energy Council, the National Coal Association, the Kentucky Resources Council, and the Ohio Department of Natural Resources. Except for the Kentucky Resources Council, all of the commenters were in favor of the policy.

In response to the Director's proposed clarification of OSM policy, the Kentucky Resources Council initiates its comments with the premise that OSM has proposed to treat the initial seeding and restoration of areas disturbed by diversions, roads and sedimentation ponds as ''normal husbandry practices.'' It then argues that the initial seeding of such areas is not normal husbandry practice, and any revegetation other than ''husbandry practices'' as defined by 30 CFR 816.116(c)(4) constitutes ''augmented seeding'' and would therefore require extension of the full liability period for the establishment of permanent vegetation. First, the Director did not base not restarting the liability period on the contention that revegetation of such areas is a normal husbandry practice. Second, the Director does not agree that any revegetation other than ''normal husbandry practices'' constitutes ''augmented seeding.'' The legislative history of the Act reveals no specific Congressional intent in the use of the term ''augmented seeding.'' Accordingly, OSM's interpretation of augmented seeding is given deference so long as it has a rational basis. OSM would not consider the seeding of small areas, such as ponds and their associated diversions and roads, as augmented seeding. However, only the reclamation and reseeding of ancillary roads and not haul roads would be considered nonaugmentative. For further discussion of such rationale, see the Director's Finding above. Areas reclaimed following removal of temporary sediment control, and associated structures such as diversions, disposal and storage areas for accumulated sediments and sediment pond embankment material, and ancillary roads used to access such areas would not be subject to a separate or extended bond liability period apart from the applicable permit area served by such structures. The seeding of sedimentation ponds and their associated diversions and roads is not the result of reclamation failure, but because 30 CFR 816.46(b)(5) prohibits the removal of temporary sedimentation ponds until two years after the last augmented seeding.

The Kentucky Resources Council overlooks the fact that for the vast majority of the reclaimed area the revegetation responsibility period will be at least five years. Neither Congressional history nor the language of the statute distinguishes between initial overall reclamation of a mined area and the subsequent restoration of temporary structures like sedimentation ponds and their associated areas. In the absence of such distinction, the Secretary is delegated discretion to determine whether a proposed state amendment is no less effective than the Act and consistent with the counterpart Federal regulation. The Director's stated interpretation of Section 515(b)(20) is that the period of revegetation responsibility applies ''to the increment or permit area as a whole, not individually to those lands within that area upon which revegetation is delayed solely because of their use in support of the reclamation effort of the planted area.'' See 58 FR 48333–48335, September 15, 1993.

OSM has taken a consistent position in approving an amendment to the Colorado (61 FR 26792, May 29, 1996) and Illinois (62 FR 54765, October 22, 1997) surface mining programs which provided that reclaimed temporary drainage control facilities shall not be subject to the extended liability period for revegetative success or the related bond release criteria. The Director, therefore, does not agree with the commenter's interpretation of Section 515(b)(20) of SMCRA.

The Kentucky Resources Council also asserts that OSM's position violates 30 CFR 816.133. Section 816.133 requires that disturbed areas be restored in a timely manner to the premining uses of land or higher or better uses. In response, the Director notes that the Ohio amendment does not eliminate this requirement.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. Comments were received from the U.S. Forest Service and the U.S. Bureau of Mines. The U.S. Forest Service commented that it had reviewed OSM's proposed rule to clarify its policy towards revegetation success and agreed with the proposed rule.

The U.S. Bureau of Mines suggested that OSM consider the significant differences in the reclamation of sediment structures and roads, since sediment structures generally possess characteristics necessary for successful reclamation, while roads generally require significant initial work to develop a necessary growth environment. OSM agrees with the commenter. OSM's policy and Ohio's regulations require that when such structures are removed, the land on which they were located must be regraded and revegetated in accordance with approved plans and the requirements of 30 CFR 816.111 through 816.116, or State counterparts. Because the Ohio program amendment limits the reclamation and reseeding to small areas (those areas that have been unavoidably disturbed in the course of gaining access for removal of sediment control structures) roads posing significant potential for reclamation problems will be excluded.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The proposed Ohio amendment does not pertain to air or water quality standards and, therefore, EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from the EPA. The EPA responded and concurred without comment on October 18, 1993 (Administrative Record No. KY–1246) .

V. Director's Decision

Based on the above findings, the Director approves Ohio's regulations at OAC 1501:13–9–15(F)(4)(c), (F)(5), and (F6).

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay.

Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will 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.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1998.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 11, 1993	September 29, 1998	OAC 1501:13–9-15(F)(4)(c), (F)(5), and (F)(6).

[FR Doc. 98–25980 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0102a; FRL–6161–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to clarify the general provisions and definitions that apply to the regulation of emissions of volatile organic compounds (VOCs), oxides of nitrogen (NOx), and other pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority.

DATES: This rule is effective on November 30, 1998 without further notice, unless EPA receives adverse comments by October 29, 1998. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision are available for public inspection at EPA's Region IX office during normal business hours and at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

FOR FURTHER INFORMATION CONTACT:

Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is BAAQMD Regulation 1, General Provisions and Definitions. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 23, 1998. A corrected version of BAAQMD Regulation 1, revised only to remove a provision that was inadvertently included with the rule, was subsequently forwarded by CARB to EPA on September 2, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Francisco Bay Area. 43 FR 8964. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.[1] 40 CFR 81.305.

On May 27, 1998, EPA proposed limited approval and limited disapproval of the version of Regulation 1 adopted by BAAQMD on December 19, 1990 and submitted by CARB on May 13, 1991. 63 FR 28958. EPA did not propose full approval of Regulation 1 because that version contained a public nuisance provision and references to a Manual of Procedures that are inappropriate for incorporation into the SIP. EPA will not finalize action on this previous submittal of the rule because CARB withdrew the May 13, 1991 submittal of BAAQMD Regulation 1 at the request of the district on July 20, 1998.

This document addresses EPA's direct-final action for BAAQMD Regulation 1, General Provisions and Definitions. The BAAQMD adopted Regulation 1 on November 11, 1993. This submitted rule was found to be complete on August 25, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[2] and is being finalized for approval into the SIP. Regulation 1, as submitted by BAAQMD on June 23, 1998, inadvertently contained a provision that the district had not intended to submit to the EPA for inclusion in the SIP. The State of California removed the provision from Regulation 1 at the request of BAAQMD and resubmitted the corrected version to EPA on September 2, 1998. It is this corrected version, as submitted to EPA by the State of California, that this direct final action incorporates into the Federally approved SIP.

BAAQMD Regulation 1 clarifies the definitions and general provisions that apply to the regulation of emissions of VOCs, NOx, and other pollutants. These pollutants contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**'' (EPA's ''Blue Book''), the EPA Region IX—California Air Resources Board document entitled ''Guidance Document for Correcting VOC Rule Deficiencies'' (April, 1991), and against other EPA policies. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

EPA previously approved various portions of BAAQMD Regulation 1, General Provisions and Definitions, into the SIP on September 2, 1981, July 6, 1982, and November 10, 1982. These portions were originally adopted by BAAQMD on September 5, 1979, May 21, 1980, December 17, 1980, and March 17, 1982. BAAQMD Regulation 1 includes the following significant changes from the current SIP:

- The scope of the exemption in Section 110.5 has been narrowed to prohibit the disposal of waste propellants, explosives, or pyrotechnics by manufacturing facilities in open outdoor fires, and
- Definitions for volatile organic compound and reduced sulfur compounds have been added in Section 236 and 237. The deficiencies noted in EPA's May 27, 1998 proposed limited approval and limited disapproval have been corrected in this version.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Regulation 1, General Provisions and Definitions is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 30, 1998 without further notice unless the Agency receives adverse comments by October 29, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 30, 1998 and no further action will be taken on the proposed rule.

[1] The San Francisco Bay Area was redesignated to attainment. See 60 FR 98 (May 22, 1995). The EPA subsequently redesignated the San Francisco Bay Area back to nonattainment for ozone based on a number of violations of the National Ambient Air Quality Standards (NAAQS) on July 10, 1998. See 63 FR 37258.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301 of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

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. 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 publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(256) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(256) New and amended regulations for the following APCDs were submitted on June 23, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Regulation 1, revised on November 3, 1993.

* * * * *

[FR Doc. 98–25891 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300722; FRL 6032–4]

RIN 2070–AB78

Acrylic Acid, Styrene, α-Methyl Styrene Copolymer, Ammonium Salt; and Styrene, 2-Ethylhexyl Acrylate, Butyl Acrylate Copolymer; Exemption from the Requirements of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer when used as inert ingredients (encapsulating agent, dispensers, resins, fibers, and beads) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. Westvaco Corporation, Chemical Division requested these exemptions from the requirement of a tolerance under the Federal Food, Drug and

Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 29, 1998. Objections and requests for hearings must be received by EPA on or before November 30, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300722, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300722, must also be submitted to: 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. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300722. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 707A, Crystal Mall #2, 1921 Jefferson Davis Hwy, Arlington, VA, (703) 308–8380; gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1998 (63 FR 27727) (FRL 5788–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP) 6E4749 and 6E4750 for a tolerance exemption by Westvaco Corporation, Chemical Division, 3950 Faber Place Drive, North Charleston, SC 29405. This notice included a summary of the petition prepared by Westvaco Corporation, Chemical Division, the petitioner. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer when used as an inert ingredient (encapsulating agent, dispensers, resins, fibers, and beads) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance for a pesticide chemical residue on food only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue'' and specifies factors EPA is to consider in establishing an exemption.

II. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply non-toxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient in food, drinking water, and other non-occupational exposures. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance exemptions for residues on acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl

acrylate copolymer on growing crops, raw agricultural commodities after harvest, and animals. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

The data submitted in the petitions and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient.

A. Toxicological Profile

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting these criteria will present minimal or no risk. Acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer conform to the definition of polymer given in 40 CFR 723.250(b) and meet the following criteria that are used to identify low-risk polymers:

Acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt:

1. Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt contains as an integral part of its composition the atomic elements carbon hydrogen, and oxygen.

3. Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. Acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt is not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substance Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt is not a water absorbing polymer.

7. Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt contains carboxylic acid as the only reactive functional group.

8. The minimum number-average molecular weight of the acrylic acid, styrene, α-methyl styrene copolymer is listed as 1,250 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

9. The acrylic acid, styrene, α-methyl styrene copolymer has a number-average molecular weight of 1,250 and contains less than 10% oligomeric material below the molecular weight 500 and less than 25% oligomeric material below the molecular weight 1,000.

In addition, acrylic acid, styrene, α-methyl styrene copolymer is approved by the Food and Drug Administration (FDA) under 21 CFR for contact with food as a component in adhesives (21 CFR 175.105), coatings (21 CFR 175.300), and paper and paperboard (21 CFR 176.170). The ammonium hydroxide utilized to form the ammonium salt is listed in 21 CFR 184.1139 under the section, ''Direct food substances affirmed as generally recognized as safe.''

Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer:

1. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250 (d)(2)(ii).

4. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer is not a water absorbing polymer.

7. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer contains only the carboxylic acid ester group as the reactive functional group.

8. The minimum number-average molecular weight of styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer is listed as 4,200 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

9. Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer has a number-average molecular weight of 4,200 and contains less than 10% oligomeric material below the molecular weight 500 and less than 25% oligomeric material below the molecular weight 1,000.

B. Aggregate Exposure

Acrylic acid, styrene, α-methyl styrene copolymer ammonium salt formulations have been in commerce since the mid 1960's. The copolymer is ubiquitous in our every day environment and as it is commonly used in flexographic printing inks and coatings, such as on newspapers, corrugated boxes (e.g. pizza boxes), and disposable drinking cups.

Although exposure to acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt may occur through dietary (e.g., food wrapping containing copolymer) and non-occupational (e.g., printed articles) sources, the chemical characteristics of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt lead to the conclusion that there is a reasonable certainty of no

harm from aggregate exposure to the polymer. Given the existing widespread and historic use of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt, any additional exposure resulting from the approval of the copolymer as an inert ingredient in pesticide formulations for use on growing crops or to raw agricultural commodities after harvest is not warranted.

Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer formulations have been in commerce since the mid 1960's. The copolymer is ubiquitous in our every day environment and as it is commonly used in flexographic printing inks and coatings such as on newspapers, corrugated boxes, and disposable drinking cups.

Although exposure to styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer may occur through dietary (e.g., food wrapping containing copolymer) and non-occupational (e.g., printed articles) sources, the chemical characteristics of styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer lead to the conclusion that there is a reasonable certainty of no harm from aggregate exposure to the polymer. Given the existing widespread and historic use of styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer, any additional exposure resulting from the approval of the copolymer as an inert ingredient in pesticide formulations for use on growing crops or to raw agricultural commodities after harvest is not warranted.

In addition, styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer is approved by the FDA under 21 CFR for contact with food as a component in adhesives (21 CFR 175.105), coatings (21 CFR 175.300), and paper and paperboard (21 CFR 176.170).

Based on the conformance of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer to the criteria in Unit IV.A. of this preamble, no mammalian toxicity is anticipated from dietary, inhalation or dermal exposure to acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer.

C. Exposures and Risks

1. *From food and feed uses, drinking water, and non-dietary exposures.* For the purposes of assessing the potential dietary exposure, EPA considered that these tolerance exemptions could be present in all raw and processed agricultural commodities and drinking water and that non-occupational, non-dietary exposure was possible. EPA concluded that, based on these chemical's categorization as a polymer conforming to the definition of a polymer under 40 CFR 723.250(b) that also meet the criteria used to identify low-risk polymers, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable.

2. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

In the case of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer, the lack of expected toxicity of these substances based on its conformance to the definition of polymers as given in 40 CFR 723.250(b) as well as the criteria that identify low-risk polymers results in no expected cumulative effects; a cumulative risk assessment is therefore not necessary.

D. Aggregate Risks and Determination of Safety for U.S. Population

Based on these chemical's conformance to the definition of a polymer given in 40 CFR 723.250(b) as well as the criteria that are used to identify low-risk polymers, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer. EPA believes these compounds present no dietary risk under reasonably foreseeable circumstances.

E. Aggregate Risks and Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a Margin of Exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Because EPA has concluded these substances pose minimal or no risk it did not use a margin of safety analysis for assessing risk to the general population of this compound. For the same reason, application of an additional margin of safety is unnecessary.

V. Other Considerations

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer.

There are no Codex Alimentarius Commission (Codex), Canadian or Mexican, residue limits for acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 30, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40

CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number OPP–300722 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, 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 Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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 OMB 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 an unfunded Federal 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.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), 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 OMB, 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

officials 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Submission to Congress and the Comptroller General

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. 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 publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In §180.1001, the table in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredients to read as follows:

§180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Acrylic acid, styrene, α-methyl styrene Copolymer, ammonium salt (CAS Reg. No. 89678–90–0), minimum number average molecular weight (in amu) 1250.	.....	Encapsulating agent, dispensers, resins, fibers and beads
* *	* * *	* *
Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer (CAS Reg. No. 30795–23–4), minimum number average molecular weight (in amu) 4200.	.....	Encapsulating agent, dispensers, resins, fibers and beads
* *	* * *	* *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt (CAS Reg. No. 89678–90–0), minimum number average molecular weight (in amu) 1250.	.....	Encapsulating agent, dispensers, resins, fibers and beads
* *	* * *	* *
Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer (CAS Reg. No. 30795–23–4), minimum number average molecular weight (in amu) 4200.	.....	Encapsulating agent, dispensers, resins, fibers and beads
* *	* * *	* *

[FR Doc. 98–26003 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300719; FRL–6032–6]

RIN 2070–AB78

Mepiquat Chloride; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of mepiquat chloride, *N,N*-dimethylpiperidinium chloride) in or on grapes and raisins. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on grapes. This regulation establishes a maximum permissible level for residues of mepiquat chloride in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on March 1, 2000.

DATES: This regulation is effective September 29, 1998. Objections and requests for hearings must be received by EPA on or before November 30, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300719] must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300719], must also be submitted to: 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. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300719]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9367, e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the plant regulator mepiquat chloride (*N,N*-dimethylpiperidinium chloride), in or on grapes at 1.0 part per million (ppm) and raisins at 6.0 ppm. These tolerances will expire and is be revoked on March 1, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Mepiquat Chloride on Grapes and FFDCA Tolerances

The applicants state that grape growers in Ohio, New York and Pennsylvania are facing an emergency situation brought on by freezing weather conditions that occurred on four days in April 1998. Regional experts called the frosts the most damaging freeze experienced in the past 30 years. The effects of the frost on the grapes include poor fruit set which will thus reduce fruit yield, with estimates of yield reductions in the 25% range. According to the applicants, there are no other registered alternative products available

to address this need other than mepiquat chloride. The use of mepiquat chloride could result in increased fruit set, and offset some of the damage caused by the late frost. EPA has authorized under FIFRA section 18 the use of mepiquat chloride on grapes for control of frost damage in Ohio, New York, and Pennsylvania. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of mepiquat chloride in or on grapes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on March 1, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on grapes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether mepiquat chloride meets EPA's registration requirements for use on grapes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of mepiquat chloride by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Ohio, New York, and Pennsylvania to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for mepiquat chloride, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of mepiquat chloride and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of *N,N*-dimethylpiperidinium chloride on grapes at 1.0 ppm and raisins at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by mepiquat chloride are discussed below.

1. *Acute toxicity.* For acute dietary risk assessment, the results from two 1-year feeding studies in the dog were combined with the results from a 90–day feeding study in the dog. The NOAEL for the acute dietary endpoint is 58.4 milligrams/kilogram/day (mg/kg/day) and the LOAEL is 95.3 mg/kg/day based on salivation and sedation. In the second 1-year study, salivation (an indicator of impaired neurological function) was observed in all dogs at 2 hours after each feeding. Salivation was slight at first, moderate to severe during the next 4 hours and then gradually disappeared. In the subchronic feeding study, sedation (also a neurotoxic sign) was observed for 1-6 hours after each dosing with 95.3 mg/kg/day, the LOAEL for the 3 studies combined. Using the hundredfold uncertainty factor (to account for both inter-species extrapolation and intra-species variability), the acute Reference dose (RfD) is calculated to be 0.6 mg/kg/day. This risk assessment will evaluate acute dietary risk to all population subgroups.

2. *Short - and intermediate - term toxicity.* The NOAEL is 58.4 mg/kg/day and the LOAEL is 95.3 mg/kg/day based on the combined results from two 1-year feeding studies and one 90-day feeding study in dogs. This endpoint is the same as that used for acute dietary and chronic RfD.

3. *Chronic toxicity.* EPA has established the RfD for mepiquat chloride at 0.6 (mg/kg/day). This RfD is based on the combined 1-year and subchronic feeding studies in the dog. The NOAEL is 58.4 mg/kg/day and the LOAEL is 95.3 mg/kg/day based on clinical signs of toxicity (salivation, sedation, abdominal and lateral positions, and xonoclonic spasms), decreased body weight, and hematological changes at 95.3 mg/kg/day. An uncertainty factor (UF) of 100 was applied to account for both inter-species extrapolation and intra-species variability. This risk assessment will evaluate chronic dietary risk to all population subgroups.

4. *Carcinogenicity.* EPA has classified mepiquat chloride as a Group E chemical - ''no evidence of carcinogenicity to humans.''

5. *FQPA safety factor.* The Agency removed the required 10x safety factor for all population subgroups except females and children.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.384) for the residues of *N,N*-dimethylpiperidinium chloride, in or on a variety of raw agricultural commodities at levels ranging from 3.0 ppm in cotton seed to 0.05 ppm in eggs and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from mepiquat chloride as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute RfD = 0.6 mg/kg/day. The acute dietary (food only) risk assessment used the Dietary Exposure Evaluation Model (DEEM). In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions -- 100% of grapes and all other commodities having mepiquat chloride tolerances will contain mepiquat chloride residues and those residues would be at the level of the tolerance -- which result in an overestimation of human dietary exposure. The results of the DEEM are summarized below. These estimates

should be viewed as a conservative risk estimate; further refinement using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis would result in a lower acute dietary exposure estimate. For acute dietary exposure, the Agency determined that the 10X safety factor is applicable to the subpopulations females (13+ years), as well as infants and children because of a lack of developmental toxicity data.

Application of the 10X safety factor to the Acute RfD of 0.6 mg/kg/day results in an acceptable acute dietary exposure of 10% of the Acute RfD for the subpopulations females (13+ years old), infants, and children (1-6 years old). For the general U.S. Population and other subpopulations to whom the 10X factor does not apply, 100% or less of the Acute RfD would be acceptable. As shown in the following table 1, the amount of acute RfD utilized does not exceed HED's level of concern.

TABLE 1.—ACUTE DIETARY EXPOSURE AND PERCENT RFD

(Total from new and published tolerances at the 99th percentile)

Population of Concern[1]	TMRC[2] (mg/kg/day)	Percent of Acute RfD (%)[3]
U.S. Population	0.0092	2
Children (1–6 years old)	0.024	4
Females (13 + years old)	0.012	2

[1] Population for which the Acute RfD applies.
[2] TMRC - Theoretical Maximum Residue Concentration from DEEM.
[3] Percentage of reference dose (% RfD) = (TMRC/RfD) x 100%.

ii. *Chronic exposure and risk.* The chronic RfD = 0.6 mg/kg/day. A DEEM chronic exposure analysis was performed using tolerance level residues, and 100% crop treated to estimate the Theoretical Maximum Residue Concentration (TMRC) for the general population and subgroups of interest. In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions -- 100% of grapes and all other commodities having mepiquat chloride tolerances will contain mepiquat chloride residues and those residues would be at the level of the tolerance -- which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing mepiquat chloride tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in a TMRC that is equivalent to the percentages of the Chronic RfD listed the following table 2 below. Application of the 10X safety factor to the Chronic RfD of 0.6 mg/kg/day results in an acceptable chronic dietary exposure of 10% or less of the chronic RfD for the subpopulations females (13+ years old), infants, and children (1–6 years old). For the general U.S. Population and other subpopulations to whom the 10X factor does not apply, 100% or less of the chronic RfD would be acceptable. As shown in the following table 2, the amount of chronic RfD utilized does not exceed HED's level of concern.

TABLE 2.—CHRONIC DIETARY EXPOSURE AND PERCENT OF RFD

Population of Concern[1]	TMRC (mg/kg/day)[2]	Percentage of Chronic RfD (%)[3]
U.S. Population (48 States)	0.0010	<1
Nursing Infants (<1 year old)	0.0011	<1

TABLE 2.—CHRONIC DIETARY EXPOSURE AND PERCENT OF RFD—Continued

Population of Concern[1]	TMRC (mg/kg/day)[2]	Percentage of Chronic RfD (%)[3]
Non-Nursing Infants (<1 year old)	0.0024	<1
Children (1-6 years old)	0.0034	<1
Females (13 years +, nursing)	0.0014	<1

[1] The subgroups listed above are: (1) The U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states). The Chronic RfD applies to all popuplation subgroups.
[2] TMRC - Theoretical Maximum Residue Concentration from DEEM.
[3] Percentage of reference dose (% RfD) = (TMRC/RfD) x 100%.

2. *From drinking water.* Mepiquat chloride is stable to hydrolysis and photolysis. Soil and aqueous photolysis are not routes of dissipation. Under aerobic conditions, mepiquat chloride appears to degrade rapidly to CO_2. Under anaerobic conditions, it appears stable. Based on study results, mepiquat chloride is considered to be relatively non-mobile, and is not expected to accumulate in fish. Since the other mepiquat chloride metabolites also degrade rapidly to CO_2, parent mepiquat chloride is the only residue of concern. There are no established Maximum Contaminant Levels or health advisory levels for residues of mepiquat chloride in drinking water. Furthermore, mepiquat chloride is considered to have limited potential for groundwater contamination. Because of mepiquat chloride's low usage rate and its rapid degradation, significant migration to surface water is not expected.

i. *Acute exposure and risk.* Drinking water levels of concern (DWLOC) for acute and chronic dietary exposure are included as the following Tables 3 and 4.

TABLE 3.— DRINKING WATER LEVELS OF CONCERN (DWLOC) FOR ACUTE DIETARY EXPOSURE

Population[7]	Acute RfD (mg/kg/day)	Acute RfD with FQPA factor[1] (mg/kg/day)	Acute Dietary Exposure[2] (mg/kg/day)	Max Water Exposure[3] (mg/kg/day)	Acute DWLOC[4,5,6] (µg/L)
U.S. Population	0.6	0.6 (FQPA factor does not apply)	0.0092	0.59	21,000
Females 13 years +	0.6	0.06	0.012	0.048	1,400
Children/Infants	0.6	0.06	0.024	0.036	360

[1] Acute RfD with FQPA factor = Acute RfD/FQPA Safety Factor (10x).
[2] Acute Dietary Exposure from DEEM analysis.

[3] Max Water Exposure = Acute RfD with FQPA factor - Acute Dietary Exposure (mg/kg/day).
[4] Acute DWLOC(µg/L) = Max. water exposure (mg/kg/day) * body wt (kg)/(10^{-3} mg/µg) * water consumed daily (L/day).
[5] HED Default body weights are 70 kg for General US Population; 60 kg for females 13+ and 10 kg for infants and children.
[6] HED Default Daily Drinking Rates are 2 L/day for Adults and 1 L/day for infants and children.
[7] Within each of these categories, the subgroup with the highest food exposure was given.

TABLE 4.—DRINKING WATER LEVELS OF CONCERN (DWLOC) FOR CHRONIC DIETARY EXPOSURE

Population	Chronic RfD (mg/kg/day)	Chronic RfD with FQPA factor[1] (mg/kg/day)	Chronic Dietary Exposure[2] (mg/kg/day)	Max Water Exposure[3] (mg/kg/day)	Chronic DWLOC[4,5,6,7] (µg/L)
U.S. Population	0.6	0.6 (FQPA factor does not apply)	0.0010	0.599	21,000
Females 13 years +	0.6	0.06	0.0014	0.0586	1,800
Children/Infants	0.6	0.06	0.0034	0.0566	570

[1] Acute RfD with FQPA factor = Acute RfD/FQPA Safety Factor (10x).
[2] Acute Dietary Exposure from DEEM analysis.
[3] Max Water Exposure = Acute RfD with FQPA factor - Acute Dietary Exposure (mg/kg/day).
[4] Chronic DWLOC(µg/L) = Max. water exposure (mg/kg/day) * body wt (kg)/(10^{-3} mg/µg) * water consumed daily (L/day).
[5] HED Default body weights are 70 kg for General US Population; 60 kg for females 13+ and 10 kg for infants and children.
[6] HED Default Daily Drinking Rates are 2 L/day for Adults and 1 L/day for infants and children.
[7] Within each of these categories, the subgroup with the highest food exposure was given.

ii. *Chronic exposure and risk.* ''The Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments'' issued on November 24, 1997 was followed for this assessment. Thus, the generic expected environmental concentration (GENEEC) model and the SCI-GROW model were run to produce estimates of mepiquat chloride concentrations in surface and ground water, respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which EPA has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of concern (DWLOCs). A DWLOC is the concentration of a pesticide in drinking water which would be acceptable as an upper limit in light of total aggregate exposure to that chemical from food, water, and non-occupational (residential) sources.

The DWLOC is the concentration in drinking water as a part of the aggregate chronic exposure that occupies no more than 100% of the RfD. The Agency's default body weights and water consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

For chronic (non-cancer) exposure to mepiquat chloride in surface and ground water, the drinking water levels of concern are 21,000 µg/L for the U.S. population, 1,800 µg/L for females (13+ years old), and 570 µg/L for children (1–6 years old). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to mepiquat chloride in drinking water. DWLOCs were then calculated using default body weights and drinking consumption figures.

Estimated average concentrations of mepiquat chloride in surface and groundwater are 1.99 parts per billion (ppb) and 0.008 ppb, respectively. The DWLOCs are as stated above. The estimated average concentrations of mepiquat chloride in surface and groundwater are less than OPP EPA's level of concern for mepiquat chloride in drinking water as a contribution to chronic aggregate exposure.

3. *From non-dietary exposure.* Mepiquat Chloride is currently not registered for use on any sites that present a risk of non-occupational, non-dietary exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether mepiquat chloride has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, mepiquat chloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mepiquat chloride has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute risk for ''food only'' does not exceed EPA's level of concern. Since estimates of mepiquat chloride in drinking water do not exceed acute drinking water levels of concern (DWLOC) listed in Table 3 of this preamble, the Agency does not expect the acute aggregate risk to exceed the level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to mepiquat chloride from food will utilize < 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to mepiquat chloride in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. There are no registered residential uses of mepiquat chloride. Therefore, a

Short- and Intermediate-Term Aggregate Risk assessment is not applicable.

4. *Aggregate cancer risk for U.S. population*. The Agency has classified mepiquat chloride as a Group E chemical, ''no evidence of carcinogenicity to humans.'' Therefore, a risk assessment is not required.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to mepiquat chloride residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of mepiquat chloride, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*.—a. *Rats*. In a developmental toxicity study, Wistar rats were dosed by oral gavage at levels of 0, 50, 150, or 300 mg/kg/day during gestation days 6 through 15. Based on the clinical signs of toxicity and decreases in the food consumption and body weight gains, the Maternal Toxicity LOAEL is 300 mg/kg/day and the Maternal Toxicity NOAEL is 150 mg/kg/day. Since developmental toxicity was not observed in this study, the Developmental Toxicity NOEL is ≧ 300 mg/kg/day (Hight Dose Tested).

b. *Rabbits*. In a developmental toxicity study, mepiquat chloride was administered to Himalayan rabbits at dose levels of 0 (untreated control), 0 (vehicle control), 50, 100 and 150 mg/kg/day during gestation days 6–18. The maternal NOAEL is 50 mg/kg/day (borderline value) and the LOAEL is 100 mg/kg/day based on body weight loss and decreased body weight gain; decreased food consumption; amber-colored liquid in the abdomens of six rabbits; diarrhea, trembling and apathy in one rabbit; and six abortions. Developmental effects were not observed in the 50 mg/kg group. Because of the high abortion rate in the 100 mg/kg group (37.5%) and high death and abortion rate in the 150 mg/kg group (58.8%), inadequate numbers of fetuses in the mid-dose and high-dose groups preclude the meaningful evaluation of developmental toxicity in this study. In order to evaluate developmental toxicity in the rabbit, the current study was to be considered with another study in which two doses of mepiquat chloride (75 and 100 mg/kg) were tested. However, because the results were reported only in the form of a brief summary, the second study cannot be presently evaluated. The developmental toxicity study in the rabbit is classified as supplementary/unacceptable and does not satisfy the guideline requirement 83-3b (OPPTS 870.3700). The study is upgradable following the review and acceptance of the second study.

iii. *Reproductive toxicity study*.—*Rats*. In the 2-generation reproductive toxicity study, groups of 25 male and 25 female Wistar rats were fed mepiquat chloride in their diets at concentrations of 0, 500, 1,500, or 5,000 ppm for 10 weeks (F_0) or 14 weeks (F_1) before mating, and during mating, gestation, and lactation. The doses corresponding to the dietary concentrations are 51.2 and 48.6, 153.1 and 146.6, and 499.3 and 574.5 mg/kg/day, respectively for F_0 and F_1 males and 54.0 and 53.3, 163.6 and 162.0, and 530.0 and 626.5 mg/kg/day, respectively for F_0 and F_1 females.

The LOAEL for parental (systemic) toxicity is 5,000 ppm (499 mg/kg/day) for male and female rats based on neurological impairment, decreased body weight and body weight gain in the adults, and retarded growth of F_1 and F_2 pups. The parental (systemic) NOAEL is 1,500 ppm (147 mg/kg/day). There were no treatment-related effects on reproductive parameters. The NOAEL for reproductive toxicity is > 5,000 ppm (499 mg/kg/day).

iv. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating pre- and post-natal toxicity for mepiquat chloride is incomplete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat developmental toxicity study and the 2-generation rat reproductive toxicity study. However the developmental toxicity study in rabbits was unacceptable and requires a new study.

v. *Conclusion*. Based on the above, the Agency determined that the 10X safety factor for protection of infants and children should be retained and applied to all population subgroups involving women and children.

2. *Acute risk*. The acute risk for food and drinking water do not exceed EPA's level of concern and therefore the acute aggregate risk does not exceed the Agency's level of concern.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to mepiquat chloride from food will utilize < 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- or intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. There are no registered residential uses of mepiquat chloride. Therefore, a Short- and Intermediate-Term Aggregate Risk assessment is not applicable.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to mepiquat chloride residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

A previously submitted study of the metabolism of mepiquat chloride in grapes was found to be adequate. The residue-of-concern in grapes is considered to be the parent compound only. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

B. Analytical Enforcement Methodology

The analytical method gas chromatography/nitrogen phosphorus

detector (GC/NPD) for mepiquat chloride in/on grapes was previously reviewed and found to be adequate for tolerance enforcement. The limit of quantification (LOQ) for this method was reported as 0.05 ppm in grapes, 0.1 ppm in grape juice, and 0.25 ppm in raisins.

C. Magnitude of Residues

The grape residue data provided with this action appear to be a summary of the data that were supplied with a previously submitted petition (PP 1F3955/1H5610). In support of that petition, 28 field trials in 8 different states (California, New York, Pennsylvania, Oregon, Michigan, New Jersey, Ohio, and Georgia) were conducted in 1984 and 1985. Residues of mepiquat chloride in/on grapes ranged from < 0.05 to 0.76 ppm with PHIs ranging from 77 to 135 days. The highest value, 0.76 ppm, is from a 0.4 lb/A treatment (1.6 times the recommended rate) and was found 106 days after application. In Ohio, residues of mepiquat chloride were 0.1 and 0.15 ppm for PHIs of 112 and 106 days, respectively.

A time-limited tolerance of 1 ppm for residues of mepiquat chloride in/on grapes will be established for purposes of this section 18 use only. Grapes processed from the field trials indicate that production of raisins resulted in a sixfold increase in mepiquat chloride residues. Mepiquat chloride did not concentrate in grape juice. A time-limited tolerance of 6 ppm for residues of mepiquat chloride in/on raisins will be established to support this section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances established for mepiquat chloride on grapes. Thus, international harmonization is not an issue for these time-limited tolerances.

E. Rotational Crop Restrictions

Since grapes are not rotated to other crops, a discussion of rotational crop restrictions is not germane to this action.

V. Conclusion

Therefore, the tolerance is established for residues of *N,N*-dimethylpiperidinium chloride in grapes at 1.0 ppm and raisins at 6.0 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 30, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300719] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, 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 Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document. VIII.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive

Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled Enhancing Intergovernmental Partnerships (58 FR 58093, October 28, 1993), 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 (OMB) 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 an unfunded federal 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.

C. Executive Order 13084

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19,1998), 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 OMB, 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

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. 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 publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 346a and 371.

b. In § 180.384 as follows:

i. By designating the existing text as paragraph (a) and adding a paragraph heading.

ii. By adding paragraph (b) and by adding and reserving with headings paragraphs (c) and (d).

The added text reads as follows:

§ 180.384 N,N-Dimethylpiperidinium chloride; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time limited tolerances are established for residues of the plant growth regulator mepiquat chloride, *N,N*-Dimethylpiperidinium chloride under section 18 emergency exemptions granted by EPA when used on the commodities in the table below. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Grapes	1.0	3/1/00
Raisins	6.0	3/1/00

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 186— [AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows;

Authority: 21 U.S.C. 348.

§ 186.2275 [Partially Redesignated and Removed]

b. In § 186.2275 by transfering the entry for ''cottonseed'' from the table and adding it alphabetically to the table in newly designated paragraph (a) of § 180.384, and by removing the remainder of § 186.2275.

[FR Doc. 98–25984 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6169–3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 1 new site to the General Superfund section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be October 29, 1998.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the ''Supplementary Information'' portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, phone (703) 603–8852, State and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA,

as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. However, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund section''), and one of sites being addressed generally by other Federal agencies (the ''Federal Facilities section.'' Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 18, 1998 (63 FR 49855).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to

describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. To date, the Agency has deleted 176 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 1998, EPA has deleted portions of 11 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

In addition to the 167 sites that have been deleted from the NPL because they have been cleaned up (9 additional sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 368 sites are also on the NPL CCL. Thus, as of September 18, 1998, the CCL consists of 535 sites.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the Region 6 office.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule, September 1998.''

C. What Documents Are Available for Review at the Region 6 Docket?

The Region 6 docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 6 docket.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 6 Docket for hours.

You may also request copies from the Headquarters or the Region 6 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any document.

Following is the contact information for the EPA Headquarters and the Region 6 dockets:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917

Brenda Cook, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6SF–RA, Dallas, TX 75202–2733, 214/655–7436

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the internet at WWW.EPA.GOV/SUPERFUND (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 1 site to the General Superfund section of the NPL: The Rockwool Industries Inc. site in Bell County, Texas. It is in group number 6. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has an HRS score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

B. Status of NPL

With the new site added in today's rule, the NPL now contains 1,194 sites, 1,041 in the General Superfund section and 153 in the Federal Facilities section. With a rule proposing to add new sites to the NPL published elsewhere in today's **Federal Register**, there are now 66 sites proposed and awaiting final agency action, 57 in the General Superfund section and 9 in the Federal Facilities section. Final and proposed sites now total 1,260.

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the site in this rule. Based on comments received on the proposed site (published at 63 FR 11339, March 6, 1998), as well as investigation by EPA and the State (generally in response to comment), EPA responded to all relevant comments received. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule, September 1998.''

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal 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 Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding a site to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of any cleanup at the site. Further, no identifiable groups are affected. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the site in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when deciding on enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted 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. 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 publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

EPA is not using technical standards as part of today's rule, which adds sites to the NPL. Therefore, the Agency did not consider the use of any voluntary consensus standards.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose any burden requiring OMB approval under the Paperwork Reduction Act.

XI. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Final Rule?

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.''

This final 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.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

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.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by adding the following site in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
*	*	*	*
TX	Rockwool Industries Inc	Bell County.	
*	*	*	*

[FR Doc. 98–25889 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4200

[WO–130–1820–00–241A]

RIN 1004–AC70

Grazing Administration; Alaska; Livestock

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is removing the grazing regulations which implement the livestock grazing program on BLM lands in Alaska because they are obsolete. This action is necessary because there are currently no livestock grazing operations under BLM's program. We do not anticipate receiving any more applications. The effect of this action is to eliminate the obsolete regulations covering livestock grazing on BLM lands in Alaska. The amount of BLM lands suitable for livestock grazing has decreased dramatically.

DATES: This rule is effective October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Peggy Fox, Alaska State Office, Bureau of Land Management, U.S. Department of the Interior, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599; Telephone (907) 271–3346 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Final Rule and Response to Comments
III. Procedural Matters

I. Background

The current part 4200 regulations were written in order to carry out the provisions of the Act of March 4, 1927, commonly known as the Alaska Livestock Grazing Act (43 U.S.C. 316, 316a-316o) (Act). The Act declared that it is Congressional policy to:

- Promote the conservation of the natural resources of Alaska;
- Provide for the protection and development of forage plants; and
- Provide for the beneficial use of the land for grazing by livestock.

The Act authorizes the Secretary of the Interior to lease to qualified applicants grazing privileges on the grazing districts established in Alaska. The Act states that the use of public lands in Alaska for grazing must be subordinated to the following uses:

- Development of the mineral resources;

- Protection, development, and use of forests;
- Protection, development, and use of water resources;
- Agriculture; and
- Protection, development, and use of other resources that may be of greater benefit to the public.

There are currently no grazing permit holders under BLM's livestock grazing program in Alaska. BLM does not anticipate receiving any more applications. The amount of BLM lands suitable for livestock grazing has decreased dramatically because of Native and State of Alaska land selections. The regulations at part 4200 are therefore unnecessary. The part 4200 regulations are specific to Alaska and removing them would have no effect on any other grazing regulations elsewhere in the United States.

On March 20, 1998, (63 FR 13608) BLM published a proposed rule in the **Federal Register** to remove the grazing regulations which implement the livestock grazing program on BLM lands in Alaska because they are obsolete. The 60-day comment period closed on May 19, 1998. BLM did not receive any public comments. However, BLM did receive one internal technical comment which we considered in finalizing the rule.

II. Discussion of Final Rule and Response To Comments

A. Legal Basis for the Final Rule

This action is necessary because there are currently no livestock grazing permit holders under the part 4200 regulations. We do not anticipate receiving any more applications. However, if there is a need in the future for a livestock grazing permit, BLM still has the authority to issue a livestock grazing permit. We will issue the livestock grazing permit in accordance with the provisions of the statute (Alaska Livestock Grazing Act, 43 U.S.C. 316, 316a-316o). The effect of this action is to eliminate the obsolete regulations covering livestock grazing on BLM lands in Alaska (43 U.S.C. 1701 *et seq.*).

B. General and Specific Comments

BLM did not receive any public comments to be considered or included in the preparation of this final rule. We have modified the proposed rule to eliminate any reference to how the BLM would respond to future livestock grazing permit applications. Specifically, BLM has revised the proposed rule to delete the following language: ''Due to a lack of interest in the program, BLM removed these regulations. For applicants wishing to apply for permits to graze livestock other than reindeer, BLM may issue special use permits.''.

Accordingly, BLM is removing the part 4200 regulations and replacing them with a statement that BLM continues to have the authority to issue a livestock grazing permit if needed.

III. Procedural Matters

Executive Order 12866

This final rule is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866. This final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. The final rule merely removes the obsolete regulations covering livestock grazing on BLM lands in Alaska. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This final rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This final rule merely fulfills the requirements of the Act, and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule will not have a significant economic impact on a number of small entities because there are no livestock grazing permit holders at present.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule is not a major rule because removal of 43 CFR part 4200 will not result in or affect the $100 million statutory threshold.

Unfunded Mandates Reform Act

This final rule to remove 43 CFR part 4200 does not impose an unfunded mandate on State, local, or tribal governments, or the private sectors of more than $100 million per year. This final rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The final rule merely removes obsolete regulations covering livestock grazing on BLM lands in Alaska.

Executive Order 12630

In accordance with Executive Order 12630, this final rule does not have significant takings implications. A takings implications assessment is not required. Since the final rule merely removes obsolete regulations, there will be no private property rights impaired as a result.

Executive Order 12612

In accordance with Executive Order 12612, the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule does not impose any obligations on any other Government nor preempt any regulatory authority of any State.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

BLM has determined that the action of removing the Alaska livestock grazing regulations will have no measurable effect on the human environment. There are currently no grazing permit holders under BLM's livestock grazing program. BLM considers this final rule an administrative action to remove unnecessary regulations for a program that is no longer used. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, this final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 FR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a

significant effect on the human environment and that has been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Author. The principal author of this final rule is Shirlean Beshir, Regulatory Affairs Group, Room 401LS, Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240; Telephone: (202) 452–5033 (Commercial or FTS).

List of Subjects in 43 CFR Part 4200

Administrative practice and procedure, Alaska, Grazing lands, Livestock, Range management.

Dated: September 18, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, BLM under the authority of 43 U.S.C. 316n revises part 4200, Group 4200, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK

Authority: 43 U.S.C. 316, 316a–316o; 43 U.S.C. 1701 *et seq.*

§ 4200.1 Authority for grazing privileges.

The BLM is authorized under the Alaska Livestock Grazing Act (Act of March 4, 1927, 43 U.S.C. 316, 316a–316o) to lease to qualified applicants the grazing privileges on the grazing districts established in Alaska.

[FR Doc. 98–25974 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 092298C]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

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

ACTION: Inseason transfer.

SUMMARY: NMFS allocates 7 mt of the 1998 Atlantic bluefin tuna (BFT) Reserve to the Harpoon category to cover overharvest of the Harpoon category quota. In addition, NMFS adjusts the October-December subquota for the General category BFT fishery by transferring 10 mt from the Reserve and 40 mt from the Incidental Longline South quota for a revised coastwide General category subquota of 116 mt for October-December. These actions are being taken to extend scientific data collection on several size classes of BFT while preventing overharvest of the adjusted subquotas for the affected fishing categories and to ensure maximum utilization of the quota while maintaining a fair distribution of fishing opportunities.

DATES: Allocation to the Harpoon category effective September 23, 1998. Transfer to the General category effective October 1, 1998, until December 31, 1998, or until the effective date of the closure, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301-713-2347, or Mark Murray-Brown, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Under the implementing regulations at § 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to allocate any portion of the Reserve to any category or categories of the fishery after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of BFT tuna before the anticipated end of the fishing season, and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded. Such authority was exercised to transfer 19 mt of the 52–mt Reserve to the Angling category large school/small medium subquota effective August 13, 1998 (63 FR 44173).

The AA is also authorized under § 285.22(i) to make adjustments to quotas involving transfers between categories if, during a single year quota period, it is determined, based on landing statistics, present year catch rates, effort, and other available information, that any category is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category after considering the preceding factors.

Quota Adjustments

Pursuant to § 285.7 and under the authority of ATCA, NMFS has provided a Letter of Authorization to fisheries biologists from the Massachusetts Division of Marine Fisheries to conduct joint research with NMFS comparing the effects of circle and straight hooks on BFT and Atlantic yellowfin tuna (YFT). A combined total of 200 BFT and/or YFT (averaging 40 lb. (18 kg)) may be collected off the Massachusetts and Rhode Island coasts under this authorization, which is effective June 29 through October 31, 1998. Because eight large school BFT have been collected to date, 0.26 mt have been deducted from the Reserve. In addition, because landings by Harpoon category vessels exceeded the 53 mt Harpoon category quota by approximately 7 mt, NMFS is transferring 7 mt of the Reserve to cover this overharvest. Following these two deductions, approximately 25 mt remain in the Reserve.

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 657 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1998. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. Approximately 66 mt remain available for the October-December General category fishery, in addition to the 10 mt set aside for the traditional fall New York Bight fishery.

After considering the previously cited factors for making transfers between categories and from the Reserve, the AA has determined that 10 mt of the remaining 25 mt of Reserve should be transferred to the General category. In addition, the AA has determined that 40 mt of the remaining Incidental Longline South quota of approximately 66 mt should be transferred to the General category. Thus, the coastwide General category quota for the October-December period is set at 116 mt.

Once the General category quota for October-December period has been attained, the fishery will be closed. The announcement of the closure will be filed at the Office of the Federal Register, stating the effective date of

closure, and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA, (301) 713-1279, or (978) 281-9305, to check the status of the fishery before leaving for a fishing trip.

Classification

This action is taken under 50 CFR 285.22 and is exempt from review under E.O. 12866.

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

Dated: September 23, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–25927 Filed 9–23–98; 4:58 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 980527137–8237–02; I.D. 121597D]

RIN 0648–AL24

Atlantic Swordfish Fishery; South Atlantic Quotas; Quota Adjustment Procedures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to establish annual quotas for the South Atlantic swordfish stock and to amend the regulations governing quota adjustment procedures in the Atlantic swordfish fishery. The purpose of this action is to improve the conservation and management of the Atlantic swordfish resource, while allowing harvests consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: All provisions of this final rule are effective October 8, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Applications for a delayed offloading exempted fishing permit may be obtained from Buck Sutter, Highly Migratory Species Management Division, St. Petersburg, FL, (813) 570–5447.

FOR FURTHER INFORMATION CONTACT: Steve Meyers or Jill Stevenson: 301–713–2347 or FAX 301–713–1917.

SUPPLEMENTARY INFORMATION: The harvest of Atlantic swordfish by U.S. fishermen is managed pursuant to the Fishery Management Plan for Atlantic Swordfish. Regulations found at 50 CFR part 630 and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and of the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*) implement the plan. Regulations issued under the authority of ATCA implement the recommendations of ICCAT.

Background information about the need for revisions to Atlantic swordfish fishery regulations was provided in the preamble to the proposed rule (63 FR 31710, June 10, 1998) and is not repeated here.

South Atlantic Swordfish Quota

In this final rule, NMFS establishes the a South Atlantic swordfish quota of 289 mt dw (384 mt ww) for each of the 1998, 1999, and 2000 fishing years. A single fishing period each year is preferred by fishery participants, semi-annual quotas are not established. The quotas established are consistant with ICCAT rcommnedations and negotiated quota-sharing agreements.

Reminder: In South Atlantic waters, U.S.-flagged vessels continue to be prohibited from fishing for swordfish with any gear other than pelagic longline. Following a closure of the directed longline fishery in the South Atlantic Ocean, no incidental harvest is allowed. Permitting and reporting requirements and minimum size requirements are also applicable to the South Atlantic swordfish fishery. Because no South Atlantic swordfish quota has been allocated to the recreational fishery sector, recreational fishery participants are prohibited from fishing for or landing South Atlantic swordfish.

Quota Adjustment Procedures

In this final rule, NMFS revises quota adjustment procedures to expedite adjustments involving simple carryover situations within a season or between seasons. Specifically, NMFS willaccomplish within- and between-season carryover quota adjustments by notice action. NMFS will consult on long-term quota adjustments necessary to prevent overfishing and/or to comply with ICCAT recommendations with the Magnuson-Stevens Act advisory panels (APs) during annual discussions on the need to amend the Fishery Management Plan (FMP).

Other Issues

In addition to the above measures, NMFS requested comments in this rulemaking on two related issues that concern management of Atlantic swordfish: (1) The offloading of swordfish harvested from the South Atlantic stock during a closure in the North Atlantic fishery and (2) the use of trip limits to extend the length of the North Atlantic swordfish fishery.

Offloading of Swordfish

NMFS is continuing the swordfish Vessel Monitoring System (VMS) pilot program (63 FR 12687, March 16, 1998), with one modification to the offloading provisions applicable during closures of the directed swordfish fisheries. Fishermen that apply for and receive an exempted fishing permit (EFP) may (1) offload swordfish after a directed fishery closure in either the North or the South Atlantic swordfish fishery and (2) possess greater than 15 South Atlantic swordfish on board in the North Atlantic Ocean during a closure of the North Atlantic directed fishery. NMFS intends to issue EFPs to those vessels that purchase, install, and operate a VMS unit. To apply for an EFP, fishermen must contact NMFS (see **ADDRESSES**).

NMFS must implement an ICCAT recommendation that requires 10 U.S. vessels to operate VMS units for a 3-year pilot program, beginning in 1999. Vessels that participate in the swordfish VMS program may be able to participate in the ICCAT program as well. NMFS encourages vessels that fish on the high seas for swordfish to join voluntarily the ICCAT VMS pilot program.

Trip Limits

Trip limits were implemented on a temporary basis in 1996 to slow down catch rates and avoid extended closure periods. In 1997 the trip limits lapsed. NMFS received comments on trip limits during the comment period of the proposed consolidation of the regulations governing highly migratory species (HMS) (61 FR 57361, November 6, 1996) and requested comments in connection with the present rule (63 FR 31710, June 10, 1998). Based on comments received, NMFS is not implementing trip limits in this rulemaking due to the need for further

analyses. Trip limits will be considered, however, in the draft FMP and in subsequent public hearings and AP meetings.

Comments and Responses

Two written comments were submitted to NMFS and three public hearings were held during the comment period.

South Atlantic Swordfish Quota

Comment: Two commenters supported the 289 mt dw quota allocated to the South Atlantic swordfish fishery.

Response: NMFS agrees.

Comment: Two commenters stated that a split season is not necessary for the South Atlantic swordfish quota. They both suggested that a split season may result in unused South Atlantic quota due to the nature of the fishery (limited number of vessels, high costs per trip due to long travel times). Interest was expressed by a commenter that the season should start later in the calendar year than June 1 to correspond to the seasonal nature of the South Atlantic fishery. Another commenter suggested it might start earlier to allow the distant water fleet to take advantage of the high demand for swordfish in early July.

Response: NMFS agrees that a split season is not necessary in the South Atlantic fishery and is establishing a single annualfishing period for the South Atlantic swordfish fishery. Under this scenario, fishing years (and the annual quota) begin June 1 and continue until the quota is caught. NMFS recognizes that economic factors determine preferences for fishing seasons in different geographic areas and is currently considering alternatives in the HMS FMP that would adjust the start of the fishing year.

Quota Adjustment Procedures

Comment: A commenter recommended that NMFS quickly finalize 1997 landings estimates in order for fishermen to benefit from the carryover of unused 1997 North Atlantic and South Atlantic swordfish quotas.

Response: NMFS agrees. By this rule NMFS is streamlining the quota carryover procedures in order to maximize the benefit to swordfish fishermen. Under the new procedures carryovers are established by notice action rather than by an extended rulemaking action.

Comment: Two commenters recommended establishing a swordfish evaluation panel of industry representatives to improve relations between NMFS and the commercial swordfishing industry. They believe that a panel would improve the accuracy of swordfish landings projections made by NMFS. One commenter indicated that the HMS Advisory Panel is a poor replacement for developing a ''reasonable swordfish evaluation panel process.''

Response: NMFS does not believe that the establishment of such a panel (which would have to comply with the Federal Advisory Committee Act) is warranted. NMFS will consult on long term quota adjustments necessary to prevent overfishing with the Magnuson-Stevens Act advisory panels during discussions on the need to amend the FMP. For short-term carryover adjustments to quotas, options are limited, with reduced need for consultation.

Offloading of Swordfish

Comment: One commenter supported the use of a VMS unit if Spanish and Japanese vessels were also required to use one. This commenter was concerned about the confidentiality of the information that would be collected by NMFS.

Response: NMFS established a voluntary unilateral swordfish VMS program to benefit U.S. fishermen. However, all ICCAT member nations must abide by a 1997 ICCAT recommendation for a VMS pilot program by 1999. Consistent with legal requirements, NMFS maintains confidentiality of VMS data submitted to the NMFS

Office of Law Enforcement.

Comment: One commenter supported allowing vessels with a VMS unit on board to transit the North Atlantic Ocean with greater than 15 South Atlantic swordfish on board.

Response: NMFS agrees that offloading of South Atlantic swordfish in northern areas provides an economic benefit to swordfish fishermen during closures in the North Atlantic. However, NMFS currently requires fishermen to obtain an EFP to be able to transit the North Atlantic area during a closed period with greater than 15 swordfish on board.

Trip Limits

Comment: One commenter stated that there should be no trip limit in the South Atlantic swordfish fishery due to high costs incurred while fishing in that area.

Response: NMFS will not implement trip limits in the South Atlantic fishery because there is no need to slow the pace of the fishery at this time. Trip limits for the South Atlantic swordfish fishery will be considered if the need arises to slow the pace of the fishery.

Comment: One commenter reiterated past comments that support trip limits only if accompanied by restrictive measures for smaller vessels such as a days-between-landings program. This commenter expressed that there would be a reduced likelihood of a closure in the first semi-annual season of the 1998 North Atlantic swordfish fishery due to a reduction in the distant water fleet and the carryover of unharvested 1997 quota.

Response: This issue needs additional analyses and opportunity for public comment. Enforcement is a particular concern for days-between-landings. NMFS agrees that, to the extent practicable, all fishery participants should be fairly affected by any effort controls in the Atlantic swordfish fisheries. The draft HMS FMP includes a re-proposal for limited access in the swordfish fishery. Once limited access measures are in place, further effort controls can be considered.

Changes From the Proposed Rule

Based on comments received on the proposed rule, a single season quota is established for the South Atlantic swordfish fishery. No additional changes, other than editorial changes, were made to the proposed rule.

Classification

This final rule is published under the authority of ATCA and the Magnuson-Stevens Act. The Assistant Administrator for Fisheries (AA), NOAA, has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and for the domestic management of the Atlantic swordfish fishery.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities as follows. The quota represents an increase relative to the 1997 quota, reflects U.S. fishing effort and catch in 1993 and 1994, and is not overly restrictive. As a result, these measures will not have a significant economic impact on a substantial number of small entities. No comments were received that changed that basis for the original

certification. Therefore, no Regulatory Flexibility Analysis was prepared.

Because this rule increases the harvest quota for swordfish from the South Atlantic swordfish stock, thereby extending the fishing season and reducing the likelihood or duration of a fishery closure, this rule relieves a restriction and under 5 U.S.C. 553(d)(1) is not subject to a delay in effective date. To the extent that this rule implements certain quota adjustment procedures that will expedite carryover of North Atlantic swordfish quota not harvested in the 1997 fishing year, the AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the new procedures for 30 days. NMFS will rapidly communicate the new regulations to fishery participants through its FAX network and HMS Information Line.

This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS reinitiated formal consultation for the South Atlantic swordfish fishery on May 4, 1998, under section 7 of the ESA. The Biological Opinion resulting from this consultation was issued on August 5, 1998. It concluded that continued operationof the longline fishery in the South Atlantic Ocean may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 23, 1998.

Gary C. Matlock,

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

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.24, paragraph (a)(3) is added; paragraphs (b), and (d) through (f) are revised; and paragraphs (g) and (h) are removed to read as follows:

§ 630.24 Quotas.

(a) * * *

(3) A swordfish possessed on board or offloaded from a vessel that used or had on board a driftnet during its current or most recent fishing trip in waters of the North and/or South Atlantic Oceans (including the Gulf of Mexico and Caribbean Sea) will be deemed to have been harvested by a driftnet.

(b) *Directed-fishery quotas.* (1) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 2,098.6 mt dw, of which 2,057 mt dw is allocated for the longline/harpoon fishery and 41.6 mt dw is allocated for the driftnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,028.5 mt dw, one for the period June 1 through November 30, 1998, and the other for the period December 1, 1998, through May 31, 1999.

(2) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 2,033.2 mt dw, of which 1,993 mt dw is allocated for the longline/harpoon fishery and of which 40.2 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannualquotas of 996.5 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

(3) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 289 mt dw.

(4) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 289 mt dw.

(5) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 2000, through May 31, 2001, is 289 mt dw.

* * * * *

(d) *Annual adjustments.* (1) As necessary, NMFS will reevaluate the annual directed fishery quotas for the North and South Atlantic swordfish stocks and the annual incidental catch quota for the North Atlantic swordfish stock. NMFS will consider the best available scientific information regarding the following factors:

(i) Swordfish stock abundance assessments;

(ii) Swordfish stock age and size composition;

(iii) Catch and effort in the swordfish fishery; and

(iv) Consistency with ICCAT recommendations.

(2) Except for the carryover provisions of paragraph (d)(3), of this section, NMFS will announce any adjustments to the annual quotas by publication of a notice in the **Federal Register**, providing for a 30-day minimum comment period. NMFS will prepare a report of its evaluations, a regulatory impact review, and an environmental assessment; and such documents will be made available to the public. NMFS will take into consideration all information received during this comment period and will publish a final rule in the **Federal Register**.

(3) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that management area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual periods. NMFS will publish notification in the **Federal Register** of any adjustment and of the apportionment made under this paragraph (d)(3).

(e) *Inseason adjustments.* (1) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed fishery and gear quotas are not exceeded.

(2) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quotas.

(3) If NMFS determines that it is necessary to close the directed fishery, any estimated overharvest or underharvest of the directed fishery quota available immediately prior to that closure will be used to adjust the annual incidental catch quota accordingly.

(4) NMFS will publish notification in the **Federal Register** of any inseason adjustment and its apportionment made under this paragraph (e).

(f) *Gear allocations.* If NMFS determines that the annual or semiannual directed fishery or incidental catch quotas must be adjusted pursuant to paragraph (d) or (e) of this section, the annual or semiannual gear quotas will be adjusted so that the new gear quotas represent the same proportion (percentage) of the adjusted quota as they did of the quota before adjustment, provided such adjusted gear quotas are consistent with applicable requirements under the Endangered Species Act and the Marine Mammal Protection Act.

[FR Doc. 98–25928 Filed 9–24–98; 4:24 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 980305056–8245–02; I.D. 020398B]

RIN 0648–AK88

Atlantic Billfishes; Atlantic Blue Marlin and Atlantic White Marlin Minimum Size; Billfish Tournament Notification Requirements; Atlantic Marlin Bag Limit

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

ACTION: Interim rule; amendment; extension of expiration date; response to comments; request for comments.

SUMMARY: By interim rule, published in the **Federal Register** on March 24, 1998, NMFS increased the minimum size limits for Atlantic blue marlin (BUM) and Atlantic white marlin (WHM) respectively, and required operators of tournaments involving any Atlantic billfish to notify NMFS at least 4 weeks prior to commencement. NMFS extends this interim rule for an additional 180 days, and amends it to increase the minimum size limit for Atlantic BUM to 99 inches LJFL (251 cm); establish a recreational bag limit of one Atlantic BUM or WHM per vessel per trip; and grant the Assistant Administrator for Fisheries, NOAA (AA) authority to adjust the bag limit. The intent of this amendment and extension is to continue to reduce overfishing of Atlantic BUM and WHM, and implement the recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required under the Atlantic Tunas Convention Act (ATCA). These actions are necessary until an amendment to the Atlantic Billfish Fishery Management Plan is proposed and approved, and other more comprehensive measures as established by that amendment, are implemented by final rule.

DATES: Effective September 23, 1998, the regulations published on March 24, 1998 at 63 FR 14030 are extended through March 19, 1999. The amendments in this rule are effective September 24, 1998 through March 19, 1999. Comments on the increase in minimum size limit for Atlantic BUM to 99 inches LJFL and the establishment of an Atlantic marlin bag limit must be received no later than November 23, 1998.

ADDRESSES: Comments should be mailed to Dr. Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of this document and documents supporting this action are available from Buck Sutter, Highly Migratory Species Management Division, NMFS, Southeast Regional Office, 9721 Executive Center Drive N, St. Petersburg, FL 33702. Comments regarding the collection-of-information requirement contained in this extended interim rule, as amended, should be sent both to one of the previous addresses and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Buck Sutter, 813–570–5447; fax: 813–570–5364.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS promulgated an interim rule (63 FR 14030, March 24, 1998) that increased the minimum size limits for Atlantic BUM and WHM to 96 inches (244 cm) lower jaw-fork length (LJFL) and 66 inches (168 cm) LJFL, respectively, and required operators of tournaments involving any Atlantic billfish to notify NMFS at least 4 weeks prior to commencement. The interim rule was intended to reduce overfishing of Atlantic BUM and WHM and to implement a recommendation of ICCAT to reduce Atlantic BUM and WHM landings by 25 percent for each of these species from 1996 levels and to improve current monitoring, data collection, and reporting requirements. The interim rule also directly responded to a petition for rulemaking from the National Fisheries Institute (NFI), received on July 28, 1997, which recommended mandatory registration and reporting requirements for all billfish tournaments. NMFS announced receipt of the petition in a **Federal Register** notice on August 28, 1997 (62 FR 45614), and made copies available to interested parties, including members of the Billfish Advisory Panel (AP). A discussion of the management and stock status of Atlantic BUM and WHM, ICCAT's recommendation relating to Atlantic billfish, and the need for interim action is found in the preamble to the interim rule.

The increased minimum sizes for Atlantic BUM and WHM, established in the original interim rule, were selected based on the 1994 to 1996 size distribution of recorded landings for those species and were calculated to reduce Atlantic BUM and WHM landings by number and weight during 1998 to provide an adequate timeframe to determine whether these size measures were an effective means to meet U.S. billfish landing caps by the end of 1999. The ICCAT recommendation restricts U.S. landings to 26.2 mt whole weight (ww) of BUM and 2.48 mt ww of WHM. The increased minimum sizes were expected to reduce the number and weight of landings of Atlantic BUM by 46 percent and 39 percent, respectively, and of Atlantic WHM by both number and weight by 53 percent from 1996 levels.

The size limits established in the interim final rule were based on the best available information at the time. However, an analysis of a more extensive database that includes 1997 landings has since been completed. This information indicates that the minimum size of 96 inches (244 cm) LJFL for Atlantic BUM may not be adequate to achieve the required 25 percent reduction in landings. Application of a 96-inch (244 cm) LJFL limit on the size frequency of Atlantic BUM landed during 1995 to 1997 results in a reduction in landings of only 21 percent by weight and 32 percent by number. Therefore, the minimum size for Atlantic BUM must be increased to 99 inches (251 cm) LJFL to help ensure full compliance with the 1997 ICCAT recommendation, with a projected reduction in landings of 32.44 percent by weight and 44.33 percent by number. Application of a 66-inch (168 cm) LJFL limit on the size frequency of WHM landed during 1995 to 1997 results in a projected reduction in landings of 42 percent by weight and 47 percent by number. While this reduction in WHM landings is less than the interim rule estimate of 53 percent by weight and by number, it is still sufficient for compliance with the 1997 ICCAT recommendation. Therefore, this extended interim rule, as amended, maintains the 66-inch (168 cm) LJFL minimum size for Atlantic WHM.

A complicating factor in evaluating minimum size for the recreational billfish fishery is the source of data used to evaluate management alternatives. Actual landings (weight, number, and size distributions) by U.S. recreational anglers are unknown; minimum landing estimates are calculated from billfish tournaments and from the Large Pelagic Survey (LPS). The only available size distribution data are collected from the Recreational Billfish Survey of tournaments, and it is unknown whether this information accurately reflects the true distribution of recreational landings. Although the use of increased minimum sizes will reduce

the number of fish that are landed and provide immediate reductions in current fishing mortality levels, the exact impact on the total mortality is unknown, since size limits and resulting landing reduction estimates were based on fish taken only during fishing tournaments.

The impact of handling or release mortality must also be considered in evaluating the effectiveness of any management measure requiring the release of live fish (e.g., fish less than the minimum size). Accurate measures of release mortality are complicated by a variety of factors, including fishing techniques (e.g., type of tackle and bait, length of fight), location on fish of hooking, water temperature, handling time, size of the fish, and many other parameters.

Considering the limits the above factors place on using minimum sizes as the only measure for complying with the ICCAT recommendation, NMFS also amends the interim rule to establish a recreational bag limit of one Atlantic marlin (either BUM or WHM) per vessel per trip. NMFS also amends the interim rule to grant the AA the authority to adjust the bag limit, with 3-days notice, including an adjustment to a zero bag limit. This will allow the bag limit to be reduced to zero when the recommended ICCAT landing cap of 26.2 mt ww Atlantic BUM and 2.48 mt ww WHM (25 percent reduction from 1996 Atlantic BUM and WHM landings) is reached.

Retention of more than one billfish (of any species) during a recreational trip is relatively rare. It has been estimated that over 70 percent of recreational trips do not result in a landed billfish (Fisher and Ditton, 1992). There are occasional trips, however, where more billfish are encountered, and limiting landings to one fish per vessel could significantly reduce fishing mortality. One concern associated with bag limits is that ''culling'' of fish could occur, that is the retention of several fish until fishing is completed, then the retention of the bag limit. However, given the conservation ethics of most billfish anglers, culling is not anticipated to be a problem. Therefore, the extended interim rule, as amended, would establish a one marlin (either BUM or WHM) per vessel, per trip bag limit. The AA would have the authority, under this alternative, to adjust the bag limit with a 3-day notice, including a zero bag limit.

In a survey of recreational billfish anglers who participate in billfish tournaments, Fisher and Ditton (1992) found that 50.1 percent of the sample population either was neutral or agreed with a one billfish per vessel, per day bag limit. Interestingly, results of the mail survey by Fisher and Ditton indicated that more anglers supported a zero bag limit (74.2 percent were either neutral or in agreement with this action). At their September 1998 meeting, Billfish AP members supported a one billfish per vessel, per trip bag limit, but were opposed to granting the AA authority to reduce the bag limit to zero.

Shortly, NMFS will propose an amendment to the Atlantic Billfish FMP, that includes a comprehensive set of management measures addressing overfishing and long-term rebuilding of overfished Atlantic billfish, including BUM and WHM, and will propose regulations implementing these measures. To allow time for the FMP Amendment and rulemaking processes to be completed, the interim rule needs to be extended to ensure that 1999 BUM and WHM landings are at least 25 percent below 1996 levels as required by the ICCAT. Therefore, in addition to the amendments discussed above, the interim rule, which would otherwise expire on September 23, 1998, is extended through March 19, 1998.

Comments Received to Date

A 4-week notification requirement for tournaments involving Atlantic billfish was originally included in a proposed rule to consolidate regulations for Atlantic Migratory Species Fisheries (61 FR 57361, November 6, 1996). Five public hearings were held to receive comments on the proposed consolidated rule. Comments addressing billfish tournament requirements were also received by mail and fax and were summarized in the interim rule, along with responses to these comments.

Subsequent to the publication of the interim rule, seven public hearings, announced in the **Federal Register** on April 9, 1998, were held to receive comments. NMFS found no opposition to the interim rule regulations at these hearings. There were 13 letters received during the comment period; 5 of these did not address the interim rule. Comments pertaining to Atlantic billfish management issues beyond the scope of the interim rule will not be addressed here. There was general support for the interim management measures; responses to additional comments on the interim rule are provided.

Responses to Comments

Comment 1: One commenter stated concern that the tournament reporting requirements should help to monitor billfish mortality but doubted if the universe of tournaments is known or even closely estimated.

Response 1: NMFS agrees that the universe of tournaments is not known, and plans to use the tournament registration requirement to better estimate the total number of tournaments. Additional measures to monitor Atlantic billfish landings are being considered in the development of the Atlantic Billfish FMP amendment.

Comment 2: The NFI found it difficult to verify the statement that landings will be reduced by 46 percent by number and 39 percent by weight for Atlantic BUM and by 53 percent by both number and weight of Atlantic WHM and that these figures should be based on cumulative frequency distribution plots or suitable tables listing the numbers of Atlantic BUM and WHM sampled by LJFL. This commenter also felt that the rule should explicitly state the assumptions underlying conclusions about the effect that larger minimum sizes will have on total recreational billfish landings based on the existing sample size frequency.

Response 2: NMFS agrees. The Atlantic BUM and WHM minimum sizes and associated reductions in landings established in the existing interim final rule were based on the best available information at the time. However, further analysis using subsequent information, which includes 1997 Atlantic BUM and WHM landings, indicates that the resultant reductions in landings from the increased minimum size were overestimated. A discussion of the new analysis and its results is mentioned in the section of supplementary information. Further detail, as requested by NFI, is contained in the EA/RIR document supporting this action.

Comment 3: The Blue Water Fishermen's Association (BWFA) supported the interim measures but stated that these measures alone are not sufficiently strict to ensure that the United States meets ICCAT Atlantic BUM and WHM landing caps and recommendations. BWFA wants the interim rule to be implemented in concert with strict quota monitoring to ensure that ICCAT caps are not exceeded. There were three other written comments expressing similar concern.

Response 3: NMFS also agrees that the increases in minimum sizes of Atlantic marlin may not be adequate to achieve the required 25-percent reduction in Atlantic BUM and WHM landings. Further the interim rule is being amended to ensure that the ICCAT recommendation is met. The minimum size for BUM has been increased to 99 inches LJFL. In addition, NMFS is establishing a one Atlantic marlin per

vessel, per trip bag limit and is granting the AA the authority to adjust the bag limit with a 3-day notice, including adjusting to a zero bag limit. Additional conservation measures to ensure that the United States meets ICCAT landing caps and recommendations are being developed as part of the Atlantic Billfish FMP amendment.

Comment 4: BWFA commented that NMFS should also implement a strict ''landing tag'' program immediately to ensure that the quota is not exceeded. Similarly, NFI recommended that NMFS require all tournaments to obtain a permit to land and/or target, in the case of catch and release tournaments, Atlantic marlin.

Response 4: NMFS is considering requiring a landing tag to be affixed to all recreationally landed Atlantic billfish as part of the Atlantic Billfish FMP amendment. However, the success of such a tagging program is dependent on self-reporting, and even then, it would not ensure that the ICCAT recommended landing cap is not exceeded. More comprehensive management measures are being developed as part of the Atlantic Billfish FMP amendment.

Comment 5: NFI is disappointed with the reporting requirements of the interim rule and concerned that NMFS [1] failure to implement anything more than a negligible improvement in billfish monitoring will jeopardize compliance with the ICCAT recommendation and undermine the credibility of the United States in the ICCAT forum. BWFA also comments that the United States has failed to monitor the recreational sector after years of advocating strict commercial measures and that the disparity in treatment undermines our credibility at ICCAT. Both NFI and BWFA commented on how much of the effort by U.S. recreational fishermen goes entirely unregulated, undetected, and undocumented. NFI specifically commented that NMFS ignored billfish landings from private and charter fishing activities not associated with tournaments and ignores comments that NFI and other organizations have submitted over several years on the need to improve monitoring of recreational fisheries for Atlantic marlin and sailfish, especially for charter and tournament businesses. Nine additional commenters expressed concern about discriminatory regulations, and they want NMFS to hold the sportfishing sector accountable for its associated fish mortalities.

Response 5: NMFS agrees that all sectors of the billfish fishery must be held accountable for their associated billfish mortality. These interim management measures are intended only as initial actions until a more comprehensive set of management measures can be implemented. Actions to improve monitoring, including private and charter/party vessels, are being developed for both the proposed Billfish Amendment and the proposed HMS FMP. Alternatives include requiring (1) permits and logbook reporting for charter/headboat operations targeting Atlantic highly migratory species; (2) observer coverage onboard charter/headboats targeting highly migratory species; (3) a landing tag to be affixed to all recreationally landed Atlantic Billfish; and (4) vessel permits for all U.S. registered vessels fishing recreationally for Atlantic highly migratory species.

Comment 6: BWFA requested that NMFS require every tournament to submit data on catches and effort, not just selected tournaments. NFI requested that there be 100 percent tournament reporting selection until a statistically based sampling program is implemented.

Response 6: The total number of tournaments held is unknown. Since implementation of the tournament registration requirement, 114 tournaments have registered. NMFS anticipates the number of tournaments registered will increase as public outreach expands. A statistically based sample of tournaments will be selected for reporting in order to reduce the potential burden on NMFS and on tournament directors. Currently, all registered tournaments that land billfish must submit tournament reports. Until a statistically based sampling program is implemented, all tournaments be 100 percent tournaments will be required to report.

Classification

NMFS extends the interim rule published on March 24, 1998, at 63 FR 14030, as amended, for 180 days. As authorized by section 305(c)(3)(B) of the Magnuson-Stevens Act, an interim rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the interim rule and, at the time of this extension, a proposed plan amendment to address the overfishing on a permanent basis is being actively pursued. The public has had opportunity to comment on the interim rule as noted in the supplementary information section. These comments were considered in determining the amendment and extension of this interim rule, and responses to comments have been provided. The Billfish AP commented on various aspects of this extended rule, as amended, at their September 1998 meeting. NMFS is preparing an amendment to the Atlantic Billfish FMP outlining a rebuilding plan and concomitant management strategies to reduce bycatch and bycatch mortality. The amendment is being developed using the best possible science and input from the Billfish AP, and various outreach forums will ensure public input into this process.

The AA has determined that this extension of the interim rule is necessary to continue to reduce overfishing of BUM and WHM and to meet U.S. obligations under ICCAT. The extension of the interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The actions set forth in the extended interim rule respond to the over-exploitation of these resources in the Atlantic Ocean and to the need to improve current monitoring, data collection, and reporting procedures, as well as to promote the release of live billfish. The United States is also obligated, under ATCA, to implement ICCAT recommendations. Failure to implement these actions in a timely manner may result in failure to meet ICCAT obligations and increase the need for more severe restrictions in the future.

The AA has determined that, under 5 U.S.C. 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest. The modifications in this rule are necessary to ensure compliance with international legal obligations. Additionally, these modifications were discussed in a public AP meeting. To ensure wide circulation of the extended interim measures, as amended, NMFS will work with the Billfish AP, recreational fishing organizations, sportfishing media, and fishing tournaments known to involve billfish, to notify affected entities. In addition, notice will be provided through the HMS FAX network and NOAA weather radio.

Further, under 5 U.S.C. 553(d)(3), the AA has determined that there is good cause, as explained above, to waive the 30-day delay in effective date. NMFS will rapidly communicate the new regulations to fishery participants through its FAX network, HMS Information Line, billfish brochure, and NOAA weather radio.

The extension of this interim rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond

to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget control number. This extended interim rule contains the same collection-of-information requirement subject to the PRA. Fishing tournament registration and selective reporting in § 644.10 have already been approved by OMB under control number 0648–0323 and estimated at 10 minutes per report. Send comments regarding this burden estimate or any other aspect of this collection-of-information requirement including suggestions on how to reduce or eliminate this burden to NMFS and OMB (see **ADDRESSES**).

Because prior notice and an opportunity for public comment are not required to be provided for the extension of this interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 644 is amended as follows:

50 CFR CHAPTER VI

PART 644—ATLANTIC BILLFISHES

1. The authority citation for part 644 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 644.21 is amended by suspending paragraph (e) and adding paragraph (f), effective from September 24, 1998, through March 19, 1999, to read as follows:

§ 644.21 Size limits.

* * * * *

(f) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

(1) Blue marlin-99 inches (251 cm)

(2) White marlin-66 inches (168 cm)

(3) Sailfish-57 inches (145 cm)

3. Section 644.26 is added, effective from September 24, 1998, through March 19, 1999, to read as follows:

§ 644.26 Catch Limits.

(a) Only one Atlantic marlin (either a blue marlin or a white marlin) may be possessed or landed per vessel per trip.

(b) If he determines after considering the most recent tournament and other landings data that such action is necessary to comply international obligations, the Assistant Administrator may increase or reduce the catch limit, including reduction to zero Atlantic marlin per vessel per trip. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable catch limit per trip under this paragraph.

[FR Doc. 98–25951 Filed 9–24–98; 1:23 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318065–8241–02; I.D. 030698B]

RIN 0648–AK68

Atlantic Sea Scallop Fishery; Extension of Interim Final Rule Implementing Area Closures

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

ACTION: Interim final rule; extension of expiration date.

SUMMARY: NMFS extends the existing closures to scallop fishing of two Mid-Atlantic areas for an additional 180 days. These closures would have expired on September 28, 1998. The extensions are necessary to continue protection of high concentrations of juvenile scallops while permanent measures are being developed by the New England Fishery Management Council (Council).

DATES: Effective September 28, 1998, the interim final rule published March 31, 1998, beginning at 63 FR 15324 is extended through March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION:

Background

In December 1997, the New England and Mid-Atlantic Fishery Management Councils (Councils) initially requested interim action to implement management measures for the scallop fishery, which close an area south of Hudson Canyon and a specific area off Virginia Beach to scallop fishing. An interim rule to immediately implement these measures was published on March 31, 1998 (63 FR 15324), with effective dates of April 3, 1998, through September 27, 1998. A full discussion of the status of the scallop stock and the need for interim action is found in the preamble to the interim rule and is not repeated here. No comments were received during the comment period.

In August 1998, the Council adopted these same measures as part of proposed Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The Council also voted to adjust the days-at-sea reduction schedule and to implement a 10-year stock rebuilding program beginning in the 1999 fishing year to eliminate overfishing and comply with the requirements of the Sustainable Fisheries Act. The Council plans to submit Amendment 7 to the FMP in October 1998. However, if Amendment 7 is approved, the final rule to implement it will not be published before the end of the effective period of the interim rule, thus allowing a lapse between the end date of the interim rule and the final rule implementing Amendment 7. This could leave the already overfished scallop stock unprotected from increased exploitation. Both Councils expressed support for the extension of the interim action at their August 1998 meetings. Extending an interim action for up to an additional 180 days is authorized under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by publication in the **Federal Register**, provided the public has had an opportunity to comment on the interim measure, and, in the case of a Council recommendation for interim measures, the Council is actively preparing an FMP, plan amendment, or proposed regulations to address the overfishing on a permanent basis. This action meets both requirements. The Council will soon submit Amendment 7, which will address overfishing on a permanent basis, and the interim final rule that implemented these closures requested public comment on the measures (no comments were received during the comment period). The extension would be in effect from September 28, 1998, through March 26, 1999, or until regulations implementing Amendment 7 become effective.

Classification

NMFS has determined that this rule is necessary to reduce overfishing of sea scallops and is consistent with the

Magnuson-Stevens Act and with other applicable laws. The public is aware that the Councils have requested this action and had an opportunity to comment on it at Council meetings.

A delay in action to reduce overfishing increases the likelihood of a loss of long-term productivity of the sea scallop resource and increases the probable need for more severe restrictions in the future. Accordingly, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), the Assistant Administrator finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for public comment because such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address overfishing of sea scallops constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 22, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–25933 Filed 9–24–98; 3:58 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 092398D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 24, 1998, until 1200 hrs, A.l.t., September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of pollock in Statistical Area 610 in the GOA as 29,790 metric tons (mt).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 29,590 mt, and set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. The fishery for pollock in Statistical Area 610 in the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on September 14, 1998 (63 FR 49668, September 17, 1998).

NMFS has determined that as of September 22, 1998, 1,200 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in Statistical Area 610 in the GOA effective 1200 hrs, A.l.t., September 24, 1998.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Current information shows the catching capacity of vessels catching pollock is 1,200 mt per day.

NMFS is closing directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., September 25, 1998.

All other closures remain in full force and effect.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the pollock TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the pollock TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–26032 Filed 9–24–98; 4:24 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 188
Tuesday, September 29, 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.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider whether to adopt as a Final rule the Proposed Rule to amend the current Compact Over-order Price Regulation to exclude milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area. Matters relating to administration and the price regulation to include the reports and recommendations of the Commission's standing Committees and action upon a Proposed Amendment to the Bylaws as noticed to the Commission at the September 2, 1998 are also scheduled.

DATES: The meeting is scheduled for Wednesday, October 7, 1998 to commence at 9:00 a.m.

ADDRESSES: The meeting will be held at The Quechee Club, 1 River Road in Quechee, Vermont.

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Kenneth Becker,

Executive Director.

[FR Doc. 98–25966 Filed 9–28–98; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF52

Tobacco—Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the definition of de minimis special entries in the tobacco program regulations which applies to the collection of the ''budget deficit'' and ''no-net-cost'' assessments on certain kinds of imported tobacco. The current de minimis special entries definition exempts entries of unmanufactured imported tobacco of 5 kilograms or less if certain conditions are met. This document proposes to raise the maximum allowable weight to 100 kilograms to save administrative cost without compromising the purpose of the exemption.

DATES: Comments on this rule should be in writing and must be received on or before October 29, 1998, in order to be assured of consideration. Written comments on the information collection contained in this rule must be received on or before November 30, 1998, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Tobacco and Peanuts Division, USDA/FSA/TPD/STOP 0514, 1400 Independence Avenue, SW, Washington DC 20250–0514. All written submissions made pursuant to this notice will be made available for public inspection in room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David McCarty, USDA/FSA/TPD/STOP 0514, 1400 Independence Avenue, SW, Washington DC 20250–0514, telephone (202) 720–6389, E-mail DMCCARTY@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Federal Assistance Program

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

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this proposed rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR 780, and those of 7 CFR part 11, must be exhausted.

Paperwork Reduction Act

The information collection in this regulation has been approved by OMB under the Paperwork Reduction Act of 1995, and assigned OMB control number 0560–0148. In order to renew that approval, the following additional information is provided:

Title: Tobacco Importer Assessments Program.

OMB Control Number: 0560–0148.

Type of Request: Request for Approval of a Previously Approved Information.

Collections Package

Abstract: Importers, of unmanufactured tobacco not produced in the United States, are required to provide information regarding the type and amount of tobacco entered for consumption into the commerce of the United States. This information collection is used by CCC to determine if the Budget Deficit Marketing Assessments and Importer No-Net Cost Assessments have been remitted correctly and timely.

Estimate of Burden: Importer reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Tobacco Importers.

Estimated number of Respondents: 30.

Estimated number of Responses per Respondent: 27.

Estimated total annual burden on Respondents: 202.5 hours.

Comment is sought on the information collection separate from that on the merits of the rule. Proposed topics for comment on the collection requirements include: (a) whether the exemption of assessments on small quantities of tobacco for samples, research, and other purposes would reduce burdensome paperwork without jeopardizing revenue; (b) whether the exemption would violate the intent of the budget deficit marketing assessment and importer no-net-cost assessment legislation set forth at sections 106, 106A and 106B of the Agricultural Act of 1949, as amended. Comments should be sent to the Desk Officer for Agriculture, Office of Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to the Director, Tobacco and Peanuts Division, USDA/FSA/TPD/STOP 0514, 1400 Independence Avenue, SW, Washington DC 20250–0514.

Background

General Provisions of the Proposed Rule

With respect to the substance of the proposed rule, this document proposes to make a revision in the definition of de minimis special entries by changing the number of kilograms of imported tobacco, classified as a sample, for the purpose of certain assessments, from five (5) kilograms or less to one hundred (100) kilograms or less. The objective is to lessen burdensome paperwork by importers and Commodity Credit Corporation (CCC) without jeopardizing revenue or violating the intent of the budget deficit marketing assessment and importer no-net-cost assessment legislation set forth at sections 106, 106A and 106B of the Agricultural Act of 1949, as amended (1949 Act). Implementing regulations for the assessments are set forth at 7 CFR part 1464, Subpart B. Under those regulations, as provided for in the 1949 Act, the assessments apply only to certain kinds of imported tobacco and 1464.102 and 1464.103 provide, further, that the assessments will not be collected on ''de minimus special entries'' which are defined, currently, in 1464.101 to be imports of unmanufactured tobacco when the total importation at any time or on any date is 5 kilograms or less and such tobacco is imported segregated from other tobacco for use as samples, for research, or other use approved by the Director. Changing the quantity threshold to 100 kilograms should still provide an accurate test for identifying non-commercial tobacco entries and should produce a net savings in light of the costs involved in administering the assessments on small quantities.

List of Subjects in 7 CFR Part 1464

Importer assessments, Tobacco, Tobacco loan program.

For the reasons set forth in the preamble, CCC proposes to amend 7 CFR part 1464 as follows:

PART 1464—TOBACCO

1. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

2. Section 1464.101 is amended by revising the definition of ''de minimis special entries'' to read as follows:

§ 1464.101 Definitions.

* * * * *

(b) *Terms.* * * *

De minimis special entries. Imports of unmanufactured tobacco when the total importation at any time or on any date is 100 kilograms or less and such tobacco is imported segregated from other tobacco for use as samples, for research, or other use approved by the Director.

* * * * *

Signed at Washington, DC, on September 21, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–25922 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–21–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Models MU–2B Series Airplanes; Notice of Public Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting; reopening of the comment period.

SUMMARY: This notice reopens the comment period and announces a public meeting on the subject proposed airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. The proposed AD would require incorporating several modifications to the operating systems and installing a placard with operating limitations within the pilot's clear view. The purpose of the meeting is to discuss technical issues related to the FAA's determination that AD action should be taken to prevent departure from controlled flight and to assist the pilot in detecting ice accumulation on the airplane when flying in icing conditions that exceed the airplane's ice protection capability, which could result in possible loss of control of the airplane. The comment period is being reopened to facilitate collection and consideration of data concerning these technical issues.

DATES: The public meeting will be held December 8, 1998, at 9:00 a.m., in Kansas City, Missouri.

Registration will begin at 8:30 a.m. on the day of the meeting.

Comments must be received no later than December 29, 1998.

ADDRESSES: The public meeting will be held at the following location: The Town Pavillion Conference Center, Royal A & B Meeting Room, 1111 Main Street, Kansas City, Missouri 64106.

Persons who are unable to attend the meeting may mail their comments (clearly marked with the docket number) in triplicate to: Federal Aviation Administration, (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Written comments to the docket will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the

public meeting and questions regarding the logistics of the meeting should be directed to Mr. Larry Werth, AD Coordinator, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–3580; facsimile (816) 426–2066.

Questions concerning the proposed AD should be directed to Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Participation at the Public Meeting on the Proposed Airworthiness Directive

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than 10 days prior to the meeting. Such requests should be submitted to Mr. Larry Werth as listed in the section titled **FOR FURTHER INFORMATION CONTACT** above, and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Background

On May 21, 1998, the Federal Aviation Administration (FAA) published in the **Federal Register** (63 FR 27872) for public comment a proposed AD that would apply to certain Mitsubishi MU–2B series airplanes. The proposed AD would require incorporating several modifications to the operating systems and installing a placard with operating limitations within the pilot's clear view.

Service history of the affected airplanes prompted the FAA to examine the design of these airplanes and analyze the ability of the pilots of these airplanes to fly and operate in icing conditions.

The actions specified by the proposed AD are intended to prevent departure from controlled flight and to assist the pilot in detecting ice accumulation on the airplane when flying in icing conditions that exceed the airplane's ice protection capability, which could result in possible loss of control of the airplane.

The comment period on the proposed rule closed on July 22, 1998. Since that time, the FAA has received several additional comments and has been contacted by various interested parties. Records of these contacts are included in the docket for this rule.

Based on the content of the comments and the interest in the rule expressed by various operators and other interested parties, the FAA has determined that it is in the public interest to reopen the comment period on this rule in order to seek additional data.

Accordingly, the FAA will conduct a public meeting in Kansas City, Missouri, for the purpose of gathering additional information.

The comment period on the proposed rule will remain open until December 29, 1998; three weeks after the close of the meeting. The FAA anticipates that the agency and the industry will use the public meeting as a forum to resolve questions concerning the approach used in the FAA's determination that AD action should be taken to prevent departure from controlled flight and to assist the pilot in detecting ice accumulation on the airplane when flying in icing conditions that exceed the airplane's ice protection capability, which could result in possible loss of control of the airplane; and to seek additional data and supporting methodologies from industry.

Persons interested in obtaining a copy of the proposed airworthiness directive as published in the **Federal Register** should contact Mr. John Dow at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT**.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures that have been established for this meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements, or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. Representatives from the FAA will conduct the public meeting. A technical panel of FAA experts will be established to discuss information presented by participants.

3. The public meeting is intended as a forum to:

- resolve questions concerning the approach used in the FAA's determination that AD action should be taken to prevent departure from controlled flight and to assist the pilot in detecting ice accumulation on the airplane when flying in icing conditions that exceed the airplane's ice protection capability, which could result in possible loss of control of the airplane; and
- seek additional data and supporting methodologies from industry, the general public, and operators.

Participants must limit their presentations and submissions of data to this issue.

4. The meeting will offer the opportunity for all interested parties to present any additional information not currently available to the FAA, and an opportunity for the FAA to explain the methodology and technical assumptions supporting its current conclusions.

5. FAA experts, industry, and public participants are expected to engage in a full discussion of all technical material presented at the meeting. Anyone presenting conclusions will be expected to submit to the FAA data supporting those conclusions. All data submitted will be placed in the public docket.

6. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group. If practicable, the meeting may be accelerated to enable adjournment in less than the time scheduled.

7. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

8. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

9. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the proposed AD may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

10. Statements made by members of the panel are intended to facilitate discussion of the issues or to clarify issues. Comments made at the public meeting will be considered by the FAA before making a final decision on the issuance of the AD.

11. The meeting is designed to solicit public views and information on the proposed AD. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Kansas City, Missouri on September 22, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25954 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–33]

Proposed Establishment of Class E Airspace; Bolivar, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace area at Bolivar Municipal Airport, Bolivar, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 18, GPS RWY 36 and VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 36 Standard Instrument Approach Procedures (SIAPs) to serve Bolivar Municipal Airport, MO. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is necessary to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The area will contain the new GPS RWY 18, GPS RWY 36 and VOR/DME RWY 36 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 18, GPS RWY 36 and VOR/DME RWY 36 SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Comments must be received on or before November 15, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–250, Federal Aviation Administration, Docket No. 98–ACE–33, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ACE–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace area at Bolivar, MO. The FAA has developed GPS RWY 18, GPS RWY 36 and VOR/DME RWY 36 SIAPs to serve Bolivar Municipal Airport, Bolivar, MO. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR. 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Bolivar MO [New]

Bolivar Municipal Airport, MO
(Lat. 37°35′43″ N., long. 93°20′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Bolivar Municipal Airport.

* * * * *

Issued in Kansas City, MO, on September 2, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25746 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162, 171 and 191

RIN 1515–AC21

Penalties for False Drawback Claims

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth the procedures to be followed when false drawback claims are filed and penalties are thereby incurred. The proposed regulatory changes would implement section 622 of the Customs modernization provisions of the North American Free Trade Agreement Implementation Act. These new provisions track, to the greatest extent possible, the procedures that have been set forth for section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592). This document also sets forth proposed mitigation guidelines that Customs would follow in arriving at a just and reasonable assessment and disposition of liabilities when false drawback claims are filed and penalties are incurred. Finally, the document proposes to amend the Customs Regulations in order to provide more specificity regarding the grounds and procedures for removal of a participant from the drawback compliance program.

DATES: Comments must be received on or before November 30, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Ressin, Penalties Branch, Office of Regulations and Rulings, 202–927–2264.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Customs Regulations to implement section 622 of Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). Title VI of the North American Free Trade Agreement Implementation Act is popularly known as the Customs Modernization Act. Paragraph (a) of section 622 amended the Tariff Act of 1930, as amended, by adding section 593A, which prohibits the filing of false (fraudulent or negligent) drawback claims and prescribes the actions that Customs may take, including the assessment of monetary penalties, if such claims are filed (gross negligence is not separately set forth as a level of culpability in the new statutory provision). New section 593A was codified as section 1593a of Title 19 of the United States Code (19 U.S.C. 1593a, hereinafter ''the statute'').

As in the case of penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), specific procedures and other requirements are set forth in the statute for prepenalty notices and penalty claims, the former not being required by the statute if the penalty is $1,000 or less. The statute provides that approval of Customs Headquarters is required if a prepenalty notice alleging fraud is contemplated. The statute also further provides for the applicability of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), which authorizes the administrative remission or mitigation of penalties. Written decisions, setting forth a final determination and findings of fact and conclusions of law upon which that determination was based, are also mandated by the statute.

Rather than setting forth specific penalty amounts, the statute provides for the assessment of monetary penalties in amounts not to exceed a specific percentage of the actual or potential loss of revenue, with the applicable percentage depending on the level of culpability, whether there have been prior violations involving the same issue, and whether the violator is a participant in the Customs drawback compliance program (the statute provides for the establishment of a drawback compliance program, and regulatory provisions relating to the operation of that program were adopted as part of the amendments to the Customs Regulations regarding drawback published in the **Federal Register** as T.D. 98–16 on March 5, 1998, 63 FR 10970). For purposes of applying the monetary penalties prescribed in the statute, Customs proposes in this document to define loss of revenue with reference to the amount of drawback that is claimed and to which the claimant is not entitled.

The statute further provides for limited penalty assessment for filing a false drawback claim if there is a prior disclosure of the violation. As in cases brought under section 592, the limited penalty assessment would be applicable only in those instances in which the circumstances of the violation are disclosed before, or without knowledge of the commencement of, a formal investigation. In this context, this document should be read in conjunction with the notice of proposed rulemaking regarding prior disclosure that was published in the **Federal Register** on September 26, 1996 (61 FR 50459).

The statute provides for penalties, or notices of violation in lieu of penalties, as set forth below in cases involving negligent violations (under the statute, a repetitive violation is one which involves the same issue as a prior violation): 1. If the violator is not a participant in the drawback compliance program, Customs shall assess monetary penalties in amounts not to exceed the following:

a. 20 percent of the loss of revenue for the first violation;

b. 50 percent of the loss of revenue for the first repetitive violation; and

c. The loss of revenue in the case of a second and each subsequent repetitive violation.

2. If the violator is a participant in the drawback compliance program and is generally in compliance with the provisions thereof, the following actions shall be taken by Customs:

a. For a first violation and for any other violation that is not repetitive or that involves the same issue as a prior violation but does not occur within three years from the date of that prior violation, a notice of violation (warning letter) shall be issued;

b. For the first violation that is repetitive and that occurs within three years from the date of the violation of which it is repetitive, a monetary penalty of up to 20 percent of the loss of revenue shall be assessed;

c. For the second violation that is repetitive and that occurs within three years from the date of the first of two violations of which it is repetitive, a monetary penalty of up to 50 percent of the loss of revenue shall be assessed; and

d. For a third and each subsequent violation that is repetitive and that occurs within three years from the date of the first of three or more violations of which it is repetitive, a monetary penalty not to exceed the loss of revenue shall be assessed.

In the case of a fraudulent violation, the statute makes no distinction between drawback compliance program participants and those who do not participate in the program: a fraudulent violation gives rise to a monetary penalty in an amount not exceeding three times the loss of revenue or, if there has been a prior disclosure regarding the fraudulent violation, in an amount not exceeding the loss of revenue.

If there has been a valid prior disclosure regarding a negligent violation, drawback compliance program participants and those who do not participate in that program are also treated the same: the violator is subject to a monetary penalty that may not exceed an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period from the date of overpayment of the claim to the date of tender of the overpaid amount.

In order to obtain the benefits of prior disclosure in both fraud and negligence cases, tender of the amount of the overpayment is required either at the time of disclosure or within 30 days (or such longer period as Customs may provide) after Customs gives notice of its calculation of the amount of the overpayment.

Paragraph (b) of section 622 of the Customs Modernization Act provides that the provisions of the statute shall apply only to drawback claims filed on and after Customs implements nationwide an automated drawback selectivity program, and mandates the publication in the Customs Bulletin of the effective date of the selectivity program.

The proposed amendments set forth in this document to implement the statute involve changes to the penalty procedure provisions within parts 162 and 171 of the regulations and the addition of a new appendix D to part 171 to set forth guidelines for the imposition and mitigation of monetary penalties incurred under the statute. To the greatest extent possible, and except where the statute expressly mandates a different approach, the regulatory amendments set forth in this document are modeled on the section 592 regulatory provisions and thus, among other things, reflect the definitions of ''fraud'' and ''negligence'' (which includes gross negligence) that are intended to be applied in cases brought under section 592 (*see* Senate Report 103–189 at pages 73–74). As noted above, these proposed regulations, if adopted as a final rule, will not be effective until Customs implements an automated drawback selectivity program.

Finally, with regard to the final amendments to the Customs Regulations regarding drawback published as T.D. 98–16 as mentioned above, Customs notes that the provisions regarding the operation of the drawback compliance program (set forth as subpart S within part 191) include, in § 191.194 (e) and (f), procedures regarding the revocation of certification for participation in the program. However, contrary to the approach taken elsewhere in the Customs Regulations in the context of a revocation or removal of a privilege, those drawback compliance program provisions do not include specific grounds for such action. Moreover, those paragraph (e) and (f) texts only refer to proposed revocation actions (with a delayed effective date following notice of the proposed revocation). Thus, no provision exists in those regulatory texts for a revocation with immediate effect when the basis for the revocation involves willfulness on the part of the program participant or when public health, interest, or safety requires immediate revocation, notwithstanding the fact that such immediate action may be necessary and would be consistent with the license revocation principles enshrined in the Administrative Procedure Act (see 5 U.S.C. 558(c)). This document proposes to revise § 191.194 (e) and (f) in order to address the above points and in order to otherwise improve the organization of, and procedures reflected in, those texts. In addition, the proposed text revisions refer to ''removal'' (rather than ''revocation'') of certification in order to reflect statutory terminology (see 19 U.S.C. 1593a(f)(1)).

Comments

Before adopting these proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Insofar as the proposed regulations closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects

19 CFR Part 162

Customs duties and inspection; Law enforcement; Penalties; Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure; Customs duties and inspection; Law enforcement; Penalties; Seizures and forfeitures.

19 CFR Part 191

Administrative practice and procedure; Customs duties and inspection; Drawback.

Proposed Amendments to The Regulations

For the reasons set forth above, it is proposed to amend parts 162, 171 and 191 of the Customs Regulations (19 CFR parts 162, 171 and 191) as follows:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

2. In § 162.71, paragraphs (b) through (e) are redesignated as paragraphs (d) through (g) and the heading for paragraph (a) is revised, and new paragraphs (b) and (c) are added, to read as follows:

§ 162.71 Definitions.

* * * * *

(a) *Loss of duties under section 592.* * * *

(b) *Loss of revenue under section 593A.* When used in § 162.73a, the term *loss of revenue* means the amount of drawback that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) *Actual loss of revenue.* When used in §§ 162.73a, 162.74(h), 162.77a and 162.79b, the term *actual loss of revenue* means the amount of drawback that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) *Potential loss of revenue.* When used in § 162.77a, the term *potential loss of revenue* means the amount of drawback that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) *Repetitive violation.* When used in § 162.73a to describe a violation, *repetitive* has reference to a violation by a person that involves the same issue as a prior violation by that person.

* * * * *

3. A new § 162.73a is added to read as follows:

§ 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), shall not exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations, (i) 20 percent of the loss of revenue for the first violation,

(ii) 50 percent of the loss of revenue for the first repetitive violation, or

(iii) One times the loss of revenue for the second and each subsequent repetitive violation.

(b) *Maximum penalty without prior disclosure for a drawback compliance program participant*—(1) *General.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has been certified as a participant in, and is generally in compliance with the procedures and requirements of, the drawback compliance program provided for in part 191 of this chapter, the monetary penalty or other sanction under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), shall not exceed:

(i) For fraudulent violations, three times the loss of revenue; and

(ii) For negligent violations,

(A) Issuance of a written notice of a violation (warning letter) for the first violation and for any other violation that is not repetitive or that is repetitive but does not occur within three years from the date of the violation of which it is repetitive,

(B) 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive,

(C) 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive, or

(D) One times the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(2) *Notice of violation and response thereto.* (i) The notice issued by Customs under paragraph (b)(1)(ii)(A) of this section shall:

(A) State that the person concerned has violated section 593A;

(B) Explain the nature of the violation; and

(C) Warn the person concerned that future violations of section 593A may result in the imposition of monetary penalties. The notice shall also warn the person concerned that repetitive violations may result in removal of certification under the drawback compliance program provided for in part 191 of this chapter until the person takes corrective action that is satisfactory to Customs.

(ii) Within 30 days from the date of mailing of the notice issued under paragraph (b)(1)(ii)(A) of this section, the person concerned shall notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation.

(c) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure as provided in § 162.74, whether or not such person has been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), shall not exceed:

(1) For fraudulent violations, one times the loss of revenue; and

(2) For negligent violations, an amount equal to the interest accruing on the actual loss of revenue during the period from the date of overpayment of the claim to the date on which the person concerned tenders the amount of the overpayment based on the prevailing rate of interest under 26 U.S.C. 6621.

4. A new § 162.77a is added to read as follows:

§ 162.77a Prepenalty notice for violation of section 593A, Tariff Act of 1930, as amended.

(a) *When required.* If the appropriate Customs field officer has reasonable cause to believe that a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a) has occurred, and determines that further proceedings are warranted, the officer shall issue to the person concerned a notice of intent to issue a claim for a monetary penalty.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Identify the drawback claim;

(ii) Set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) Specify all laws and regulations allegedly violated;

(iv) Disclose all the material facts which establish the alleged violation;

(v) State whether the alleged violation occurred as a result of fraud or negligence; and

(vi) State the estimated actual or potential loss of revenue due to the drawback claim and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is $1,000 or less.

(d) *Prior approval.* If an alleged violation of 19 U.S.C. 1593a occurred as a result of fraud, a prepenalty notice shall not be issued without prior approval by Customs Headquarters.

§ 162.79a [Amended]

5. Section 162.79a is amended by removing the references ''§ 162.76(b)(1) or § 162.77(b)(1)'' and adding, in their place, ''§ 162.76(b)(1), § 162.77(b)(1) or § 162.77a(b)(1) and (b)(2)''.

6. Section 162.79b is revised to read as follows:

§ 162.79b Recovery of actual loss of duties or revenue.

Whether or not a monetary penalty is assessed under this subpart, the appropriate Customs field officer shall require the deposit of any actual loss of duties resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) or any actual loss of revenue resulting from a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties or actual loss of revenue in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued, the port director shall issue a written notice to the person of the liability for the actual loss of duties or actual loss of revenue. The notice shall identify the merchandise and entries involved, state the loss of duties or revenue and how it was calculated, and require the person to deposit or arrange for payment of the duties or revenue within 30 days from the date of the notice. Any determination of actual loss of duties or actual loss of revenue under this section is subject to review upon written application to the Commissioner of Customs.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 is revised to read in part as follows:

Authority: 19 U.S.C. 66, 1592, 1593a, 1618, 1624. * * *

2. Section 171.21 is revised to read as follows:

§ 171.21 Written decisions.

If a petition for relief relates to a violation of section 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a or 19 U.S.C. 1641), the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

3. Part 171 is amended by adding a new Appendix D to read as follows:

Appendix D To Part 171—Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1593A

A monetary penalty incurred under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a; hereinafter referred to as section 593A), may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618; hereinafter referred to as section 618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by Customs in arriving at a just and reasonable assessment and disposition of liabilities arising under section 593A within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in prepenalty proceedings, in determining the monetary penalty assessed in the penalty notice, and in arriving at a final penalty disposition. The assessed or mitigated penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1593a(i).

(A) Violations of Section 593A

A violation of section 593A occurs when a person, through fraud or negligence, seeks, induces, or affects, or attempts to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material, or aids or abets any other person in the foregoing violation. There is no violation if the falsity is due solely to clerical error or mistake of fact unless the error or mistake is part of a pattern of negligent conduct. Also, the mere nonintentional repetition by an electronic system of an initial clerical error shall not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the person's attention to the nonintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 593A.

(B) Degrees of Culpability

There are two degrees of culpability under section 593A: negligence and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute or done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Fraud.* A violation is determined to be fraudulent if the material false statement, omission or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

(C) Assessment of Penalties

(1) *Issuance of Prepenalty Notice.* As provided in § 162.77a of the Customs Regulations (19 CFR 162.77a), if Customs has reasonable cause to believe that a violation of section 593A has occurred and determines that further proceedings are warranted, a notice of intent to issue a claim for a monetary penalty shall be issued to the person concerned. In issuing such prepenalty notice, the appropriate Customs field officer shall make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice shall not be issued if the claim does not exceed $1,000.

(2) *Issuance of Penalty Notice.* After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (C)(1), the appropriate Customs field officer shall determine whether any violation described in section (A) has occurred. If a notice was issued under paragraph (C)(1) and the appropriate Customs field officer determines that there was no violation, Customs shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the appropriate Customs field officer determines that there was a violation, Customs shall issue a written penalty claim to the person concerned. The written penalty claim shall specify all changes in the information provided in the prepenalty notice issued under paragraph (C)(1). The person to whom the penalty notice is issued shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, Customs shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(D) Maximum Penalties

(1) *Fraud.* In the case of a fraudulent violation of section 593A, the monetary penalty shall be in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) *Negligence.*

(a) *In General.* In the case of a negligent violation of section 593A, the monetary penalty shall be in an amount not to exceed 20 percent of the actual or potential loss of revenue for the first violation.

(b) *Repetitive Violations.* For the first negligent violation that is repetitive (i.e., involves the same issue and the same violator), the penalty shall be in an amount not to exceed 50 percent of the actual or potential loss of revenue. The penalty for a second and each subsequent repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue.

(3) *Prior Disclosure.*

(a) *In General.* Subject to paragraph (D)(3)(b), if the person concerned discloses the circumstances of a violation of section 593A before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this Appendix may not exceed:

(i) In the case of fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) If the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period that begins on the date of overpayment of the claim and ends on the date on which the person concerned tenders the amount of the overpayment.

(b) *Condition Affecting Penalty Limitations.* The limitations in paragraph (D)(3)(a) on the amount of the monetary penalty to be assessed apply only if the person concerned tenders the amount of the overpayment made on the claim either at the time of the disclosure or within 30 days (or such longer period as Customs may provide) from the date of notice by Customs of its calculation of the amount of overpayment.

(c) *Burden of Proof.* The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(d) *Commencement of Investigation.* For purposes of this Appendix, a formal investigation of a violation is considered to be commenced with regard to the disclosing party, and with regard to the disclosed information, on the date recorded in writing by Customs as the date on which facts and circumstances were discovered which caused Customs to believe that a possibility of a violation of section 593A existed.

(e) *Exclusivity.* Penalty claims under section D shall be the exclusive civil remedy for any drawback-related violation of section 593A.

(E) Deprivation of Lawful Revenue

Notwithstanding section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties and taxes resulting from a violation of section 593A, Customs shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(F) Final Disposition of Penalty Cases When the Drawback Claimant Is Not a Certified Participant in the Drawback Compliance Program

(1) *In General.* Customs shall consider all information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed penalty. All factors considered should be stated in the decision.

(2) *Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *Nonrepetitive Negligent Violation.* The final penalty disposition shall be in an amount ranging from a minimum of 10 percent of the actual or potential loss of revenue to a maximum of 20 percent of the actual or potential loss of revenue.

(b) *Repetitive Negligent Violation.*

(i) *First Repetitive Negligent Violation.* The final penalty disposition shall be in an amount ranging from a minimum of 25 percent of the actual or potential loss of revenue to a maximum of 50 percent of the actual or potential loss of revenue.

(ii) *Second and Each Subsequent Repetitive Negligent Violation.* The final penalty disposition shall be in an amount ranging from a minimum of 50 percent of the actual or potential loss of revenue to a maximum of 100 percent of the actual or potential loss of revenue.

(c) *Fraudulent Violation.* The final penalty disposition shall be in an amount ranging from a minimum of 1.5 times the actual or potential loss of revenue to a maximum of 3 times the actual or potential loss of revenue.

(3) *Penalty Disposition When There Has Been a Prior Disclosure.*

(a) *Negligent Violation.* The final penalty disposition shall be in an amount equal to the interest determined in accordance with paragraph (D)(3)(a)(ii).

(b) *Fraudulent Violation.* The final penalty disposition shall be in an amount equal to 100 percent of the actual or potential loss of revenue.

(4) *Mitigating Factors.* The following factors shall be considered in mitigation of the proposed or assessed penalty claim or final penalty amount, provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If the Customs error contributed to the violation, but the alleged violator is also culpable, the Customs error is to be considered as a mitigating factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be cancelled.

(b) *Cooperation with the Investigation.* To obtain the benefits of this factor, the alleged violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. An example of the cooperation contemplated includes assisting Customs officers to an unusual degree in auditing the books and records of the alleged violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the alleged violator may not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(c) *Immediate Remedial Action.* This factor includes the payment of the actual loss of revenue prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of revenue attributable to the violation. In appropriate cases, where the alleged violator provides evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(d) *Prior Good Record.* Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of filing drawback claims without violation of section 593A, or any other statute prohibiting the making or filing of a false statement or document in connection with a drawback claim. This factor will not be considered in alleged fraudulent violations of section 593A.

(e) *Inability to Pay the Customs Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay). In addition, the alleged violator must present information reflecting ownership and related domestic and foreign parties and must provide information reflecting its current financial condition, including books and records of account, bank statements, other tax records (for example, sales tax returns) and a list of assets with current values; if the alleged violator is a closely held corporation, similar current financial information must be provided on the shareholders, wherever they are located.

(f) *Customs Knowledge.* This factor may be used in non-fraud cases if it is determined that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. This factor shall not be applicable when a substantial delay in the investigation is attributable to the alleged violator.

(5) *Aggravating Factors.* Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the

final administrative penalty. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be used to offset the presence of mitigating factors. The following factors shall be considered ''aggravating factors'', provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Obstructing an investigation or audit.

(b) Withholding evidence.

(c) Providing misleading information concerning the violation.

(d) Prior substantive violations of section 593A for which a final administrative finding of culpability has been made.

(e) Failure to comply with a Customs summons or lawful demand for records.

(G) Drawback Compliance Program Participants

(1) *In General.* Special alternative procedures and penalty assessment standards apply in the case of negligent violations of section 593A committed by persons who are certified as participants in the Customs drawback compliance program and who are generally in compliance with the procedures and requirements of that program. Provisions regarding the operation of the drawback compliance program are set forth in part 191 of the Customs Regulations (19 CFR part 191).

(2) *Alternatives to Penalties.* When a participant described in paragraph (G)(1) commits a violation of section 593A, in the absence of fraud or repeated violations and in lieu of a monetary penalty, Customs shall issue a written notice of the violation (warning letter).

(a) *Contents of Notice.* The notice shall:

(i) State that the person has violated section 593A;

(ii) Explain the nature of the violation; and

(iii) Warn the person that future violations of section 593A may result in the imposition of monetary penalties and that repetitive violations may result in removal of certification under the drawback compliance program until the person takes corrective action that is satisfactory to Customs.

(b) *Response to Notice.* Within 30 days from the date of mailing of the written notice, the person shall notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation. If the person fails to provide such notification in a timely manner, any penalty assessed for a repetitive violation under paragraph (G)(3) shall not be subject to mitigation under this Appendix.

(3) *Repetitive Violations.*

(a) *In General.* A person who has been issued a written notice under paragraph (G)(2) and who subsequently commits a negligent violation that is repetitive (i.e., involves the same issue), and any other person who is a participant described in paragraph (G)(1) and who commits a repetitive negligent violation, is subject to one of the following monetary penalties:

(i) An amount not to exceed 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive;

(ii) An amount not to exceed 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive; and

(iii) An amount not to exceed 100 percent of the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(b) *Repetitive Violations Outside 3-year Period.* If a participant described in paragraph (G)(1) commits a negligent violation that is repetitive but that did not occur within 3 years of the violation of which it is repetitive, the new violation shall be treated as a first violation for which a written notice shall be issued in accordance with paragraph (G)(2), and each repetitive violation subsequent thereto that occurs within any 3-year period described in paragraph (G)(3)(a) shall result in the assessment of the applicable monetary penalty prescribed in that paragraph.

(4) *Final Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *In General.* Customs shall consider all information in the petition and all available evidence, taking into account any mitigating factors (see paragraph (F)(4)), aggravating factors (see paragraph (F)(5)), and extraordinary factors in determining the final assessed penalty. All factors considered should be stated in the decision.

(b) *First Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2).* The final penalty disposition shall be in an amount ranging from a minimum of 10 percent of the loss of revenue to a maximum of 20 percent of the loss of revenue.

(c) *Second Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition shall be in an amount ranging from a minimum of 25 percent of the loss of revenue to a maximum of 50 percent of the loss of revenue.

(d) *Third and Each Subsequent Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition shall be in an amount ranging from a minimum of 50 percent of the loss of revenue to a maximum of 100 percent of the loss of revenue.

(e) *Fraudulent Violations.* The final penalty disposition shall be the same as in the case of fraudulent violations committed by persons who are not participants in the drawback compliance program (see paragraph (F)(2)(c)).

(5) *Final Penalty Disposition When There Has Been A Prior Disclosure.* The final penalty disposition shall be the same as in the case of persons who are not participants in the drawback compliance program (see paragraph (F)(3)).

PART 191—DRAWBACK

1. The authority citation for part 191 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

2. In § 191.194, paragraphs (e) and (f) are revised to read as follows:

§ 191.194 Action on application to participate in compliance program.

* * * * *

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 191.192;

(iii) The program participant repeatedly files false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the applicable drawback office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification shall be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the applicable drawback

office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, Customs Headquarters will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a Customs notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 days after receipt of the appeal.

Approved: August 3, 1998.

Robert S. Trotter,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–25895 Filed 9–28–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 98N–0520]

Medical Devices; Establishment Registration and Device Listing for Manufacturers and Distributors of Devices; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain regulations governing establishment registration and device listing by domestic distributors. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. These amendments are being made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). This companion proposed rule is being issued under FDAMA and the act as amended.

DATES: Comments must be received on or before December 14, 1998.

ADDRESSES: Submit written comments on the companion proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20852.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comment. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on February 11, 1999. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives any significant adverse comment regarding the direct final rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on medical devices without diminishing the protection of public health.

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115). Section 213(b) of FDAMA made the following changes to section 510(g) of the act (21 U.S.C. 360(g)) regarding establishment registration and device listing by domestic distributors:

1. FDAMA amended section 510(g) of the act to add a new paragraph (g)(4) to provide that the registration and listing requirements of section 510 of the act do not apply to distributors who act as ''wholesale distributors,'' and who do not manufacture, repackage, process, or relabel a device.

2. FDAMA also added a definition of ''wholesale distributor'' to section 510(g) of the act. A ''wholesale distributor'' is defined as ''any person (other than the manufacturer or the initial importer) who distributes a device from the original place of manufacture to the person who makes the final delivery or sale of the device to the ultimate consumer or user.''

FDA is issuing this companion proposed rule to amend certain existing regulations to conform to amendments made by FDAMA to section 510(g) of the act. For a discussion of the specific provisions of the regulation, see the preamble to the direct final rule published elsewhere in this issue of the **Federal Register**.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this proposed 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.

III. Analysis of Impacts

FDA has examined the impact of this companion proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulatory action is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies applicable statutory requirements imposed by FDAMA. Because the companion proposed rule exempts certain distributors from registration and device listing, it may permit more small competitors to enter the marketplace. The agency certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule does not impose a mandate that results in an expenditure of $100 million or more in either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Submission of Comments

Interested persons may, on or before December 14, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. The comment period runs concurrently with the comment period for the direct final rule. Two copies of any comment are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the direct final rule and this proposed rule. In the event the direct final rule is withdrawn, all comments received will be considered comments on the proposed rule.

List of Subjects in 21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 807 be amended as follows:

1. The part heading for part 807 is revised to read as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

2. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

3.Section 807.3 is amended by revising paragraphs (d)(2) and (g), and by adding paragraph (s) to read as follows:

§ 807.3 Definitions.

* * * * *

(d) * * *

(2) Initial importation of devices manufactured in foreign establishments; or

* * * * *

(g) Initial importer means any importer who furthers the marketing of a device from a foreign manufacturer to the person who makes the final delivery or sale of the device to the ultimate consumer or user, but does not repackage, or otherwise change the container, wrapper, or labeling of the device or device package.

* * * * *

(s) Wholesale distributor means any person (other than the manufacturer or the initial importer) who distributes a device from the original place of manufacture to the person who makes the final delivery or sale of the device to the ultimate consumer or user.

4. Section 807.20 is amended by revising paragraph (a)(4), by redesignating paragraph (d) as paragraph (c) and paragraph (c) as paragraph (d), respectively, and by adding paragraph (c)(3) to read as follows:

§ 807.20 Who must register and submit a device list.

(a) * * *

(4) Acts as an initial importer;

* * * * *

(c) * * *

(3) Acts as a wholesale distributor, as defined in § 807.3(s), and who does not manufacture, repackage, process, or relabel a device.

* * * * *

§ 807.22 [Amended]

5.Section 807.22 *How and where to register establishments and list devices* is amended in paragraph (c) by removing the words ''distributor'' and ''distributors'' each time they appear and by adding in their place the words ''initial importer'' and ''initial importers'', respectively.

Dated: July 15, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–25797 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 581

[AR 15–185]

Army Board for Correction of Military Records

AGENCY: Assistant Secretary of the Army for Manpower and Reserve Affairs, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army proposes to amend its regulation on Army Board for Correction of Military Records to bring it in line with changes to Army Regulation 15–185, with the same title. This proposal updates the policies and procedures for consideration of applications, and corrections of the military records process. The section implements portions of Title 10, U.S. Code 1034, and Department of Defense (DOD) Directive 7050.6, Military Whistleblower Protection, that pertain to actions by the Army Board for Correction of Military Records. It also implements DoD Instruction 1336.6 Correction of Military Records and streamlines portions of the application process by transferring the information into a Department of the Army Pamphlet.

DATES: Comments must be received not later than October 29, 1998.

ADDRESSES: Comments may be sent to The Army Review Boards Agency, ATTN: SFMR–RBR, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

FOR FURTHER INFORMATION CONTACT: Ms. Gale Thomas, Military Personnel Management Specialist, (703) 607–2044.

SUPPLEMENTARY INFORMATION: Section 581.3 contained in 32 CFR part 581 provides Department of the Army policy, criteria and administrative instructions regarding an applicant's request for the correction of a military record.

Executive Order 12866

This proposed rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*, the proposed rule will not have an annual effect on the economy of $100 million or have a significant impact on a substantial number of small entities. The proposed rule only concerns the release of information that pertains to Federal records.

Paperwork Reduction Act

In compliance with The Paperwork Reduction Act, information collection is required on Department of Defense Form 149 titled ''Application for Correction of Military Record''. The form is necessary to identify specific types of information in support of the Army Board requirements. The form was approved previously by the Office of Management Budget (OMB) and assigned OMB Control No. 0704–0003.

List of Subjects in 32 CFR Part 581

Administrative practice and procedure, Archives and Records, Military Personnel.

Accordingly, part 581 is proposed to be amended as follows:

1. The authority citation for 581 continues to read as follows:

Authority: 10 U. S. C. 1552, 1553, 1554, 3012; 38 U. S. C. 3103a.

2. Section 581.3 is proposed to be revised to read as follows:

§ 581.3 Army Board for Correction of Military Records.

(a) General.—(1) *Purpose.* This section prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR).

(2) *Statutory authority.* Title 10 U. S. C. Section 1552, Correction of Military Records: Claims Incident Thereto (10 U. S. C. 1552), is the statutory authority for this section.

(b) *Responsibilities.*—(1) *The Secretary of the Army.* The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications as appropriate.

(2) *The ABCMR Director.* The ABCMR Director will manage the ABCMR's day-to-day operations.

(3) *The Chair.* The Chair of a given ABCMR panel will preside over the ABCMR panel, conduct a hearing, maintain order, ensure the applicant receives a full and fair opportunity to be heard and certify the written record of proceedings in pro forma and formal hearings as being true and correct.

(4) *The ABCMR members.* The ABCMR members will—

(i) Review all applications properly before them, to determine the existence of error or injustice.

(ii) If persuaded that probable material error or injustice exists, and sufficient evidence exist on the record, direct or recommend changes in military records to correct the error or injustice.

(iii) Recommend a hearing when appropriate in the interest of justice.

(iv) Deny applications where the alleged error or injustice is not adequately supported by the evidence, and a hearing is not deemed proper.

(v) Deny applications where the application is not timely filed, and it is not in the interest of justice to excuse the failure to timely file.

(5) *The Army records holding agency.* The Army records holding agency will—

(i) Take appropriate action on routine issues that may be administratively corrected under authority inherent in the custodian of the records and do not require ABCMR action.

(ii) Furnish all requested Army military records to the ABCMR.

(iii) Request additional information from the applicant, if needed, to assist the ABCMR in conducting a full and fair review of the matter.

(iv) Take corrective action directed by the ABCMR or the Secretary of the Army.

(v) Inform the Defense Finance and Accounting Service (DFAS), when appropriate, the applicant, his or her counsel, if any, and interested Members of Congress, if any, after a correction is complete.

(vi) Return original records of the soldier or former soldier obtained from the Department of Veterans Affairs (VA).

(6) *The Army staff agencies and commands.* The Army staff agencies and commands will—

(i) Furnish advisory opinions on matters within their areas of expertise upon request of the ABCMR, within a timely manner.

(ii) Obtain additional information or documentation as needed before providing the opinions to the ABCMR.

(iii) Provide records, investigations, information, and documentation upon request of the ABCMR.

(iv) Provide additional assistance upon request of the ABCMR.

(v) Take corrective action directed by the ABCMR or the Secretary of the Army.

(7) *DFAS.* The ABCMR staff will request that DFAS—

(i) Furnish advisory opinions on matters within its area of expertise upon request.

(ii) Obtain additional information or documentation as needed before providing the opinions.

(iii) Provide financial records upon request.

(iv) Settle claims on behalf of the Army based on ABCMR final actions.

(v) Report quarterly on the monies expended as a result of ABCMR action, and the names of the payees, to the ABCMR Director.

(c) *ABCMR establishment and functions.*—(1) *ABCMR Establishment.* The ABCMR operates pursuant to law (10 U. S. C. 1552) within the Office of the Secretary of the Army. The ABCMR consists of civilians regularly employed in the executive part of the Department of the Army (DA), who are appointed by the Secretary of the Army, and who

serve on the ABCMR as an additional duty. Three members constitute a quorum.

(2) *ABCMR Functions.* (i) The ABCMR considers individual applications properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice.

(ii) When an applicant has suffered reprisal under the Military Whistleblower Protection Act (10 U. S. C. 1034 and Department of Defense Directive (DODD) 7050.6), the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(iii) The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing in 10 U. S. C. 1034 and DODD 7050.6), or call for additional evidence or opinions.

(d) *Application procedures.*—(1) *Who may apply.* The ABCMR's jurisdiction under 10 U. S. C. 1552 extends to any military record of the DA. It is the nature of the record, and/or the status of the applicant, that defines the ABCMR's jurisdiction.

(i) Usually applicants are soldiers or former soldiers of the active Army, the U.S. Army Reserve (USAR), and in certain cases, the Army National Guard (ARNG), and other military and civilian individuals affected by an Army military record. Requests are personal to the applicant and relate to military records. Requests are submitted on Department of Defense (DD) Form 149, Application for Correction of Military Record. Soldiers in an active or reserve status need not submit applications via their chain of command.

(ii) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, is missing, or is deceased. Depending on the circumstances, a child, spouse, parent or other close relative, an heir, or legal representative (such as a guardian or executor) of the soldier or former soldier may be able to show a proper interest. Applicants must send proof of proper interest with the application when requesting correction of another person's military records.

(2) *Time limits.* Applicants must file an application within 3 years after the alleged error or injustice was discovered or should have been discovered. The ABCMR may deny an untimely application. The ABCMR may excuse untimely filing in the interest of justice.

(3) *Administrative remedies.* The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

(4) *Stay of other proceedings.* Applying to the ABCMR does not stay other proceedings.

(5) *Counsel.* (i) Applicants may be represented by counsel, at their own expense.

(ii) See DODD 7050.6 for provisions for counsel in cases processed under 10 U. S. C. 1034.

(e) *Application processing.* (1) Actions by the ABCMR Director and staff. The ABCMR staff will review each application to determine if it meets the criteria for consideration by the ABCMR. The application may be returned without action if:

(i) The applicant fails to complete and sign the application.

(ii) The applicant has not exhausted all other administrative remedies.

(iii) The ABCMR does not have jurisdiction to grant the requested relief.

(iv) No new evidence was submitted with a request for reconsideration.

(2) *Burden of proof.* The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

(3) *ABCMR consideration.* (i) A panel consisting of at least three ABCMR members shall consider each application properly brought before it. One panel member serves as its chair.

(ii) The panel may consider the case on the merits in executive session or authorize a hearing.

(iii) Each application will be reviewed to determine:

(A) Whether the preponderance of the evidence shows that an error or injustice exists.

(*1*) If so, what relief is appropriate.

(*2*) If not, deny relief.

(B) Whether to authorize a hearing.

(C) If the application is filed outside the statute of limitations, whether to deny based on untimeliness or to waive the statute in the interest of justice.

(f) *ABCMR hearings.* Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

(g) *Disposition of applications.* (1) *ABCMR decisions.* The panel's majority vote constitutes the action of the ABCMR. The ABCMR's findings, recommendations, and, in the case of a denial, the rationale will be in writing.

(2) *ABCMR final action.* (i) The ABCMR acts for the Secretary of the Army and its decision is final when it:

(A) Denies any application (except under 10 U.S.C. 1034).

(B) Grants any application in whole or in part without a hearing when:

(*1*) The relief is as recommended by the proper staff agency in an advisory opinion; and

(*2*) Is unanimously agreed to by the ABCMR panel; and

(*3*) Does not involve an appointment or promotion requiring confirmation by the Senate.

(ii) The ABCMR will forward the decisional document to the Secretary of the Army for final decision in any case where:

(A) A hearing was held.

(B) The facts involve reprisals under the Military Whistleblower Protection Act confirmed by the Department of Defense Inspector General (DODIG) under 10 U.S.C. 1034 and DODD 7050.6.

(C) The ABCMR recommends relief, but is not authorized to act for the Secretary of the Army on the application.

(3) *Decision of the Secretary of the Army.* (i) The Secretary of the Army may direct such action as he or she deems proper on each case. Cases returned to the Board for further consideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the ABCMR's recommendation, or adopts a minority position, or fashions an action that he or she deems proper and supported by the record, that decision will be in writing and will include a brief statement of the grounds for denial or revision.

(ii) The Secretary of the Army will issue decisions on cases covered by the Military Whistleblower Protection Act (10 U.S.C. 1034 and DODD 7050.6). In cases where the DODIG concluded that there was reprisal, these decisions will be made within 180 days after receipt of the application and the investigative report by the DODIG, the Department of the Army Inspector General (DAIG), or other Inspector General (IG) offices. Unless the full relief requested is granted, these applicants will be informed of their right to request review of the decision by the Secretary of Defense.

(4) *Reconsideration of applications.* An applicant may ask the ABCMR to reconsider its decision under the following circumstances:

(i) If the ABCMR receives the request within 1 year of the ABCMR's action, and the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to

determine if it includes evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether new evidence exists sufficient to show probable material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives the request more than 1 year after the ABCMR's action, or after the ABCMR has already considered one request for reconsideration, the ABCMR staff will review the request to determine if substantial relevant evidence is submitted showing fraud, mistake of law, mathematical miscalculation, manifest error, or the existence of substantial, relevant new evidence discovered contemporaneously or within a short time after the ABCMR's original consideration. If the ABCMR staff finds such evidence, it will be submitted to the ABCMR for its determination of whether a material error or injustice exists, and if so, the proper remedy. If the ABCMR staff does not find such evidence, the application will be returned to the applicant without action.

(h) *Claims/Expenses.*—(1) *Authority.* (i) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(ii) The Army may not pay any claim previously compensated by Congress through enactment of a private law.

(iii) The Army may not pay for any benefit to which the applicant might later become entitled under the laws and regulations managed by the VA.

(2) *Settlement of claims.* (i) The ABCMR will furnish DFAS copies of decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(ii) DFAS will settle claims on the basis of the corrected military record. DFAS will compute the amount due, if any. DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and/or to aid in deciding amounts due. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted. The applicant's acceptance of a settlement fully satisfies the claim concerned.

(3) *Payment of expenses.* The Army may not pay attorney's fees or other expenses incurred by or on behalf of an applicant in connection with an application for correction of military records under 10 U.S.C. 1034 or 1552.

(i) *Miscellaneous provisions.*—(1) *Special standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles* v. *Secretary of the Army* (Civil Action No. 77–0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member, on or before November 27, 1979, in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the word CATEGORY ''G'' in block 11, (DD Form 149) Application for Correction of Military or Naval Record. Such applications should be viewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official shall not constitute an action or decision by the Board for Correction of Military Records.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act, 5 U.S.C. 552, records created on or after November 1, 1996 shall be available by electronic means.

(ii) Under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552(a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is received from the applicant, or as otherwise authorized by law.

Loren G. Harrell,

Director, Army Board for Correction of Military Records.

[FR Doc. 98–25863 Filed 9–28–98; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 55

[USCG 1998–3821]

RIN 2115–AF48

Coast Guard Child Development Services Programs

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish child development services for eligible children of the Department of Transportation military and civilian personnel and eligible children of armed forces members and federal civilian employees. This proposed rule also establishes the basis for a ''total family income'' sliding fee schedule to make child care more affordable for lower-income families in center-based programs. This proposed rule also provides a mechanism to reduce fees for users of family child care providers through the use of appropriated funds.

DATES: Comments must reach the Docket Management Facility on or before October 29, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG 1998–3821), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions about the docket, contact Ms. Paulette Twine, Chief, Documentary

Services Division, Department of Transportation, telephone 202–366–9329. For questions about this notice, contact Ms. Elaine Sweetland, Project Manager, Office of Work-Lift (202) 267–6727 or Ms. Jessie Broadaway, Project Manager, Office of Work-Life (202) 267–6728.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit written data, views, or arguments. If you submit comments, you should include your name and address, identify this rulemaking (USCG 1998–3821) and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want us to acknowledge receiving your comments, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public meeting. You may request a public meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a public meeting should be held, it will hold the meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The first child care programs in the Coast Guard were spouse sponsored and met in buildings that a command was not using. In the early 1970's, Coast Guard sponsored child care centers were developed and became Morale, Welfare, and Recreation (MWR) activities under policy promulgated by MWR, following Department of Defense guidelines. In 1987 the two centers remaining under spouse sponsorship were brought into the Coast Guard MWR system and policy specific to Coast Guard child care was issued.

In 1996 the Child Development Services Manual, Commandant Instruction M1754.15 was issued providing policy guidance to manage and run Coast Guard child care programs. A copy of the manual is in the docket of the rulemaking and available therefor review. The policy directives in the Manual apply to all child development services provided by the Coast Guard, including center-based and family child care. The manual provides the policy for eligibility for services, health and safety standards, staff-to-child ratios, program and staff training requirements, discipline policies, facility requirements, child abuse prevention and reporting requirements, special needs children, parental involvement, and financial management.

In 1996 new legislation was passed regarding child development services. The Coast Guard Authorization Act of 1996 (Act) added section 515 to Title 14 of the U.S. Code, which requires the Secretary of Transportation to promulgate regulations to implement section 515. The authority to promulgate regulations pertaining to section 515 and other authorities under the Act was delegated to the Commandant of the Coast Guard on July 18, 1997 (62 FR 38478). Section 515 allows the Commandant to make Coast Guard child development services available to members of the Armed Forces and Federal civilian employees. The Act requires that the regulations establish fees to be charged for child development services that take into consideration total family income.

The purpose of this rulemaking is to implement section 515 and establish a fee regime to permit eligible federal employees and military members to take advantage of Coast Guard offered child care services. The Child Development Services Manual will continue to provide policy guidance to supplement the rule.

Discussion of Proposed Rule

Because child development services apply to civilian employees as well as military members, we propose to remove the word ''Military'' from the heading at 33 Code of Federal Regulations, Subchapter B, so the heading reads ''Personnel.'' Within Subchapter B, this proposed rule creates a new part 55 of 33 Code of Federal Regulations.

Section 55.5. This proposed section describes the military members and civilian employees who are eligible to use the Coast Guard's child development services. These include Coast Guard members, civilian Coast Guard employees, and other military personnel and Federal civilian employees, on a space available basis.

Section 55.9. This proposed section conforms to the requirements of 14 U.S.C. 515(c). Paragraph (a) provides for regular and unannounced inspections of child development centers by headquarters program personnel, the commanding officer of the sponsoring command, fire personnel, and health and safety personnel. Paragraph (b) provides for employee training on a monthly basis. Training will be conducted by the Center Director and others arranged for by the Director with expertise in specific disciplines, and will consist of training about early childhood development, activities and disciplinary techniques, child abuse prevention and detection, and emergency medical procedures.

Section 55.11. This proposed section establishes a total family income chart to be used to calculate fees at child development centers. Fees will vary, depending on total family income, and geographic location. Fees for each of the prescribed categories will be set by the local command to cover the expenses of that particular center. Fees are set by the local command rather than at Coast Guard headquarters because the primary expense for providing child care services is salaries, which vary widely in the geographic areas where the Coast Guard operates. The chart in Subsection (a) is to be used by each local command to establish a sliding fee scale, based on total family income. ''Total family income'' is defined in section 55.7. We are adopting the DOD definitions of total family income and the five income categories of the sliding fee scale as they apply to child development services. Adopting the DOD definitions will ensure that military members from all the services have equivalent eligibility requirements at Coast Guard and DOD child development centers.

Subsection (b) discusses the proper use of fees collected from parents for child care services. To conform with the requirements of 14 U.S.C. 515(b), these fees can only be used to compensate those employees who are directly involved in providing child care services at center-based programs unless use of fees in this manner is determined to be uneconomical and inefficient. Uneconomical and inefficient means that using the fees in this manner would not provide a quality program at an affordable cost to parents using the child care services. If this is the case, then the fees may be used for consumable or disposable items for the centers. If these needs have been met, the fees may then be used for other center expenses.

Section 55.13. This proposed section discusses family home day care providers and Coast Guard Family Child Care Providers. A family home care provider is an individual licensed by a state agency who offers child care in his or her home. A Coast Guard Family Child Care Provider is a Coast Guard family member who provides child care in Coast Guard -leased or -owned

housing. Approval procedures are detailed in the Child Development Services manual. Family child care is an option because it can provide flexibility in meeting unusual duty hours and best meets the needs of personnel at smaller units.

When available, appropriated funds may be used to reduce the child care costs of eligible persons who choose to use family child care. Guidelines concerning family child care are contained in the Child Development Services Manual.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule would apply only to providers of Coast Guard child development services programs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The small entities affected by this rule are family home day care providers (e.g., Coast Guard Family Child Care Providers). If funds are available, the family home day care providers may receive funding to enable them to provide services to families of Coast Guard military members and Coast Guard civilian employees at a more affordable rate. This rulemaking does not result in any change in the amount of income received by family home day care providers.

Therefore, the Coast Guard's position is that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies, and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact The Dependent Resource Coordinator or Family Child Care Coordinator on the Coast Guard Work-Life Staff that serves your geographic area.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

Under paragraph 2.B.2.b.(34) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. This authority deals with the use of Coast Guard funds for Coast Guard Child Development Services and requirements for facility and program inspections and for staff training and has no impact on the environment.

A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 55

Day care, Government Employees, Infants and Children and Military Personnel.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Chapter I as follows:

1. In the heading of Subchapter B, remove the word ''Military.''

2. Add part 55 to Subchapter B to read as follows:

PART 55—CHILD DEVELOPMENT SERVICES

Subpart A—General

Sec.
55.1 Purpose.
55.3 Who Is Covered by this Part?
55.5 Who is Eligible for Child Development Services?
55.7 Definitions.
55.9 Child Development Centers.
55.11 How are Child Development Center Fees Established?
55.13 Family Child Care.

Authority: 14 U.S.C. 515.

Subpart A—General

§ 55.1 Purpose.

This subpart implements 46 U.S.C. 515, which provides for Coast Guard Child Development Services.

§ 55.3 Who Is Covered by this Part?

This subpart applies to all Coast Guard installations.

§ 55.5 Who Is Eligible for Child Development Services?

Coast Guard members and civilian Coast Guard employees are eligible for the Child Development Services described in this subpart. As space is available, members of the other Armed Forces and other Federal civilian employees are also eligible.

§ 55.7 Definitions.

As used in this part—

Child Development Center means a facility located on a Coast Guard installation that offers, on a regularly scheduled basis, developmental services designed to foster social, emotional, physical, creative, and intellectual growth to groups of children.

Child Development Services means developmental services provided at a child development center or by a family child care provider at his or her Coast Guard-owned or -leased home.

Coast Guard Family Child Care Provider means a Coast Guard family member, 18 years of age or older, who provides child care for 10 hours or more per week per child to one but no more than six children, including the provider's own children under the age of eight, on a regular basis in his or her Coast Guard-owned or -leased housing.

Coast Guard Family Child Care Services means child care provided on a regularly scheduled basis for 10 hours or more a week by an individual certified by the Coast Guard and who resides in Coast Guard-controlled housing.

Command means the Commanding Officer of one or more units of personnel in a limited geographic area with responsibility for a child development center.

Family Child Care means child care provided in the home of a provider, either a Coast Guard Family Child Care Provider or a Family Home Day Care Provider.

Family Home Day Care Provider means an individual 18 years of age or older who is licensed by the state agency that regulates child care. This person provides child care to one but to no more than six children, including the provider's own children under the age of eight, on a regular basis in his or her residence.

Geographic Cost of Living Allowance means the adjustment in basic pay related to higher living costs in certain geographic areas.

Total Family Income means the earned income for adult members of the household including wages, salaries, tips, long-term disability benefits received by a family, incentive and special pay for service or anything else of value, even if not taxable, that was received for providing services. Also included is Basic Allowance for Housing and Basic Allowance for Subsistence authorized for the pay grade of military personnel, whether the allowance is received in cash or in-kind. Total Family Income does not include: the geographic cost of living allowances; alimony and child support; temporary duty allowances or reimbursements for educational expenses; veterans benefits; workers compensation benefits; and, unemployment compensation. These are to be excluded from Total Family Income.

Uneconomical and inefficient means that the fees collected from parents can not be used in a manner that provides a quality program at an affordable cost to parents using the child care services.

§ 55.9 Child Development Centers.

(a) The Commandant may make child development services available at Child Development Centers located at Coast Guard Installations.

(b) Regular and unannounced inspections of each child development center shall be conducted annually by headquarters program personnel, the commanding officer of the sponsoring command, fire personnel, and health and safety personnel.

(c) Training programs shall be conducted monthly to ensure that all child development center employees complete a minimum of 20 hours of training annually with respect to early childhood development, activities and disciplinary techniques appropriate to children of different ages, child abuse prevention and detection, and appropriate emergency medical procedures.

§ 55.11 How Are Child Development Center Fees Established?

(a) Fees for the provision of services at child development centers shall be set by each Command with responsibility for a center-based program, according to the following total family income chart:

Total Family Income

$0 to $23,000
$23,001 to $34,000
$34,001 to $44,000
$44,001 to $55,000
Over $55,000

(b) Fees for the provision of services at Coast Guard child development centers shall be used only for compensation for employees at those centers who are directly involved in providing child care, unless it is uneconomical and inefficient. If uneconomical and inefficient, then the fees may be used for:

(1) The purchase of consumable or disposable items for Coast Guard child development centers; and

(2) If the requirements of such centers for consumable or disposable items for a given fiscal year have been met, for other expenses of those centers.

§ 55.13 Family Child Care Providers.

When appropriated funds are available, funds may be offered to provide assistance to Coast Guard Family Child Care Providers or to family home day care providers so that family child care services can be provided to military members and civilian employees of the Coast Guard, at a cost comparable to the cost of services at Coast Guard child development centers.

Dated: July 28, 1998.

T.J. Barrett, RADM, USCG,

Assistant Commandant for Human Resources, Acting.

[FR Doc. 98–25931 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–15–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet on: Wednesday, October 21, 1998, 8:30 a.m. to 5:00 p.m.; Thursday, October, 22, 1998, 8:30 a.m. to 5:00 p.m.; Friday, October 23, 1998, 8:30 a.m. to 5:00 p.m.; and Saturday, October 24, 1998, 8:30 a.m. to noon.

ADDRESSES: The committee will meet at the Rocky Mountain Village, Alvarado Road (off I–70), Empire, Colorado.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (http://www.access-board.gov/rules/outdoor.htm).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by October 9, 1998, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

James J. Raggio,

General Counsel.

[FR Doc. 98–25985 Filed 9–28–98; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0102b; FRL–6161–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is approving a revision to the California State Implementation Plan (SIP) which concerns the general provisions and definitions that are applicable to all regulations in the Bay Area Air Quality Management District.

The intended effect of this action is to clarify the general provisions and definitions that apply to the regulation of emissions of volatile organic compounds (VOCs), oxides of nitrogen (NOx), and other pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by October 29, 1998.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revision are available for public inspection at EPA's Region IX office during normal business hours and at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns Bay Area Air Quality Management District Regulation 1, General Provisions and Definitions, submitted to EPA on June 23, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: September 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–25892 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144, 145 and 146

[FRL–6170–2]

RIN 2040–AB83

Reopening of Comment Period on Revisions to the Underground Injection Control Regulations for Class V Injection Wells

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for the proposed rule revising the Class V Underground Injection Control (UIC) regulations which published in the **Federal Register** on July 29, 1998 at (63 FR 40585). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The comment period for this proposal will be reopened on September 29, 1998 and will close on November 30, 1998. Comments will only be accepted on new sections of the proposed rule (see Table 1 of the preamble (63 FR 40587)).

ADDRESSES: Send written comments to the UIC Class V, W–98–05 Comment Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. EPA would appreciate one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the above address. For information on how to access Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington DC, 20460. Phone: 202–260–1993. E-mail: delehanty.robyn@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The reopened comment period for the proposed rulemaking now ends November 30, 1998. All comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be incorporated into the Record and considered before promulgation of the final rule.

Dated: September 23, 1998.

J. Charles Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 98–26008 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6169–2]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 26

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 12 new sites to the NPL, all to the General Superfund section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 30, 1998.

ADDRESSES: *By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND. DOCKET@EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, phone (703) 603–8852, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. However, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public

Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund section''), and one of sites being addressed generally by other Federal agencies (the ''Federal Facilities section''). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 18, 1998 (63 FR 49855).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, to describe the relevant release(s) the approach generally used is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals

more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. To date, the Agency has deleted 176 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 1998, EPA has deleted portions of 11 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

In addition to the 167 sites that have been deleted from the NPL because they have been cleaned up (9 additional sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 368 sites are also on the NPL CCL. Thus, as of September 1998, the CCL consists of 535 sites.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters in Washington, D.C. and in the appropriate Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the appropriate Regional docket after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

You may also request copies from EPA Headquarters or the appropriate Regional docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

Following is the contact information for the EPA Headquarters docket (see ''How do I submit my comments?'' section below for Regional contacts): Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble, or contact Regional offices as detailed in the ''How do I submit my comments?'' section below.)

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. The Headquarters docket also contains an ''Additional Information'' document which provides a general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, and the economic impacts of NPL listing.

D. What Documents Are Available for Public Review at the Regional Dockets?

Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble. Regional offices may be reached at the following:

Jim Kyed, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA Waste Management Records Center, HRC–CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866, 212/637–4435

Kevin Wood, U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103, Mail Code: 3HS33, 215/814–3303

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8127 Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–7570

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mail Code 6SF–RA, Dallas, TX 75202–2733, 214/655–7436

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/312–6757

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2343

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101, 206/553–2103

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

Table 1 identifies the 12 sites in the General Superfund section being proposed to the NPL in this rule. This table follows this preamble. All sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has an HRS score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register**, results in an NPL of 1,194 sites, 1,041 in the General Superfund section and 153 in the Federal Facilities section. With this proposal of 12 new sites, there are now 66 sites proposed and awaiting final agency action, 57 in the General Superfund section and 9 in the Federal Facilities section. Final and proposed sites now total 1,260.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal 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 Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

B. Does the Regulatory Flexibility Act Apply to This Proposed Rule?

While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, the Agency did not consider the use of any voluntary consensus standards.

VIII. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

IX. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose any burden requiring OMB approval under the Paperwork Reduction Act.

XI. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?

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.''

This final 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.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

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 because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 26, GENERAL SUPERFUND SECTION

State	Site name	City/county	Group
CA	Lava Cap Mine	Nevada City	21
CA	Omega Chemical Corporation	Whittier	22
MN	Fridley Commons Park Well Field	Fridley	4/5
NJ	Middlesex Sampling Plant	Middlesex	4/5
NJ	United States Avenue Burn	Gibbsboro	4/5
NY	Hiteman Leather	West Winfield	4/5
NY	Mohonk Road Industrial Plant	High Falls	4/5
NY	Smithtown Ground Water Contamination	Smithtown	4/5
OK	Tulsa Fuel and Manufacturing	Collinsville	4/5
TX	City of Perryton Well No. 2	Perryton	4/5
TX	Many Diversified Interests, Inc	Houston	19
VT	Pownal Tannery	Pownal	4/5

Number of Sites Proposed to General Superfund Section: 12.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 22, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 98–25890 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 98–163; FCC 98–221]

1998 Biennial Regulatory Review—Modifications to Signal Power Limitations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes increasing the signal power limitations in order to improve the transmission rates experienced by persons using high speed digital information products, such as 56 kilobits per second (kbps) modems, to download data from the Internet. Current rules limiting the signal power that can be transmitted over telephone lines can prohibit such products from operating at their full potential. We believe that these signal power limitations may be increased without causing interference or other technical problems. We propose increasing the signal power limitations and request comment on the benefits and harms, if any, that may result from this change. Specifically, this change will allow Pulse Code Modulation (PCM) modems, used by Internet Service Providers (ISPs) and other online information service providers to utilize higher signal power levels to transmit data at moderately higher speeds.

DATES: Comments are due on or before October 29, 1998, and reply comments are due on or before November 13, 1998.

ADDRESSES: Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, an electronic and a paper copy of any comments, reply comments, and supporting documents should be submitted to Vincent M. Paladini, Federal Communications Commission, Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C. 20554 or via the Internet to vpaladin@fcc.gov. Electronic submissions must be in WordPerfect 5.1 for Windows format.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail

address.'' A sample form and directions will be sent in reply.

FOR FURTHER INFORMATION CONTACT: Vincent M. Paladini, (202) 418–2320, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554. Further information may also be obtained by sending an electronic mail message to vpaladin@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Notice of Proposed Rulemaking in the matter of 1998 Biennial Regulatory Review—Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules. The technical parameters of Part 68 fall into three broad categories: signal power limitations, transverse balance requirements, and billing protection provisions. The signal power limitations of section 68.308 are designed to protect the network from crosstalk and other interference caused by excessive signal power. Theoretically, PCM modems operating over the Public Switched Telecommunications Network (PSTN) are capable of data transmission rates of up to 56 kbps. The signal power limitations found in section 63.308 of our rules appear to limit the transmission rate of PCM modems to 54 kbps. This is due to the way PCM is decoded within the PSTN. Digital signals transmitted by a PCM modem may be converted into analog signals by decoders within the network that translate digital signals into analog signals. Decoders operate by converting each discrete eight-bit digital input signal, or ''word,'' into a specific analog output signal strength, or voltage. PCM technique utilizes 256 decoder output voltages, one for each of the 256 possible eight-bit input combinations, or ''words.'' Each voltage corresponds with a specific signal power level. The signal power limitations contained in Part 68 may curtail the acceptable range of signal strengths used by PCM modems connected to the PSTN, potentially limiting transmission speeds.

In response to this situation, we propose increasing the encoded analog content power limitations specified in sections 68.308(h)(1)(iv) and 68.308(h)(2)(v) from −12 dBm to −6 dBm. We understand that an increase of this magnitude may be sufficient to broaden the range of acceptable signal strengths to enable PCM modems to approach their theoretical maximum speed. We seek comment on the effect of this proposed rule change. In particular, we seek comment on whether this rule change will discernibly improve the performance of PCM modems, whether increasing the signal power risks harm to the network, whether a signal power limit other than −6 dBm but greater than −12 dBm, or another modification to Part 68 of our rules, would be more beneficial and entail less risk. We request that all comments be accompanied by a thorough analysis of the likely effect of the proposed rule change, both the positive, in terms of increased transmission rates and other tangible benefits, and the negative, in terms of additional signal interference, crosstalk, or other network detriment. In particular, we seek comment on the potential detrimental effects of the proposed power increase on advanced communications services, such as asymmetric digital subscriber loop (ADSL), and other digital subscriber line (e.g., xDSL) services. We seek comment on whether the proposed rule change will allow consumers who access the Internet or other online services to experience faster transmission rates. We also seek comment identifying other factors limiting transmission rates, such as available network capacity, line noise, and the quality of the local loop, and discussing how these factors may be affected by increased signal power limitations. Finally, we seek comment on what rule modifications would be necessary to implement the revised signal power limitation.

We recognize that the modifications proposed in this Notice may produce only moderate improvements in the actual performance of 56 kbps PCM modems. We propose these modifications, however, because we desire to remove impediments to data transmission over the PSTN where we find that the public interest will be served by doing so. We ask parties to identify other provisions of Part 68 that may be affected by this proposed rule change.

List of Subjects in 47 CFR 68

Communications common carriers, Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–25978 Filed 9–28–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 63, No. 188

Tuesday, September 29, 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

Notice Inviting Applications for Designation of Rural Empowerment Zones; Correction

AGENCY: Office of the Secretary, USDA.

ACTION: Correction.

SUMMARY: The U.S. Department of Agriculture (USDA) corrects a notice published April 16, 1998 (63 FR 19143). This action is taken to correct cross references relating to the form and content of strategic plans which are required as part of the application package for rural empowerment zone designations. Accordingly, the notice published April 16, 1998 (63 FR 19143), is corrected as follows:

On page 19144, in the second column, the first sentence of paragraph VII(A) should cross reference sections 25.202 and 25.203.

On page 19145, in the first column, the sentence comprising paragraph VII(E)(2) ''Section 2—Phase I operational budget'' should cross reference section 25.403(c)(2).

Dated: September 11, 1998.

Dan Glickman,

Secretary.

[FR Doc. 98–26022 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–042–2]

National Wildlife Services Advisory Committee (formerly known as the National Animal Damage Control Advisory Committee); Notice of Intent to Reestablish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to reestablish the National Wildlife Service Advisory Committee (the Committee) for a 2-year period. The Secretary of Agriculture has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Mendoza, Director, Operational Support Staff, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: The purpose of the National Wildlife Services Advisory Committee is to advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies.

Done in Washington, DC, this 23rd day of September 1998.

Reba Evans,

Acting Deputy Assistant Secretary for Administration.

[FR Doc. 98–26024 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Insurance Pilot Program

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice; Request for Comments.

SUMMARY: This notice announces a public comment period on developing a new pilot program that would indemnify crop losses that result due to scab problems in the Northern Plains area of the United States in conjunction with the Federal crop insurance program. This action is necessary to address the scab problems in the Northern Plains. It is intended to ensure that producers have an adequate risk management tool for handling this disease.

DATES: Submit comments on or before October 29, 1998.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Mo 64131. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, Mo., address listed above, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 193(b) of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) authorizes the Secretary of Agriculture to develop and administer a pilot program for crop insurance coverage that indemnifies crop losses due to a natural disaster such as insect infestation or disease. This section also requires the pilot program to be actuarially sound, as determined by the Secretary of Agriculture and administered at no net cost. The pilot can last no more than two years.

Some interested parties, including producer groups, have indicated that the scab problems in the Northern Plains may require a unique approach to ensure that producers have an adequate risk management tool for handling this disease. The scab problems have lowered small grains grade qualities for wheat and barley in this region. The current small grains crop insurance provisions, 7 CFR 457. 101, section 11(b) allow for quality adjustment of barley and wheat only when barley or wheat production grades U.S. No. 5 or worse. In some instances, barley and wheat damaged by scab do not meet this threshold, yet some price reduction is incurred by the producer in the marketing of such grain.

FCIC is soliciting comments concerning development of a pilot program for addressing scab problems in the Northern Plains. FCIC encourages and welcomes any proposals, recommendations, options, concerns, or other comments the public may have with respect to the development of such a pilot program. Parties affected by any pilot program resulting from this notice will include producers, grain elevators, insurance companies reinsured by FCIC, and insurance agents.

Signed in Washington, DC, on September 23, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–26023 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service, USDA

Government Performance and Results Act Strategic Plan: Year 2000 Revision

AGENCY: Forest Service.

ACTION: Notice of public meeting; request for public comment.

SUMMARY: The Government Performance and Results Act of 1993 (GPRA) requires the Forest Service to ask for the views and suggestions of anyone ''potentially affected by or interested in'' the Agency's strategic plan. In addition to announcements in the popular media and outreach through a variety of networks to individuals and organizations, the Strategic Planning and Resource Assessment Staff, in partnership with Agency field personnel, will be hosting a series of public meetings to solicit input about the goals and objectives for the Forest Service Strategic Plan (GPRA 2000 Revision). This notice announces public meetings for that purpose and provides information about where to send written comments.

DATES: The public meetings will be held in Albuquerque, NM (December 1, 1998); Atlanta, GA (November 10, 1998); Chicago, IL (November 18, 1998); Denver, CO (December 3, 1998); Los Angeles, CA (October 20, 1998); Seattle, WA (October 27, 1998); and Washington, DC (November 4, 1998). Public meetings will begin at 9 a.m. at each of the above locations and continue until 4 p.m., with appropriate breaks, on the dates indicated. Additional information about who to contact for more specific information about public meetings is listed in the table under Supplementary Information.

ADDRESSES: Written comments on the development of the Forest Service strategic play may be sent to Kathryn P. Maloney, Director, Strategic Planning and Resource Assessment Staff, USDA Forest Service, PO Box 96090, Washington, DC 20090–6090 or via internet at *http://www.resources.program/wo@fs.fed.us.* Written comments also may be faxed to (202) 205–1546. Additional information about the current (1997) strategic plan can be found on the internet on the Strategic Planning and Resource Assessment Staff Home Page at *http://www.fs.fed.us/pl/rpa.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning pubic meetings, contact Rod Kuhn of the Strategic Planning and Resource Assessment Staff, Washington, DC at (202) 205–1033 or via internet at *rkuhn/wo@fs.fed.us.* For additional information about submission or written comments for the Forest Service Strategic Plan (GPRA 2000 Revision), contact Nancy Osborne of the Strategic Planning and Resource Assessment Staff, Washington, DC at (202) 205–1292 or via internet at *nosborne/wo@fs.fed.us*

SUPPLEMENTARY INFORMATION: Member of the public interest in attending public meeting may contact Forest Service employees at the following locations for additional information:

USDA FOREST SERVICE PUBLIC MEETING LOCATIONS AND CONTACTS

Location	Date	Local contact
Albuquerque, NM	December 1, 1998	Parks Hilliard—(505) 842–3202.
Atlanta, GA	November 10, 1998	Bob Wilhelm—(404) 347–7076.
Chicago, IL	November 18, 1998	Mike Prouty—(612) 649–5276.
Denver, CO	December 3, 1998	Pam Skeals—(303) 275–5152.
Los Angeles, CA	October 20, 1998	Mike Srago—(415) 705–2855.
Seattle, WA	October 27, 1998	Dick Phillips—(503) 808–2281.
Washington, DC	November 4, 1998	Rod Kuhn—(202) 205–1033.

Public meetings will focus on the suitability of the three goals in the Agency's current strategic plan (Ensure sustainable ecosystems; Provide multiple benefits for people within the capabilities of ecosystems; and, Ensure organizational effectiveness); the nature of the long-term priorities or objectives needed to meet those goals; what Agency managers should focus on as critical indicators of success or failure in relation to the goals and objectives of the strategic plan; the most important outcomes or future resource conditions on which the Agency should focus; and any other issues and concerns that should be considered in the development of a revised strategic plan.

Dated: September 24, 1998.

Sandra H. Key,

Acting Deputy Chief, Programs and Legislation.

[FR Doc. 98–26031 Filed 9–28–98; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Electronic and Information Technology Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of appointment of advisory committee members and date of first meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has decided to establish an advisory committee to assist it in developing a proposed rule on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. The Electronic and Information Technology Access Advisory Committee (Committee) includes organizations which represent the interests affected by the accessibility standards for electronic and information technology. This notice also announces the time and place of the first Committee meeting, which will be open to the public.

DATES: The first meeting of the Committee is scheduled for Thursday, October 15, 1998 through Friday, October 16, 1998 beginning at 9:30 a.m. each day. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

ADDRESSES: The first meeting of the Committee will be held at 1331 F Street, NW., Washington, DC in the third floor training room.

FOR FURTHER INFORMATION CONTACT: Doug Wakefield, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000,

Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 39 (Voice); (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication N–02 (Electronic and Information Technology Access Advisory Committee notice). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication N–02. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/notices/eitaac.htm).

Background

On August 24, 1998, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice of intent to establish an advisory committee to provide recommendations for a proposed rule addressing accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. 63 FR 45041 (August 24, 1998). The notice identified the interests that are likely to be significantly affected by the accessibility standards: Federal agencies and Federal contractors; the electronic and information technology industry; organizations representing the access needs of individuals with disabilities; and other persons affected by accessibility standards for electronic and information technology.

Approximately 50 nominations were submitted. About 10 nominations were received from individual members of the public who have disabilities (or have family members who have disabilities). Nineteen nominations were received from organizations representing persons with disabilities. Three nominations were received from access consultants with experience in accessibility issues. The remaining nominations primarily consisted of organizations representing the electronic and information technology industry which includes some Federal, State, and local government entities.

For the reasons stated in the notice of intent, the Access Board has determined that establishing the Electronic and Information Technology Access Advisory Committee (Committee) is necessary and in the public interest. The Access Board has appointed 23 members to the Committee from the following organizations:

American Council of the Blind
American Foundation for the Blind
Arkenstone, Inc.
Association of Access Engineering Specialists
Association of Tech Act Projects
Easter Seals
Electronic Industries Alliance
FutureForms
Georgia Institute of Technology
IBM Special Needs Center
Meeting the Challenge, Inc.
Microsoft Corporation
NCR Corporation
National Association of the Deaf
National Federation of the Blind
National Industries for the Blind
National Science Foundation
Self Help for Hard of Hearing People, Inc.
Trace Research and Development Center
United Cerebral Palsy Associations
WGBH National Center for Accessible Media
WebABLE! Solutions
World Wide Web Consortium, Web Accessibility Initiative

The Board plans to involve other Federal agencies through a less formal, but certainly no less important, ad hoc committee comprised of those Federal agencies identified in section 508 (a)(2)(A) and public members of the Board. This committee will assist the Board's staff in preparing proposed and final standards. The Access Board regrets being unable to accommodate all requests for membership on the Committee. In order to keep the Committee to a size that can be effective, it was necessary to limit membership. It is also desirable to have balance among members of the Committee representing different clusters of interest, such as disability organizations and the electronic and information technology industry. The Committee membership identified above provides representation for each interest affected by issues to be discussed.

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate with subcommittees of the Committee. The Access Board believes that participation of this kind can be very valuable for the advisory committee process. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility standards for electronic and information technology are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. Decisions with respect to future meetings will be made at the first meeting. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 98–25986 Filed 9–28–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel Identification Requirements.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 5,250 hours.

Number of Respondents: 7,000.

Avg. Hours Per Response: 45 minutes.

Needs and Uses: Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, NOAA is responsible for management of the Nation's marine fisheries. As part of its efforts to enforce fishery regulations, NOAA has included requirements that fishing vessels display the vessel's official number in a specific way. The display of the number assists law enforcement officials in monitoring fishing and other activities and to ascertain whether the vessel is participating in activities authorized for that vessel.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: Recordkeeping/third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by

calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1998

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25975 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Survey of U.S. Assistive Technology Industry.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 8,000 hours.

Average Time Per Response: 4 hours per response.

Number of Respondents: 2,000 respondents.

Needs and Uses: Commerce/BXA, in partnership with the Federal Laboratory Consortium and the Department of Education, is conducting an assessment of the domestic assistive technologies industry in order to determine the competitiveness of the U.S. industry and to facilitate the transfer of defense technologies from federal laboratories to firms in the industry.

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; and competitiveness issues.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Victoria Baecher-Wassemer (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassemer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: September 23, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25976 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Statement of Financial Interests (Regional Fishery Management Councils).

Agency Form Number(s): 88–195.

OMB Approval Number: 0648–0192.

Type of Request: Revision of a currently approved collection.

Burden: 118 hours.

Number of Respondents: 196.

Avg. Hours Per Response: Approximately 35 minutes.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act requires disclosure of financial interests in any harvesting, processing, or marketing activities by nominees and members of the Fishery Management Councils. This information is made available for public inspection. Through the collection of information, the public and others will be more readily able to identify bias or apparent conflicts of interest in Council activities.

Affected Public: Individuals.

Frequency: On occasion and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25977 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke five antidumping duty orders in part.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on pure

magnesium from Canada, cut-to-length carbon steel plate from Canada, corrosion-resistant carbon steel plate from Canada, titanium sponge from Russia and brass sheet and strip from the Netherlands.

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Oil Country Tubular Goods, A–357–810	8/1/97–7/31/98
Siderca S.A.I.C	
Belgium: Industrial Phosphoric Acid, A–423–602	8/1/97–7/31/98
Societe Chimique Prayon-Rupel	
Canada: Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/97–7/31/98
Continuous Color Coat, Ltd.	
Dofasco, Inc.	
Sorevco, Inc.	
Stelco, Inc.	
DNN Galvanizing Corp.	
Canada: Cut-to-Length Carbon Steel Plate, A–122–823	8/1/97–7/31/98
Algoma Steel, Inc.	
Stelco, Inc.	
Gerdau MRM Steel	
Canada: Pure Magnesium, A–122–814	8/1/97–7/31/98
Norsk Hydro Canada, Inc.	
Italy: Certain Pasta, A–475–818	7/1/97–6/30/98
Industria Alimentare Colavita, S.p.A.*	
*Inadvertently omitted from previous initiation notice.	
Italy: Granular Polytetrafluoroethylene Resin, A–475–703	8/1/97–7/31/98
Ausimont Spa	
Japan: Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/97–7/31/98
Nippon Steel Corporation	
Kawasaki Steel Corporation	
Japan: Oil Country Tubular Goods, A–588–835	8/1/97–7/31/98
Sumitomo Metal Industries, Ltd.	
Kazakhstan: Titanium Sponge, A–834–803	8/1/97–7/31/98
Ust-Kamenogorsk Titanium and Magnesium Plant	
Mexico: Cement, A–201–802	8/1/97–7/31/98
Apasco, S.A. de C.V.	
Cemex, S.A. de C.V.	
Cementos de Chihuahua, S.A. de C.V.	
Mexico: Cut-to-Length Carbon Steel Plate, A–201–809	8/1/97–7/31/98
Altos Hornos de Mexico S.A. de C.V.	
Mexico: Oil Country Tubular Goods, A–201–817	8/1/97–7/31/98
Hylsa, S.A. de C.V.	
Tubos de Acero de Mexico S.A.	
Republic of Korea: Cold-Rolled Carbon Steel Flat Products, A–580–815	8/1/97–7/31/98
Dongbu Steel Co., Ltd.	
Pohang Iron and Steel Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/97–7/31/98
Dongbu Steel Co., Ltd.	
Pohang Iron and Steel Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
Republic of Korea: Oil Country Tubular Goods, A–580–825	8/1/97–7/31/98
SeAH Steel Corporation	
Romania: Carbon Steel Plate, A–485–803	8/1/97–7/31/98
Windmill International PTE Ltd. of Singapore/Windmill International Romania Branch	
Russia: Titanium Sponge, A–821–803	8/1/97–7/31/98
TMC Trading International, Ltd.	
The Netherlands: Brass Sheet & Strip, A–421–701	8/1/97–7/31/98
Outokumpu Copper Strip B.V.	
The Netherlands; Cold-Rolled Carbon steel Flat Products, A–421–804	8/1/97–7/31/98
Hoogovens Staal BV	
The People's Republic of China: Sulfanilic Acid*, A–570–815	8/1/97–7/31/98
Zhenxing Chemical Industry Company	
Yude Chemical Industry Company	
*If one of the above named companies does not qualify for a separate rate, all other exporters of sulfanilic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
Canada: Alloy Magenesium, C–122–815	1/1/97–12/31/97
Norsk Hydro Canada Inc.	
Canada: Pure Magnesium, C–122–815	1/1/97–12/31/97

	Period to be reviewed
Norsk Hydro Canada Inc.	
Israel: Industrial Phosphoric Acid, C–508–605	1/1/97–12/31/97
Haifa Chemicals Ltd.	
Rotem Amfert Negev Ltd.	
Italy: Certain Pasta, C–475–819	1/1/97–12/31/97
Audisio Industrie Alimentari S.p.L.*	
De Gi Ma s.r.l.*	
Industrie Alimentari Molisane s.r.l.*	
La Molisana Industrie Alimentari S.p.A.*	
Pastifico Antonio Pallante s.r.l.*	
Pastifico Fabianelli S.p.A.*	
Pastifico Laporta S.a.s.*	
Petrini S.p.A.*	
*Inadvertently omitted from previous initiation notice.	
Mexico: Cut-to—Length Carbon Steel Plate, C–201–810	1/1/97–12/31/97
Altos Hornos de Mexico S.A. de C.V.	
Republic of Korea: Cold-Rolled Carbon Steel Flat Products, C–580–818	1/1/97–12/31/97
Pohang Iron and Steel Company	
Pohang Coated Steel Co.	
Pohang Steel Industries	
Dongbu Steel Co.	
Union Steel Manufacturing Co., Ltd.	
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, C–580–818	1/1/97–12/31/97
Pohang Iron and Steel Company	
Pohang Coated Steel Co.	
Pohang Steel Industries	
Dongbu Steel Co.	
Union Steel Manufacturing Co., Ltd.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 752(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1656(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 23, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–26061 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review

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

SUMMARY: In response to a request from six exporters,[1] the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order of brake rotors from the People's Republic of China ("PRC") published on April 17, 1997 (*see* 62 FR 18740). The review covers the period April 1, 1997, through September 30, 1997.

We have preliminarily determined that U.S. sales have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess no antidumping duties for the six PRC exporters subject to this review.

Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Everett Kelly, or Barbara Wojcik-Betancourt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766, (202) 482–4194, or (202) 482–0629 respectively.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the

[1] The six exporters are China National Industrial Machinery Import & Export Company ("CNIM"), Lai Zhou Auto Brake Equipments Factory ("LABEF"), Longkou Haimeng Machinery Co., Ltd. ("Haimeng"), Qingdao Gren Co. ("GREN"), Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"), and Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP").

Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Background

On November 3, 1997, the Department received requests from CNIM, GREN, Haimeng, LABEF, Winhere and ZLAP (hereafter referred to as ''the six respondents'') for a new shipper review pursuant to section 751(a)(2)(B) of the Act and § 351.214(b) of the Department's regulations.

Section 751(a)(2) of the Act and § 351.214(b)(2)(i) of the Department's regulations govern determinations of antidumping duties for new shippers. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value (''LTFV'') investigation (the ''POI'') and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer. The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI, and (iv) in an antidumping proceeding involving inputs from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government. 19 CFR 351.214(b) (ii) and (iii).

The six respondents' requests were accompanied by information and certifications establishing the effective date on which they first shipped and entered brake rotors. Each of the six respondents also claims it has no affiliated companies which exported brake rotors from the People's Republic of China (''PRC'') during the POI. In addition, each of the six respondents also certified that its export activities are not controlled by the central government. Based on the above information, the Department initiated a new shipper review covering the six respondents (*Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Administrative Reviews* (62 FR 64206, December 4, 1997)). The Department is now conducting this review in accordance with section 751 of the Act and 19 CFR 351.214.

In January 1998, the six respondents submitted responses to the Department's antidumping questionnaire. In March and April 1998, the six respondents and the petitioner submitted publicly available information and comments for consideration in valuing the factors of production. Also, the Department issued supplemental questionnaires to the six respondents, each of which submitted responses to those questionnaires in April 1998. On May 4, 1998, we postponed the preliminary results until no later than September 24, 1998. (*See* 63 FR 25821, May 11, 1998).

On July 31, 1998, the respondents and petitioners submitted additional comments on publicly available information submitted for use in the preliminary results.

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: Automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Period of Review

The period of review (''POR'') covers the period April 1, 1997, through September 30, 1997.

Separate Rates

In proceedings involving non-market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. One of the respondents (*i.e.*, Winhere), although wholly-owned by Hong Kong individuals, is located within the PRC. Two respondents (*i.e.*, Haimeng, ZLAP) are joint ventures between Chinese and foreign companies. The three other respondents are either wholly owned by all the people (*i.e.*, CNIM) or collectively owned (*i.e.*, GREN, LABEF). Thus, for all six respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (*Bicycles*) 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon*

Carbide). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of *de jure* control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988, (the Industrial Enterprises Law), ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988, the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC,'' the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises' (Business Operation Provisions), and the 1994 ''Foreign Trade Law of the People's Republic of China.''

In prior cases, we have analyzed these laws and have found them to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' joint ventures, or collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (*Furfuryl Alcohol*) 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* (*Drawer Slides*) 60 FR 29571–29576 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the six respondents mentioned above.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices (''EPs'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each respondent asserted the following: (1) It establishes its own EPs; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, the respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is de facto absence of governmental control of the export functions of these respondents. Consequently, we have preliminarily determined that each entity has met the criteria for the application of separate rates (*see Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review,* 62 FR 55215, October 23, 1997).

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the EP to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. CNIM

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME companies, we based those charges on surrogate rates from India. (*See* Surrogate Country section below). To value foreign inland freight, we used the average truck freight rate contained in the Indian periodical *The Times of India.* We have used this same rate in numerous NME cases in which India has been selected as the primary surrogate. *See Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9164 (February 28, 1997) (*Brake Rotors*). To value foreign brokerage and handling expenses, we relied on public information reported in the antidumping investigation of stainless steel bar from India.

2. GREN

We calculated EP based on packed, CIF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and handling fees were provided by NME suppliers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India. For ocean freight, we used rates from the U.S. Federal Maritime Commission because GREN used NME freight carriers.

3–6. Haimeng, LABEF, Winhere, and Zlap

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight and foreign brokerage and handling. As all foreign inland freight and handling fees were provided by NME suppliers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country.

None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. We determined that India is a country comparable to the PRC in terms of overall economic development (*see* Memorandum to Louis Apple, dated January 22, 1998). In addition, based on publicly available information placed on the record, we have determined that India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we valued those factors using values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the companies in the PRC which produced the subject merchandise for the exporters which sold the subject merchandise to the United States during POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian or Indonesian values.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Preliminary Results Valuation Memorandum from the Team to the File, dated September 24, 1998.

To value pig iron and iron scrap, we used domestic price data from the April 1996–March 1997 financial report of Lamina Foundries (Lamina) because the prices reported therein are most contemporaneous to the POR and best represent the costs of those inputs. We removed excise and sales taxes from the pig iron and scrap values because the financial report indicated that these taxes were included in the values. For steel scrap, lubrication oil and limestone, we used the April 1996–March 1997 import value from *Monthly Statistics of the Foreign Trade of India (Monthly Statistics).* For ferrosilicon and ferromanganese, we used the March-May 1997 import value from *Monthly Statistics.*

For coking coal, we used a 1996–1997 price from the publication *Federation of Indian Chambers of Commerce.* To value firewood, we used a 1990 domestic value from the USAID publication, *Marketing Opportunities for Social Forestry in Uttar Pradesh*. To value electricity, we used an April 1996–July 1996 average price for electricity from *Business World*.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general and administrative (SG&A) expenses, factory overhead and profit, we calculated simple averages based on financial data from only five Indian producers. We used only those producers' financial reports because they were most contemporaneous with the POR and because we have publicly available information that demonstrates that these companies are producers of the subject merchandise (*i.e.*, Jayaswals Neco Limited (''Jayaswals''), Kalyani Brakes Limited (''Kalyani''), Krishna Engineering Works (''Krishna''), Nagpur Alloy Castings Ltd. (''Nagpur''), and Rico Auto Industries Limited (''Rico'')). Where appropriate, we have removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (*see Brake Rotors* at 9160). We also made certain adjustments to the percentages calculated as a result of reclassifying expenses contained in the financial reports.

In utilizing the financial data of the Indian companies, we treated the line item labeled ''stores and spares consumed'' as part of factory overhead because stores and spares are not direct materials consumed in the production process. Based on publicly available information, we have considered the molding materials (*i.e.*, sand, bentonite, coal powder, steel pellets, lead powder, waste oil) to be indirect materials included in the stores and spares consumed category of the financial statements. We based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. Where a company did not distinguish interest income as a line item within total ''other income,'' we used the relative ratio of interest income to total other income as reported for the Indian metals industry in the *Reserve Bank of India Bulletin*. For a further discussion of other adjustments made, *see* the Preliminary Results Valuation Memorandum.

To value PRC inland freight, we used the April 1994 truck rate from the *Times of India*.

In accordance with, the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (1997) we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of exportation to the factory, or from the domestic supplier to the factory on an import-specific basis.

To value adhesive tape, corrugated cartons, pallet wood, nails, polyethylene material for bags, plastic straps and steel strips, we used April 1996–March 1997 import values from *Monthly Statistics of India*.

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and § 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the six respondents during the period April 1, 1997, through September 30, 1997:

Manufacturer/producer/exporter	Percent margin
China National Industry Machinery, Import & Export Company (CNIM)	0.00
Lai Zhou Auto Brake Equipments Factory (LABEF)	0.00
Longkou Haimeng Machinery Co., Ltd. (Haimeng)	0.00
Qingdao Gren Co. (GREN)	0.00
Yantai Winhere Auto-Part Manufacturing Co., Ltd. (Winhere)	0.00
Zibo Luzhou Automobile Parts Co., Ltd. (ZLAP)	0.00

Interested parties may request disclosure within 5 days of the date of publication of this notice and may

request a hearing within 10 days of publication. Any hearing, if requested, will be held at the earliest convenience of the parties. Case briefs from interested parties may be submitted not later than 63 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 70 days after the date of publication. The Department will issue the final results of this new shipper administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 90 days of issuance of these preliminary results. Upon completion of this new shipper review, the Department will issue appraisement instructions directly to the Customs Service. The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Furthermore, upon completion of this review, the posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and § 351.214(e) of the Department's regulations, will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise.

If the final results should yield no margin of dumping for the six respondents noted above, then the Department will instruct the Customs Service to liquidate all entries of the subject merchandise during the POR both produced and exported by GREN, Haimeng, LABEF, Winhere and ZLAP, and subject merchandise exported by CNIM but manufactured by Hanting Casting Factory without regard to antidumping duties.

The following deposit requirements will be effective upon publication of the final results of this new shipper antidumping duty administrative review for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of this new shipper administrative review; (2) the cash deposit rate for PRC exporters who received a separate rate in the LTFV investigation will continue to be the rate assigned in that investigation; and (3) the cash deposit rate for all other PRC exporters will continue to be 43.32 percent, the PRC-wide rate established in the LTFV investigation.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 351.214(d).

Dated: September 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–26062 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Reestablishment of the U.S. Automotive Parts Advisory Committee

AGENCY: International Trade Administration, Commerce.

ACTION: Reestablishment of the U.S. Automotive Parts Advisory Committee.

SUMMARY: Having determined that the Committee's work continues to be in the public interest in connection with the performance of duties imposed on the Department by law, the U.S. Automotive Parts Advisory Committee (APAC) was reestablished. The reestablishment of the APAC is in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR subpart 101–6.10 (1990), Federal Advisory Committee Management Rule.

The APAC was established by the Secretary of Commerce on June 6, 1989, to advise Department of Commerce officials on issues related to sales of U.S.-made auto parts to Japanese markets. It functions as an advisory body in accordance with the Federal Advisory Committee Act. Authority for the APAC is contained in 15 U.S.C. 4704, as amended by section 510 of Pub. L. 103–236 (April 30, 1994).

FOR FURTHER INFORMATION CONTACT: Robert Reck, U.S. Department of Commerce, International Trade Administration, Trade Development, Office of Automotive Affairs, (202) 482–1418.

Dated: September 21, 1998.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 98–26017 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 980722187–8187–01]

RIN 0693–ZA21

Upgrading of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) Accreditation Manual

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: ASCLD/LAB has requested that the Office of Law Enforcement Standards (OLES) at NIST assist in upgrading its laboratory accreditation program to meet applicable international standards. ASCLD/LAB operates an accreditation program for crime laboratories, with members consisting of 139 domestic and 14 foreign laboratories. The work of performing laboratory audits and reviewing audit reports for accreditation is performed on a voluntary basis. The program includes criteria to judge the quality and performance of a crime laboratory and the operation of an evaluation program to identify those laboratories meeting ASCLD/LAB criteria. Accreditation is a tool to ensure that the laboratories' contributions to the criminal justice system are consistent, repeatable, and scientifically based. The current criteria and accreditation program consists of procedures prepared by members of the ASCLD/LAB based on their professional knowledge and experience in crime laboratory operations prior to the establishment of international standards. They must now be modified to conform to established world-wide accepted standards.

As part of the phenomena of globalization of markets, several international organizations have prepared generic criteria for competence of laboratory operations and for operating accreditation programs to measure laboratory competence. The International Organization for Standards (ISO) has prepared ISO Guide 25 General Requirements for the Competence of Calibration and Testing

Laboratories and ISO Guide 58 General Requirement for Operation and Recognition of Calibration and Testing Laboratory Accreditation Program. The International Laboratory Accreditation Conference (ILAC) has provided an international forum for national laboratory accreditation programs to meet and contribute to the ISO standards effort. The ISO and ILAC effort have produced an international consensus on what constitutes a competent laboratory and how an accreditation program to measure that competence should operate. The objective has been to promote world-wide acceptance of test reports from accredited laboratories. The Agreement on Technical Barriers to Trade (that created the World Trade Organization which was adopted in the U.S. as the Trade Agreement Act of 1995) includes an obligation for governments to base technical regulations on such international standards when they exist. It also includes strong pressures for private organizations such as ASCLD/LAB to do as well.

DATES: Applicants must submit their proposals (an original and two (2) copies) to the address below no later than 5 pm Eastern Standard Time on October 30, 1998. The final award decision will be made no later than January 2, 1999.

ADDRESSES: Office of Law Enforcement Standards, NIST, Building 225, Room A323, Gaithersburg, Maryland 20899–0001, ATTENTION: Dr. Alim A. Fatah. The envelope should reflect, ''Upgrading of ASCLD/LAB Accreditation Manual''.

FOR FURTHER INFORMATION CONTACT: Alim A. Fatah, (301) 975–2757 for technical questions and an application kit. For administrative questions concerning this notice may be directed to the NIST Grants Office at (301) 975–6329.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609

Authority: 42 USC Sections 3721; 3722(c), (d); 3788(b), (c) and 15 USC Sections 272(b)(1), (2), (9); (c)(1), (2), (3), (19).

Program Objectives/Description: The primary objective of this solicitation is to provide financial assistance to an organization with expertise and a strong desire to upgrade the policies and procedures of the ASCLD/LAB to meet applicable international standards, in accordance with the ISO Guide 25 and ISO Guide 58 General Requirements. Proposals should cover the following:

1. Revised accreditation manual in accordance with ISO 25 and 58 guide Requirements;
2. A summarization of changes to the current practices;
3. Recommendations of the Operations Manual based on the ISO 58 Requirements;
4. Recommendations for the changes to the bylaws necessary to conform to the criteria of the ISO Guides 25 and 58; and
5. Recommendations for a transition plan to fully implement the new criteria and procedures.

Proposals should show the applicant's familiarity with ISO and past and current performance of these standards.

The vision of the OLES at the NIST is to apply science and technology to the needs of the criminal justice community, including law enforcement corrections, forensic science and fire service. While the primary focus is on the development of minimum performance standards, which are promulgated by the sponsoring agency as voluntary national standards. OLES also undertakes studies leading to new technology development and evaluations, new measuring science protocols, new standard reference materials and standard reference collections for application to the criminal justice system, and issuance of technical reports and user guidelines.

Eligibility: State, local, and tribal governments; colleges and universities; non-profit and for-profit (commercial) entities are eligible to apply.

Funding Availability and Type of Funding Instrument: Approximately $40,000.00 for one (1) cooperative agreement award is available. NIST will be substantially involved in this activity by collaborating with the applicant who is selected by providing technical guidance, expertise and review of accomplishments during the award period.

Selection Process: Proposals will be reviewed according to the evaluation criteria below, by three (3) or more reviewers with expertise in the criminal justice field. The proposals will be ranked based on the reviewers' scores. The Selecting Official, who is the Director of OLES, will consider the evaluation criteria, the scores of the reviewers, and the cost in making the final award decision.

Evaluation Criteria: The criteria to be used in evaluating these proposals include:

1. The applicants' understanding of the technical approach demonstrating how they plan to meet the requirement of the solicitation. Key elements include the applicants' understanding of Forensic Crime Laboratory quality and accreditation issues. (10 points)
2. The applicants' past performance with inclusion of at least three (3) references from two (2) sources for similar services. At least one of the references shall include the understanding and familiarity with ISO guidelines for laboratory accreditation programs, specifically ISO Guide 25 and ISO Guide 58 and the ability to closely work with Forensic Technical and Professional Associations, such as ASCLD, ASCLD/LAB and American Association of Forensic Sciences (AAFS). (60 points)
3. One key person, the Project Manager, shall have the expertise in Forensic Crime Laboratory quality and accreditation issues and will have at least one year of experience. Key qualifications include experience with ISO guidelines for laboratory accreditation programs, specifically ISO Guide 25 and ISO Guide 59. (30 points)

Technical approach is paramount, but cost will be considered in negotiating the award. In addition to submitting documents in hard-copy format, the applicant selected for the award will be encouraged to submit progress reports and other documents in electronic readable format (diskette or CD–ROM).

Award Period: It is NIST's intent to fund the cooperative agreement for a one (1) year period.

Matching Requirements: This program does not require matching funds.

Application Kit: An application kit, containing all of the required application forms and certifications is available by contacting Alim Fatah at (301) 975–2757. The application kit includes the following:

SF–424 (Rev 7/97) Application for Federal Assistance
SF–424A (Rev 7/97) Budget Information—Non-Construction Programs
SF–424B (Rev 7/97) Assurances—Non-Construction Programs
CD–511 (7/91) Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
CD–512 (7/91) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying
SF–LLL–Disclosure of Lobbying Activities

Paperwork Reduction Act: The Standard Form 424 and other Standard Forms in the application kit are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control No. 0348–0044, 0348–0040, 0348–0043, and 0348–0046. The applicants must submit one (1) original and two (2) copies of all applications and proposals.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reductions Act, unless that collection of information displays a currently valid OMB Control Number.

Additional Requirements

Primary Application Certifications: All primary applicant institutions must submit a completed form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations must be provided:

1. *Nonprocurement Debarment and Suspension:* Prospective participants (as defined in 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurment Debarment and Suspension'' and the related section of the certification form prescribed above applies;
2. *Drug-Free Workplace:* Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart F, ''governmentwide Requirements for Drug-Free Workplace (''Grants'') and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying:* Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosure:* Any applicant institutions that has paid or will pay for lobbying using any funds must submit form SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

5. *Lower-Tier Certifications:* Recipients shall require applicant/bidder institutions for subgrants, contracts, subcontracts or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of the recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

6. *Name Check Reviews:* All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Pre-award Activities: Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

No Obligation for Future Funding: If an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance: Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

False Statements: A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DoC are made.

Indirect Costs: No Federal funds will be authorized for Indirect Cost (IDC).

Purchase of American-made Equipment and Products: Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Federal Policies and Procedures: Recipients and subrecipients under the above grant program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards. The above grant program does not directly affect any state or local government.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Executive Order Statement: This funding notice was determined to be ''not significant'' for purposes of Executive Order 12866.

Dated: September 22, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–26064 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–13–M

COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT

Meeting

AGENCY: Commission on the Advancement of Federal Law Enforcement.

ACTION: Notice of public hearings.

TIMES AND DATES:

Monday, October 5, 1998: 9 A.M.–4 P.M.

Tuesday, October 6, 1998: 9 A.M.–4 P.M.

Thursday, November 12, 1998: 9 A.M.–4 P.M.

Friday, November 13, 1998: 9 A.M.–4 P.M.

Tuesday, December 1, 1998: 9 A.M.–4 P.M.

Wednesday, December 2, 1998: 9 A.M.–4 P.M.

Hearing dates for 1999 have yet to be determined.

SUMMARY: The Commission on the Advancement of Federal Law Enforcement was created by the Congress in section 806 of Pub. L. 104–132, more commonly known as the Anti-Terrorism and Effective Death Penalty Act of 1996. Congress' charge to the Commission is extremely broad and directs the Commission to ''review, ascertain, evaluate, report and recommend'' action to the Congress on a broad array of issues affecting federal law enforcement priorities for the 21st century. The Commission's report will include recommendations for administrative and legislative action that the Commission considers advisable on the issues is it evaluating. The Commission announces its hearing schedule, thereby notifying the general public of their opportunity to attend the hearings and to offer testimony. These public hearings are designed to give the Commission the considered views of those testifying to assist the Commission in the preparation of its report and to give interested parties the opportunity to present to the Commission information that these parties believe will assist the Commission in its task. The Commission will include in its study of the various federal law enforcement entities their respective functions, programs, responsibilities, and jurisdictions, along with questions involving their training, coordination, and their interaction with each other, as well as with state and local law enforcement bodies.

Date and Time: Monday, October 5, 1998; 9 A.M. to 4 P.M., Tuesday, October 6, 1998; 9 A.M. to 4 P.M.

Location: The American Chemical Society (Othmer Hall), 1155 M Street, NW., Washington, DC 20036.

Date and Time: Thursday, November 12, 1998; 9 A.M. to 4 P.M., Friday, November 13, 1998; 9 A.M. to 4 P.M.

Location: To be determined.

Date and Time: Tuesday, December 1, 1998; 9 A.M. to 4 P.M., Wednesday, December 2, 1998; 9 A.M. to 4 P.M.

Location: To be determined.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, Commission on the Advancement of Federal Law Enforcement, 1615 M Street, NW., Suite 240, Washington, DC 20036. Telephone (202) 634–6501. Facsimile: (202) 634–6038.

SUPPLEMENTARY INFORMATION: The Commission on the Advancement of Federal Law Enforcement was established by Pub. L. 104–132, dated April 24, 1996.

Carmelita Pratt,

Administrative Officer.

[FR Doc. 98–25932 Filed 9–28–98; 8:45 am]

BILLING CODE 6820–DK–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

September 23, 1998.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, 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.

Upon a request from the Government of Costa Rica, the U.S. Government has agreed to increase the current guaranteed access level for Categories 347/348.

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 63520, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 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 November 24, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 1, 1998, you are directed to increase the guaranteed access level (GAL) for Categories 347/348 to 2,300,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26066 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DR–F

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

September 23, 1998.

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

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

EFFECTIVE DATE: September 29, 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 swing, carryforward and special shift.

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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 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 29, 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	
225	5,927,160 square meters.
300/301	4,292,381 kilograms.
315–O [2]	31,562,638 square meters.
317–O/617/326–O [3]	29,016,274 square meters of which not more than 3,834,249 square meters shall be in Category 326–O.
331/631	2,178,543 dozen pairs.
336/636	686,063 dozen.
338/339	1,326,384 dozen.
340/640	1,667,864 dozen.
345	477,203 dozen.
347/348	1,956,570 dozen.
350/650	164,570 dozen.
351/651	526,160 dozen.
359–C/659–C [4]	1,482,822 kilograms.
359–S/659–S [5]	828,505 kilograms.
361	1,311,615 numbers.
369–S [6]	960,227 kilograms.
445/446	57,767 dozen.
447	9,072 dozen.
448	20,264 dozen.
613/614/615	22,756,161 square meters.
618–O [7]	1,100,005 square meters.
619/620	9,234,812 square meters.
638/639	1,596,089 dozen.
641	1,568,347 dozen.
643	222,785 numbers.
644	302,130 numbers.
645/646	863,624 dozen.
847	144,054 dozen.

Category	Adjusted twelve-month limit [1]
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [8], 332, 333, 352, 359–O [9], 362, 363, 369–O [10], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [11], 464, 469pt [12], 603, 604–O [13], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [14], 666, 669–O [15], 670–O [16], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [17], as a group.	101,546,468 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	3,341,427 square meters equivalent.
In Group II subgroup 435	52,458 dozen.

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

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

[3] 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.

[4] 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.

[5] 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.

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

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

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

[9] 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.).

[10] 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.).

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

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

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

[14] 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.).

[15] 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.).

[16] 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).

[17] 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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–26067 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries

September 23, 1998.

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

ACTION: Issuing a directive to the Commissioner of Customs extending amendment of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on March 24, 1998 (63 FR 14071) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. By date of export, the foreign origin exception for findings and trimmings, including elastic strips of less than one inch in width, under the Special Access Program was temporarily amended to include non-U.S. formed, U.S. cut interlinings for the period March 22, 1998 through September 22, 1998 for men's and boys' suit jackets and suit-type jackets in Categories 433, 443, 633 and 643. In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article. This amendment is being extended for the final time for the period beginning on September 23, 1998 and extending through December 31, 1998 for men's and boys' suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and are of a type described below:

(1) A weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermoplastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

Also, this amendment is being extended for chest type plate, ''hymo'' piece or ''sleeve header'' of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of men's or boys' tailored suit jackets, for the one-year period beginning on September 23, 1998 and extending through September 22, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 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 March 20, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on September 23, 1998, by date of export, you are directed to extend, for the final time for the period beginning on September 23, 1998 and extending through December 31, 1998, the amendment to treat non-U.S. formed, U.S.-cut interlinings, further described below, for men's and boys' wool and man-made fiber suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 as qualifying for the exception for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article.

The amendment implemented by this directive shall be of a temporary nature. The amendment will terminate on December 31, 1998, by date of export.

As described above, non-U.S. formed, U.S.-cut interlinings may be used in imports of men's or boys' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and of a type described below:

(1) A weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

Also, you are directed to extend this amendment for the one-year period, beginning on September 23, 1998 and extending through September 22, 1999, for chest type plate, ''hymo'' piece or ''sleeve header'' of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of men's or boys' tailored suit jackets and suit-type jackets.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26063 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Government of Colombia Request to Consult with the United States on Non-Textured Polyester Filament Yarn

September 25, 1998.

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

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: William J. Dulka, Director, Industry Assessment Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

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

The Customs, Tariffs and Foreign Trade Committee of Colombia (AAA Committee) has stated that there was a substantial and ongoing increase in imports of non-textured polyester filament yarn (Tariff Heading 5402.43.00) which was causing serious damage to the Colombian industry during the period June 1997 through May 1998, and that damage was attributable to imports from Korea, the United States, Malaysia, Thailand and Taiwan.

On August 17, 1998, under Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC), the AAA Committee requested consultations with the Government of the United States with respect to non-textured polyester filament yarn, produced or manufactured in the United States and exported to Colombia. The Government of Colombia proposes to establish a one-year quantitative restraint for U.S. imports of this product at a level of 588.79 metric tons (588,790 kilograms).

Anyone wishing to comment or provide data or information regarding these consultations, particularly with regard to the export of non-textured polyester filament yarn to Colombia, is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, D.C. 20230; ATTN: Helen L. LeGrande.

As consultation may occur soon, comments should be submitted as soon as possible, preferably by October 12, 1998. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

Should a solution be reached in consultations with the Government of Colombia, further notice will be published in the **Federal Register**.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–26171 Filed 9–28–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: Monday, October 5, 1998, from 10:30 a.m. to 1:30 p.m.

PLACE: The meeting will be held at the Wayfarer Inn, 121 South River Road, Bedford, New Hampshire.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED:

1. Election of Chair.
2. Swearing-in of Dorothy Johnson.
3. Report from the Chief Executive Officer
4. Approval of Minutes and Proceedings of previous Board Meeting
5. Committee reports.
   a. Executive Committee.
   b. Management Committee.
1. Inspector General's Report.
2. Progress on Auditability (60 day report)
   c. Planning Committee.
1. Consideration of Annual Plan.
   d. Communications Committee
6. Report to Board from State Commissions.
7. Report to Board from SEANet.
8. Consideration of AmeriCorps Promise Fellows Grants.
9. Public Comment.
10. Future Board Meetings.
11. Adjournment.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, Attn: Rhonda Taylor, Assoc. Dir., Special Projects and Initiatives, 1201 New York Avenue N.W., 8th Floor, Washington, D.C. 20525. Telephone (202) 606–5000 ext. 282. (T.D.D. (202) 565–2799).

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Taylor.

Dated: September 24, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–26203 Filed 9–25–98; 2:35 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: DoD Building Pass Application; DD Form 2249; OMB Number 0704–0328.

Type of Request: Extension.

Number of Respondents: 102,000.

Responses Per Respondent: 1.

Annual Responses: 102,000.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 10,200.

Needs and Uses: The information is used by officials of Security Services, Defense Protective Services, Washington Headquarters Services, to maintain a listing of personnel who are authorized a Department of Defense (DoD) Building Pass. The information collected from the DD Form 2249, ''DoD Building Pass Application,'' is used to verify need and to issue a DoD Building Pass to DoD personnel, other authorized U.S. Government personnel, and DoD consultants and experts who regularly work in or require frequent and continuing access to DoD owned or occupied buildings in the National Capital Region.

Affected Public: Individuals or Households; Business or Other For-Profit.

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 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: September 23, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–25903 Filed 9–28–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of an Extension of the Public Comment Period for the Draft Environmental Impact Statement (DEIS) for Class Aircraft Developing Homeport Facilities for Three NIMITZ-Carriers in Support of the U.S. Fleet

AGENCY: Department of the Navy, DOD.

ACTION: Extension of public comment period.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) to evaluate homeport facilities for three NIMITZ-Class aircraft carriers. In accordance with these laws and regulations, this notice announces that the public comment period will extend until November 12, 1998. Public hearings on the DEIS currently scheduled for September will be moved to October to provide additional time for public review prior to the hearings. Public notices will be published in the **Federal Register**, local papers, and mailed to recipients of the DEIS regarding the new meeting dates.

ADDRESSES: The DEIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the DEIS have been distributed to the following libraries for public review: 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; and Sno-Isl Library System, 7312 35th Avenue, Marysville, WA.

Please send your comments to Mr. John Coon (Code 05AL.JC), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132, telephone 1–888–428–6440, fax (619) 532–4998 or e-mail address at CVN HOMEPORTING@efdswest.navfac.navy.mil. Written comments must be postmarked by Thursday, November 12, 1998.

POINT OF CONTACT: Additional information concerning this notice may be obtained by contacting Mr. Coon at (619) 532–4998.

Dated: September 22, 1998.

Ralph W. Corey,

LCDR, JAGC, Federal Register Liaison Officer.

[FR Doc. 98–25826 Filed 9–28–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Global Positioning System (GPS) Vulnerability and Alternatives will meet to examine the vulnerabilities of the GPS on Navy and Marine Corps platforms and weapons systems. All sessions of the meeting will be devoted to executive sessions that will include discussions and technical examination of information related to GPS vulnerabilities; the Department of the Navy's mitigation plans for platforms, weapons, communications, and intelligence systems as related to the projected threat; GPS modernization; and research, development, test, acquisition, and training activities to improve GPS-related military readiness and precision navigation capabilities. All sessions of the meeting will be closed to the public.

DATES: The meeting will be held on Tuesday, October 6, from 8 a.m. to 5 p.m.; Wednesday, October 7, from 8 a.m. to 5 p.m.; and Thursday, October 8, 1998, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, California, on October 6 through 8, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions involving technical examination of information related to vulnerabilities and deficiencies of the GPS on Navy and Marine Corps platforms and weapons systems. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1).

Dated: September 21, 1998.

Ralph W. Corey,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–26013 Filed 9–28–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request; Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration—Case Service Report

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On September 16, 1998, an emergency review notice inviting comment from the public was published for the Case Service Report. Date for approval by the Office of Management and Budget (OMB) was inadvertently published in the **Federal Register** (63 FR 49557) as ''September 16, 1998''. This notice corrects the date for approval by OMB to ''October 1, 1998''.

FOR FURTHER INFORMATION CONTACT: 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 request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

Dated: September 23, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer.

[FR Doc. 98–25950 Filed 9–28–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–405–000]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

September 23, 1998.

Take notice that on September 16, 1998, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the Tariff sheets listed in the attached Appendix A to be effective November 2, 1998.

CIG states that the purpose of this compliance filing is to conform CIG's tariff to requirements of Order No. 587–H. CIG also requests a waiver of Section 154.203(b) of the Commission's Regulations to make minor housekeeping changes.

CIG states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25945 Filed 9–28–98; 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

September 23, 1998.

Take notice that an informal settlement conference in this proceeding

will be convened on Tuesday, September 29, 1998, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 208–2058 or David R. Cain at 208–0917.

David P. Boergers,

Secretary.

[FR Doc. 98–25942 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–777–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 23, 1998.

Take notice that on September 14, 1998, El Paso Natural Gas Company, (El Pasco) PO Box 1492, El Paso, Texas 79978, filed in Docket No. CP98–777–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212). El Paso filed for authorization to upgrade an existing bi-directional meter station in Lea County, New Mexico, under El Paso's blanket certificates issued in Docket No. CP82–435 and CP88–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, El Paso would upgrade its Grama Ridge Meter Station by changing one of the three existing orifice plates with a new 5.75 bore orifice plate. The new 5.75 orifice would initiate an increase of the maximum peak day capacity from 50,000 Mcf to 95,000 Mcf of natural gas for LG&E Natural Gathering and Processing Company's anticipated increase in storage withdrawal and injection at its storage facility in Lea County. El Paso estimates the cost to upgrade the station at $200 and states that it has sufficient capacity to accomplish the transportation of the increased service without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–25936 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–017]

El Paso Natural Gas Company; Notice of Compliance Filing

September 23, 1998.

Take notice that on September 17, 1998, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A, to become effective March 1, 1998:

Second Revised Volume No. 1–A

2nd Sub Fourth Revised Sheet No. 210
2nd Sub Second Revised Sheet No. 210.01
2nd Sub Second Revised Sheet No. 211
2nd Sub 1st Revised Sheet No. 211A
2nd Sub Fourth Revised Sheet No. 215
2nd Sub Third Revised Sheet No. 217
Substitute Original Sheet No. 219A
Original Sheet No. 219B
Original Sheet No. 219C

These tariff sheets are being submitted to further specify the procedures used by El Paso for handling pooling transactions on its system and to restate all sheets to reflect an effective date of March 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25943 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–407–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 23, 1998.

Take notice that on September 17, 1998, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance the following pro forma tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A:

Pro Forma Sheet No. 219A
Pro Forma Sheet No. 219B
Pro Forma Sheet No. 219C

El Paso states that these pro forma tariff sheets are being filed to replace the current multi-directional pooling provisions with a new progressive pooling methodology. El Paso proposes to implement progressive pooling on the first day of the month following the fourth month after issuance of a Commission order accepting the tariff provisions.

El Paso states that copies of the filing were served upon all shippers on El Paso's system, interested regulatory commissions, and parties of record at Docket No. RP97–20–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25947 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–787–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 23, 1998.

Taken notice that on September 15, 1998, Northern Natural Gas Company, (Applicant), P.O. Box 3330, Omaha, Nebraska, 68103–0330, filed in Docket No. CP98–673–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for approval to upgrade an existing delivery point located in Fillmore County, Minnesota, to accommodate interruptible natural gas deliveries to UtiliCorp United Inc. (UCU), under Applicant's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is the file with the Commission and open to public inspection.

Applicant proposes to upgrade a delivery point to accommodate natural gas deliveries to UCU under currently effective throughput service agreements. Applicant asserts that UCU has requested the upgrade of the existing delivery point to provide interruptible natural gas service to the Preston # 1 town border station for redelivery to a new ethanol plant. Applicant further states that the estimated incremental volumes proposed to be delivered to UCU at this delivery point are 2,550 MMBtu on a peak day and 435,788 MMBtu on an annual basis. It is also indicated that the estimated cost to upgrade the delivery point is $132,000 and the UCU will provide a contribution in aid of construction for estimated costs of the facility.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–25937 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

September 23, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Tuesday, October 6, 1998 and continuing on Wednesday, October 7, 1998, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 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 intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude (202) 208–0583, Bob Keegan at (202) 208–0158 or Edith A. Gilmore at (202) 208–2158.

David P. Boergers,

Secretary.

[FR Doc. 98–25944 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–406–000]

Overthrust Pipeline Company; Notice of Tariff Filing

September 23, 1998.

Take notice that on September 17, 1998, pursuant to 18 CFR 154.7, Overthrust Pipeline Company tendered for filing and acceptance to be effective October 17, 1998, the following tariff sheets to First Revised Volume No. 1–A of its FERC Gas Tariff (Overthrust's tariff).

Original Sheet No. 42A
Second Revised Sheet Nos. 38, 39, 41, 44, 45, 55 and 56
Third Revised Sheet Nos. 35A, 36, 40 and 42
Fourth Revised Sheet No. 43
Seventh Revised Sheet No. 30

Through this filing, Overthrust revised tariff language applicable to (1) the sale of firm transportation capacity to be consistent with that approved by the Commission for Questar Pipeline Company, the operating partner of Overthrust and (2) information required by a shipper when submitting a request for transportation service.

Overthrust stated that these revisions are necessary so that the electronic-gas management system used to operate Questar's pipeline may also be used to operate Overthrust's system. Overthrust believes that the consistency achieved between the two tariffs through the proposed change will also further streamline the operating services provided by Questar for Overthrust.

Overthrust stated further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 or the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25946 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–000, ER98–2550–000, ER98–495–000, ER98–1614–000. ER98–2145–000, ER98–2668–000, ER98–2669–000, ER98–496–000, ER98–2160–000, ER98–441–001, ER98–495 001, and ER98–496–001.]

Southern California Edison Company, Et al.; Notice of Settlement Conference

September 23, 1998.

California Independent System Operator Corp., El Segundo Power, LLC, Pacific Gas and Electronic Company, Duke Energy Moss Landing LLC, Duke Energy Oakland LLC, San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company

Take notice that a conference will be convened in the subject proceedings on Wednesday, October 14, 1998, at 9:00 a.m. and will run as late as necessary. In addition, the conference can resume on Thursday morning and run until 11:30 a.m., if required. The conference will be held in Conference Rooms A and B of Pacific Gas and Electric Company, 245 Market Street, San Francisco, California. Presiding at the conference will be Chief Administrative Law Judge Curtis L. Wagner, Jr., the Settlement Judge/mediator in these proceedings. Chief Judge Wagner must be back in Washington, DC on October 16, 1998, for an important meeting of the FERC Senior Staff. For this reason, Chief Judge Wagner will be in San Francisco on Tuesday, October 13, 1998, to meet with individual parties or groups of parties if desired. Arrangements to meet with the Chief Judge can be made in advance by contacting him at: Honorable Curtis L. Wagner, Jr., Chief Administrative Law Judge, Federal Energy Regulatory Commission, 888 First St., N.E., Room 11F–1, Washington, D.C. 20426, Phone: 202–219–2500, FAX: 202–219–3289, E-mail: curtis.wagner@ferc.fed.us with a cc to: martha.altamar@ferc.fed.us.

On October 13, 1998, the Chief Judge can be reached at the Chancellor Hotel, 433 Powell Street, San Francisco, California, 415–362–2004.

The Chief Judge urges all parties to review both the draft contract and the proposed settlement agreement in advance of the meeting and to discuss any differences among themselves before the conference.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend the conference. Persons wishing to become party must move to intervene and receive intervenor status pursuant to section 385.214 of the commission's regulations.

For additional information, please contact Paul B. Mohler at (202) 208–2140, or by e-mail at paul.mohler@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 98–25934 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–792–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

September 23, 1998.

Take notice that on September 18, 1998, Texas Eastern Transmission Corporation (Texas Eastern) 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP98–792–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct a delivery point in Madison County, Kentucky, so that Texas Eastern may provide natural gas deliveries to Delta Natural Gas Company (Delta), a local distribution company and existing Texas Eastern customer. Texas Eastern makes this request, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection, under its blanket certificate issued in Docket No. CP82–535–000.[1]

Texas Eastern proposes to construct and install dual 2-inch tap valves, dual 2-inch isolation valves, a 2-inch check valve and a 2-inch insulating flange on Texas Eastern's existing 30-inch Line Nos. 10 and 15 at approximate Mile Post 457.99 in Madison County, Kentucky (Tap). In addition to the facilities described above, Delta will install, or cause to be installed, a dual 2-inch turbine meter plus associated piping (Meter Station), approximately 100 feet of 2-inch pipeline which will extend from the Meter Station to the Tap (Connecting Pipe), and electronic gas measurement equipment (EGM).

Delta will reimburse Texas Eastern for 100% of the costs and expenses that Texas Eastern will incur for installing the Tap and for reviewing and inspecting the installation of the Meter Station, Connecting Pipe, and EGM. Such costs and expenses are estimated to be approximately $34,611, including an allowance for federal income taxes.

Texas Eastern states that the transportation service will be rendered pursuant to Texas Eastern's Open Access Rate Schedules of Texas Eastern's FERC Gas Tariff, Volume No. 1. Texas Eastern's existing tariff does not prohibit the addition of this facility. Texas Eastern states that the installation of the delivery point will have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–25938 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 21 FERC ¶ 62,199 (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–408–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Compliance Filing

September 23, 1998.

Take notice that on September 18, 1998, Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the Tariff sheets listed in Appendix A to the filing to be effective November 2, 1998.

WIC states that the purpose of this compliance filing is to conform WIC's tariff to requirements of Order No. 587–H.

WIC states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25948 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4240–000, et al.]

Abacus Group, Ltd, et al.; Electric Rate and Corporate Regulation Filings

September 22, 1998.

Take notice that the following filings have been made with the Commission:

1. Abacus Group, Ltd.

[Docket No. ER98–4240–000]

Take notice that on September 17, 1998, Abacus Group, Ltd. (AGL), amended its July 28, 1998, petition to the Commission for acceptance of AGL 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.

AGL intends to engage in wholesale electric power and energy purchases and sales as a marketer. AGL is not in the business of generating or transmitting electric power.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER98–4562–000]

Take notice that on September 16, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Wheelabrator Martell, Inc. (Wheelabrator Martell) for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement by extending the date by which Wheelabrator Martell must obtain certification by the ISO in accordance with Section 4.3.2 of the agreement.

The ISO states that this filing has been served on all parties listed on the Service List in the above-referenced docket.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER98–4563–000]

Take notice that on September 16, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Burney Forest Products (Burney Forest Products) for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement by extending the date by which Burney Forest Products must obtain certification by the ISO in accordance with Section 4.3.2 of the agreement.

The ISO states that this filing has been served on all parties listed on the Service List in the above-referenced docket.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–4564–000]

Take notice that on September 16, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Martinez Refining Company—Division of Equilon Enterprises, LLC (Martinez Refining) for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement by extending the date by which Martinez Refining must obtain certification by the ISO in accordance with Section 4.3.2 of the agreement.

The ISO states that this filing has been served on all parties listed on the Service List in the above-referenced docket.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Oklahoma Gas and Electric Company

[Docket No. ER98–4565–000]

Take notice that on September 17, 1998, Oklahoma Gas and Electric Company (OG&E), tendered for filing a service agreement for a party to take service under its short-term power sales agreement.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4566–000]

Take notice that on September 17, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group (MSCG).

Con Edison states that a copy of this filing has been served by mail upon MSCG.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4567–000]

Take notice that on September 17, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Northeast Utilities Wholesale Marketing (NEU).

Con Edison states that a copy of this filing has been served by mail upon NEU.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4568–000]

Take notice that on September 17, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Coral Power, L.L.C., (Coral).

Con Edison states that a copy of this filing has been served by mail upon Coral.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–4569–000]

Take notice that on September 17, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Indiana Michigan Power Company

[Docket No. ER98–4570–000]

Take notice that on September 17, 1998, Indiana Michigan Power Company (I&M), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement between the Town of Avilla, Indiana (Avilla) and I&M (Agreement).

I&M requests that the Agreement be made effective as of October 15, 1998, and states that a copy of its filing was served upon Avilla, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER98–4571–000]

Take notice that on September 17, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 18, 1998, between KCPL and NorAm Energy Services, Inc. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888-A in Docket No. OA97–636–000.

KCPL proposes an effective date of September 1, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER98–4572–000]

Take notice that on September 17, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 18, 1998, between KCPL and NorAm Energy Services, Inc. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of September 1, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER98–4573–000]

Take notice that on September 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between Mt. Poso Cogeneration Company and the ISO for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of September 4, 1998.

The ISO states that this filing has been served on Mt. Poso Cogeneration and the California Public Utilities Commission.

Comment date: October 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER98–4574–000]

Take notice that on September 17, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Mt. Poso Cogeneration Company (Mt. Poso Cogeneration) and the ISO for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of September 4, 1998.

The ISO states that this filing has been served on Mt. Poso Cogeneration and the California Public Utilities Commission.

Comment date: October 7, 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.

David P. Boergers,

Secretary.

[FR Doc. 98–25983 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4412–000, et al.]

CET Marketing, L.P., et al.; Electric Rate and Corporate Regulation Filings

September 21, 1998.

Take notice that the following filings have been made with the Commission:

1. CET Marketing L.P.

[Docket No. ER98–4412–000]

Take notice that on September 16, 1998, CET Marketing L.P. (CET Marketing), tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended page 2 to its Application for Order Accepting Rate Schedule for Power Sales at Market-Based Rates and Granting Waivers and Pre-Approvals of Certain Commission Regulations filed on August 31, 1998 in the above-referenced proceeding.

CET Marketing requests that the Commission grant it waiver of the 60-day notice period so that the authority requested may be granted effective September 1, 1998.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota Company) and (Wisconsin Company)

[Docket No. ER98–4547–000]

Take notice that on September 16, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Minnesota Power, Inc., (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on August 20, 1998.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–4548–000]

Take notice that on September 16, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Minnesota Power, Inc., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on August 20, 1998.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER98–4549–000]

Take notice that on September 16, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with El Paso Energy Marketing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of September 16, 1998.

Copies of the filing were served upon El Paso Energy Marketing, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER98–4550–000]

Take notice that on September 16, 1998, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement dated September 9, 1998, for firm point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Montana Power Trading and Marketing Company. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Washington Water Power Company

[Docket No. ER98–4551–000]

Take notice that on September 16, 1998, Washington Water Power Company tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR Section 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9 with City of Anaheim, (which replaces unexecuted Service Agreement No. 25, previously filed with the Commission under Docket No. ER97–1252–000, effective December 15, 1995, and an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9 with Cinergy Services, Inc.

WWP requests waiver of the prior notice requirement and requests that the Service Agreement for Cinergy Services, Inc., be accepted for filing effective September 1, 1998.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER98–4552–000]

Take notice that on September 16, 1998, Commonwealth Edison Company (ComEd), submitted for filing a Short-Term Firm Service Agreement with DTE Energy Trading, Inc. (DTEET), and a Non-Firm Service Agreement with Duke Energy Corporation (DUKE), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 11, 1998, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on DTEET, DUKE and the Illinois Commerce Commission.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation as Agent for the AEP Operating Companies

[Docket No. ER98–4553–000]

Take notice that on September 16, 1998, American Electric Power Service Corporation, as agent for the AEP Operating Companies (AEP), tendered for filing with the Commission an executed Service Agreement with West Virginia Power, a division of Utilicorp United, Inc. (WV Power), under the Wholesale Market Tariff of the AEP Companies.

AEP requests that the Agreement be made effective as of November 1, 1998.

AEP states that a copy of its filing was served upon WV Power, the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Washington Water Power Company

[Docket No. ER98–4554–000]

Take notice that on September 16, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, unexecuted Service Agreements under WWP's FERC Electric Tariff First Revised Volume No. 9, with Aquila Power Corporation, Hetch-Hetchy Water & Power, LA Department of Water & Power, Morgan Stanley Capital Group, Inc., PECO Energy, City of Redding, California, Salt River Project, Sempra Energy Trading Corporation, Tucson Electric Power, Turlock Irrigation District, and Vastar Power Marketing, Inc. Unexecuted Certificates of Concurrence are also included with this filing for PECO Energy Company and Tucson Electric Power.

WWP requests waiver of the prior notice requirements and that the unexecuted Service Agreements and Certificates of Concurrence be accepted for filing effective September 1, 1998.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER98–4555–000]

Take notice that on September 16, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Koch Energy Trading, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of September 16, 1998.

Copies of the filing were served upon Koch Energy Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–4556–000]

Take notice that on September 16, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission Notification of Change in Status to inform the Commission of the fact that PP&L Resources, Inc., PP&L's parent company, has acquired Penn Fuel Gas, Inc.

PP&L states that a copy of this filing has been provided to the Pennsylvania Public Utility Commission.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–4557–000]

Take notice that on September 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and the Empire District Electric Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER98–4558–000]

Take notice that on September 16, 1998, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing the First Amendment to the Interconnection and Operation Agreement between Entergy Gulf States, Inc., and Tenaska Frontier Partnership, Ltd.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER98–4559–000]

Take notice that on September 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and DTE Energy Trading, Inc.

Entergy Services requests that the Service Agreements be made effective as rate schedules no later than September 3, 1998.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER98–4560–000]

Take notice that on September 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and the Board of Municipal Utilities of Sikeston, Missouri for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Metropolitan Edison Company

[Docket No. ER98–4561–000]

Take notice that on September 16, 1998, Metropolitan Edison Company (trading and doing business as GPU Energy), tendered for filing (i) Notice of Termination of an Electricity Supply Contract with the Borough of Middletown, Pennsylvania (Middletown); (ii) a settlement agreement between GPU Energy and Middletown relating to the termination of that contract, including provisions relating to the interim supply of electricity; and (iii) a service agreement between Middletown and GPU Energy under GPU Energy's Market-Based Sales Tariff, also related to the interim supply of electricity. GPU Energy states that copies of this filing have been served on Middletown and on the Public Utilities Commission of Pennsylvania.

Comment date: October 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. GPU Service Corporation

[Docket No. OA96–114–002]

Take notice that on August 6, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as and collectively referred to hereafter as GPU Energy), tendered for filing a refund report in compliance to the Commission's June 25, 1998, order in the above-referenced docket. A copy of the filing was served upon the affected wholesale customers and to each affected state commission.

Comment date: October 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Minnesota Power & Light Company

[Docket No. OA97–617–000]

Take notice that on July 9, 1997, Minnesota Power & Light Company tendered for filing in compliance with the Commission's Order No. 888-A copies of their pro forma open access transmission tariff in the above-referenced docket.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Indiana Gas and Electric Company

[Docket No. OA97–641–000]

Take notice that on July 11, 1997 and July 29, 1997, Southern Indiana Gas and Electric Company tendered for filing in compliance with the Commission's Order No. 888–A copies of its Transmission Services Tariff in the above-referenced docket.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Oakland LLC, Duke Energy Morro Bay LLC, Duke Energy Moss Landing LLC

[Docket Nos. ER98–3416–002, ER98–3417–002 and ER98–3418–002] (Not Consolidated)

Take notice that on September 16, 1998, Duke Energy Moss Landing LLC, Duke Energy Oakland LLC and Duke Energy Morro Bay LLC (collectively, Applicants) each tendered for filing amended rate schedules in compliance with the Commission's August 17, 1998 order, 84 FERC ¶ 61,186 (1998). The Applicants amended the rate schedules for Duke Energy Moss Landing LLC, FERC Electric Rate Schedule No. 3, Duke Energy Oakland LLC, FERC Electric Rate Schedule No. 3 and Duke Energy Morro Bay, FERC Electric Rate Schedule No. 2. The affected rate schedules govern the Applicants' sales of certain ancillary services at market-based rates.

The amended rate schedules reflect the Commission's directive to limit the sales of ancillary services to either the California Independent System Operator Corporation (California ISO) or others that self-supply ancillary services to the California ISO.

In accordance with the Commission's August 17, 1998, order the amended rate schedules are made affective retroactive to July 1, 1998.

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.

David P. Boergers,

Secretary.

[FR Doc. 98–25935 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2628–047 Alabama]

Alabama Power Company; Notice of Availability of Environmental Assessment

September 23, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has prepared an environmental assessment (EA) for an application to amend the exhibit-R Recreation Plan and Change of Project Boundary on Lake Harris, the project reservoir. Alabama Power Company (licensee) proposes to increase recreational and hunting lands, permit access to currently restricted land, reduce natural undeveloped land, and remove residential lands from the project.

In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Harris Project is located on the Tallapoosa River in Clay, Cleburne and Randolph Counties, Alabama.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 North Capitol, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–25941 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed with the Commission

September 23, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Action:* Notice of Final Design, Construction Methods, and Timing of Construction Activities, Including Final Design Drawings and Specifications for the North Shore Erosion Control Plan for the Kerr Hydroelectric Project.

b. *Project No.:* 5–041.

c. *Filing Date:* June 24, 1998.

d. *Licensee:* Montana Power Company and Confederated Salish and Kootenai Tribes of the Flathead Reservation.

e. *Name of Project:* Kerr Hydroelectric Project.

f. *Location:* Flathead River, Flathead and Lake Counties, Montana.

g. *Authorization:* Article 73 of the project license.

h. *Licensee contact:* Mr. Larry Thompson, General Manager, Power Generation, Montana Power Company, 40 East Broadway, Butte, MT 59701–9394, (406) 723–5421.

i. *FERC Contact:* Robert Grieve (202) 219–2655.

j. *Comment Date:* November 4, 1998.

k. *Description of Proceeding:* Article 73 requires the licensee to file final design, construction methods, and timing of construction activities, including final design drawings and specifications, for the north shore erosion control plan at Flathead Lake. Article 73 also requires the licensee, in addition to erosion control measures to be located along the Flathead Waterfowl Production Area (WPA) on Flathead Lake, to construct a shore-aligned erosion protection segment east of the WPA eastern boundary. The licensee's filing includes the design, construction methods, and timing of construction activities for: (1) a shore-aligned revetment structure of approximately 3,400 feet located on the west side of the Flathead River mouth extending northwest, which will adjoin an existing 200-foot-long revetment; (2) a shore-aligned revetment structure of approximately 4,400 feet located on the east side of the Flathead River mouth extending east to the eastern boundary of the WPA; and (3) riverbank protection along the west side of the Flathead River from the river mouth extending north to the northern boundary of the WPA. The filing did not include the design for the shore-aligned erosion protection segment east of the WPA as required by article 73. The licensee states that because offshore revetments along the WPA are no longer required, a transition structure to prevent additional erosion is no longer necessary. In addition, the subject revetment is not needed to protect wildlife habitat on the WPA. Further, in conveying the parcels of private property, the licensee reserved easements permitting it to flood these properties and otherwise affect the land in connection with operation of the project. By this notice, the Commission requests comments on the licensee's

plan as filed, to include the licensee's exclusion of the erosion protection segment east of the WPA boundary.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's Representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–25939 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Licenses

September 23, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of licenses.

b. *Project Nos:* 1855–021, 1989–011, 2077–013, and 2669–015.

c. *Date Filed:* August 10, 1989.

d. *Applicant:* New England Power Company and USGen New England, Inc.

e. *Name of Projects:* Bellows Falls, Wilder, Fifteen Mile Falls, and Bear Swamp.

f. *Location:* Bellows Falls: On the Connecticut River, in Cheshire & Sullivan Counties, New Hampshire, and in Windham & Windsor Counties, Vermont, Wilder: On the Connecticut River, in Grafton County, New Hampshire, and Orange & Windsor Counties, Vermont, Fifteen Miles: On the Connecticut River in Grafton County, New Hampshire, Caledonia County, Vermont, Bear Swamp: On the Deerfield River, In Franklin and Berkshire Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* John A. Whittaker, IV, Attorney, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005, Tel: (202) 371–5766.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* November 4, 1998.

k. *Description of Amendments:* Licensee proposes to delete from projects' boundaries transmission lines/facilities that are no longer considered primary facilities, as follows:

Bellows Falls Project (P–1855): Licensee proposes to delete three multi-wound step-up transformers from the project's boundary. The three transformers are integral parts of the licensee's regional transmission system.

Wilder Project (P–1892): Licensee proposes to delete to 13.8–kV bus, two banks of 13.8/46–kV step-up transformers, a 13.8/115–kV step-up transformer bank, and the 115–kV appurtenances from the project's boundary. These transmission facilities are integral parts of the licensee's regional transmission system.

Fifteen Mile Falls Project (P–2077): Licensee proposes to delete certain transmission facilities from the project's boundary. These facilities are:

McIndoes Development: the step-up substation (except the four 2.4/34.5–kV step-up transformers), and the 34.5–kV 5.6-mile-long transmission line extending from the transformer bank to the Comerford switching station.

Comerford Development: the substation and switchyard (except the four 13.8/230–kV step-up transformers and four 1,500-foot-long circuits extending from the step-up generation transformers to the 230–kV switchyard).

Moore Development: the step-up substation and the two 230–kV, 7-mile-long single circuit transmission line extending from the switchyard to the Comerford switchyard.

The above transmission facilities of the Fifteen Mile Falls project are integral parts of the licensee's regional transmission system.

Bear Swamp (P–2669): Licensee proposes to delete a 115–kV, 1.6-mile-long tap line from Bear Swamp to the Adams-Harriman 115-kV line; the connecting circuits between the 115-kV bus and the 13.8-kV bus at Bear Swamp; and the 115-kV switchyard. These transmission facilities are integral parts of the licensee's regional transmission system.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must be in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each

representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–25940 Filed 9–28–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6169–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Survey of the Inorganic Chemical Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Inorganic Chemical Industry Survey. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 29, 1998.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by EMAIL at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1848.01.

SUPPLEMENTARY INFORMATION:

Title: Survey of the Inorganic Chemical Industry (EPA ICR No. 1848.01). This is a new collection.

Abstract: Under the Industry Studies Program, EPA's Office of Solid Waste is planning to conduct surveys of various industries through FY 1999, primarily for developing hazardous waste listing determinations as part of a rule-making effort under Sections 3001 and 3004 of the Resource Conservation and Recovery Act (RCRA).

This ICR will allow continued and expanded data collection on the inorganic chemical industry for the following program areas:

- Listing.
- Land Disposal Restrictions (LDR) and Capacity.
- Source Reduction and Recycling.
- Risk Assessment.

EPA has been conducting surveys and site visits for various industries over the past 12 years under authority granted under RCRA section 3007 and OMB #2050–0042. Responses to these surveys are mandatory and required by EPA to collect data for development of hazardous waste rule-makings as required by a consent decree signed December 9, 1994, which resulted from the EDF v. Reilly case.

For the inorganic chemical industry that is the subject of this information collection, these surveys will collect the data listed below.

- Corporate/facility data—name, location, EPA hazardous waste identification number, and facility representative.
- Feedstock and product information—chemical and physical identification of feedstock and raw materials.
- General process information—types of processes in place, and on-site wastewater treatment and disposition.
- Specific manufacturing processes, residuals—flow sheets, including types and points of introduction and generation of feedstock, products, co-products, by-products, and residuals.
- General residuals management information—on-site and/or off-site management of residuals of concern.
- Residuals characterization—chemical/physical properties of the residuals, regulatory status (i.e., whether the waste already is a hazardous waste).
- Residuals management units/facility-wide exposure pathway risk assessment of information—management units that manage residuals of concern, operating and design information on units, potential releases from units, environmental descriptors surrounding management units.

In addition to the RCRA section 3007 questionnaire, other information collection efforts under this ICR include clarifications and updates to the questionnaire, site visits, and sampling. The information collected will be used primarily to determine if wastes from the inorganic chemical industry should be listed as hazardous. In addition, this information also will be used to support other RCRA activities including developing engineering analyses; conducting regulatory impact analyses, economic analyses, and risk assessments; and developing land disposal restrictions treatment standards and waste minimization programs.

The information collection will consist of a census of all the facilities included in the inorganic chemical industry.

EPA anticipates that some data provided by respondents will be claimed as confidential business information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. EPA now is requiring that claims of confidentiality be substantiated at the time the claim is made. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2. 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. The **Federal Register** document required under 5 CFR 1320.8(d) soliciting comments on this collection of information was published on April 8, 1998 (63 FR 17170); EPA received four comments letters.

Burden Statement: The average annual burden imposed by the survey and other information collection efforts is approximately 43.3 hours per respondent. 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 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 to 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.

Respondents/affected entities: Manufacturers/processors of inorganic chemicals.

Estimated number of respondents: 132.

Frequency of response: The average number of responses for each respondent is 1.16.

Estimated total annual hour burden: 1,907.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1848.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, S.W., Washington, DC 20460 (or E-Mail Farmer.Sandy @ epamail.epa.gov);
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725–17th Street, N.W., Washington, DC 20503.

Dated: September 23, 1998

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–26004 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6170–3]

National Drinking Water Advisory Council; Request For Nominations

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chair. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. On December 15 of each year, five members complete their appointment. Due to a declined appointment last year, an additional vacancy is available to fill a term expiring December 16, 1999, all other terms will expire in the Year 2001. Therefore, this notice solicits names to fill six vacancies occurring on December 16, 1998.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face to face meetings each year, generally in the Spring and Fall. Additionally, members will be asked to serve on one of the Council's working groups that are formed each year to assist the EPA in major program issue development. These meetings are held approximately four times a year, with two meetings by conference call.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street, SW, Washington, D.C. 20460, no later than October 23, 1998. The Agency will not formally acknowledge or respond to nominations. E-Mail your questions to shaw.charlene@epamail.epa.gov or call 202/260–2285.

Dated: September 23, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water

[FR Doc. 98–26009 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6169–8]

Science Advisory Board; Notification of Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Ecological Processes and Effects Committee of the Science Advisory Board (SAB) will meet on October 13–15, 1998 in Room 3709 Mall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The meeting will convene at 8:30 a.m. and end no later than 5:30 p.m. each day. The meeting is open to the public, with seating available on a first-come basis. The purpose of the meeting is to: a) review certain aspects of the Office of Water's Index of Watershed Indicators; and b) continue work on a Committee project on ecological report cards.

Background

Index of Watershed Indicators: In May 1997, the EPEC prepared an advisory document recommending improvements and modifications to the Agency's Index of Watershed Indicators (IWI). The IWI is a geographic information system (GIS)-based tool for providing integrated information on the condition and vulnerability of watersheds in the United States. The first version of the IWI, released in October 1997, contains 15 data layers (or indicators) providing information on water and sediment quality within a watershed, indicators of urban and agricultural runoff potential, information on aquatic species at risk in a watershed, and so forth. In its September 1997 advisory report, the Committee recommended that subsequent versions of the IWI include a broader range of indicators, including indicators of terrestrial condition, and that the algorithm used to integrate the various indicators into a watershed score be evaluated.

The Charge to the Committee for the October review of the IWI is to provide peer review and advice on the strategic plan for the IWI; the algorithm used to calculate watershed scores; and the proposed indicators of terrestrial condition. In addition, the Committee may comment on other aspects of the IWI, including the ability of the suite of indicators to adequately characterize watershed condition and vulnerability.

Copies of the IWI information provided to the Committee are NOT available from the SAB Office, but may be obtained by contacting Lynda Buie, EPA Office of Water, 401 M Street, SW, Washington, DC 20460, Mail Code (4503F), telephone (202) 260–7046, or via email at Buie.Lynda@epa.gov.

Ecological Report Cards: The Committee is conducting a self-initiated project to offer advice to the Agency on the content and design of an ecological report card, including the definition of baseline ecological data and benchmarks that can be measured to demonstrate improvements in ecological integrity as a result of management or restoration programs. At its meeting in July 1998, the Committee was briefed on various Agency efforts to develop indicators and progress measures. The October meeting will be an opportunity for the Committee to finalize a project description, and begin discussion of a conceptual framework for ecological report cards. Subsequent meetings will likely focus on the application of the report card framework to example Agency efforts, as well as possible

discussion of data requirements and data-related issues.

FOR FURTHER INFORMATION CONTACT: The proposed meeting agenda is available from Ms. Mary Winston, Committee Operations Staff, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW., Washington DC 20460, telephone (202) 260–2554, fax (202) 260–7118, or via Email at winston.mary@epa.gov.

Any member of the public wishing to submit comments must contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO) for the Committee, in writing no later than 4:00 pm on October 8, 1998 at: Science Advisory Board (1400), Room 3702, U.S. Environmental Protection Agency, Washington DC 20460; FAX (202) 260–7118; or E-mail at sanzone.stephanie@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

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 be of any length, may be provided to the relevant committee or subcommittee up until the time of the meeting.

Copies of SAB prepared reports mentioned in this FR document may be obtained 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.

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: September 22, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–26005 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6170–1]

Nominations for Peer Reviewers for Perchlorate Toxicological Review

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

ACTION: Request for nominations.

SUMMARY: EPA's Office of Solid Waste and Emergency Response has retained Research Triangle Institute, Inc. (RTI) to coordinate a scientific peer review of the Toxicological Review document for perchlorate, including the revised provisional reference dose (RfD), cancer assessment and ecological assessment. The peer review workshop is tentatively scheduled to be held in late 1998 or early 1999, in Ontario, California, and will be open to members of the public as observers. The peer review will be conducted in accordance with EPA's 1998 Peer Review Handbook, and is being organized to assist in completing EPA's evaluation of the effects on human health and the environment of perchlorate. RTI is seeking nominations of highly qualified scientists with expertise in general toxicology, thyroid function and toxicology, developmental toxicology, neurotoxicology, immunotoxicology, pharmacology, genetic toxicology, medical endocrinology with an emphasis on thyroid function, biostatistics, assessment of risks due to non-cancer and cancer health effects, and assessment of risks due to ecological effects. RTI will select approximately 10 objective peer reviewers based upon demonstrated expertise of the scientists and the need for balance in affiliation among the peer reviewers. RTI will consider potential conflicts of interest in screening nominees for suitability as peer reviewers. All nominations will be carefully considered, but the source of peer reviewer nominations will not be a factor in the selection of peer reviewers and stakeholders are not guaranteed that any of their nominees will be selected. The peer review will cover the protocols and results of ongoing studies of perchlorate toxicity to human health and the environment, as well as the Toxicological Review document, including the revised provisional RfD, cancer assessment, and ecological assessment for perchlorate prepared by EPA's National Center for Environmental Assessment (NCEA).

DATES: Nominations for peer reviewers must be submitted by October 29, 1998. A detailed resume for each nominated scientist should be included with the submission. The projected date for the peer review workshop is late 1998 or early 1999, depending on the availability of the peer reviewers.

ADDRESSES: Peer reviewer nominations should be sent to Susan Goldhaber at Research Triangle Institute, Inc., P.O. Box 12194, Research Triangle Park, North Carolina, 27709. Peer reviewer nominations may also be submitted by facsimile at 919–541–7155, or by E-mail at sbg@rti.org. The peer review workshop will be held in Ontario, California.

FOR FURTHER INFORMATION CONTACT: For technical and logistical inquires, contact Susan Goldhaber, Research Triangle Institute, by telephone, at 919–541–5965, by facsimile, at 919–541–7155, or by E-mail, at sbg@rti.org.

SUPPLEMENTARY INFORMATION:

Background

EPA is in the process of developing a toxicological review document for perchlorate, including a revised provisional RfD, cancer assessment, and ecological assessment. An RfD is an estimate of a daily oral human exposure that will result in no deleterious noncancer effects over a lifetime. Ideally, an RfD is based on an array of endpoints that address potential toxicity during various critical life stages, from developing fetus through adult and reproductive stages. The noncancer, cancer and ecological assessments may be used to support development of a health advisory and/or drinking water regulations and cleanup decisions at hazardous waste sites. In accordance with EPA's 1998 Peer Review Handbook, a key step in the development of the Toxicological Review document for perchlorate will be an external peer review, in the form of a workshop, of the recently completed toxicity studies, the Toxicological Review document, and the revised provisional RfD, cancer assessment and ecological assessment in that document.

EPA's Superfund Technical Support Center issued a provisional RfD for perchlorate in 1992 and a revised provisional RfD in 1995. The provisional RfD values (1992 and 1995) were based on an acute study in which

single doses of potassium perchlorate caused the release of iodide from the thyroids of patients with Graves' Disease. The provisional RfD values did not undergo internal Agency or external peer review. In March of 1997 a peer review panel convened by an independent organization, Toxicology Excellence for Risk Assessment (TERA), determined that the health effects and toxicity data for perchlorate were insufficient to generate a credible RfD for risk assessment purposes. The reviewers were concerned that developmental toxicity, notably neurological development due to hypothyroidism during pregnancy, could be a critical effect of perchlorate that has not been adequately examined in studies to date. They also concluded that insufficient data were available on potential effects of perchlorate on organs and tissues other than the thyroid.

New Health Effects/Toxicology Studies Underway

A set of toxicological and ecological studies is underway to address key data gaps and provide a comprehensive database related to the toxicity of perchlorate. The studies are being funded and overseen by a variety of organizations with potential responsibility for perchlorate contamination in the environment including the United States Air Force, the National Aeronautics and Space Administration and the Perchlorate Study Group (PSG).[1]

To date, a 90-day subchronic oral study, a neurobehavioral developmental toxicity study, and a genotoxicity study have been completed. Currently ongoing studies include a segment II developmental toxicity study, a two-generation reproductive toxicity study, absorption, distribution, metabolism, and elimination (ADME) studies, perchlorate mechanistic studies, and immunotoxicity studies. Ecotoxicity studies in Daphnia, earthworms, lettuce and fathead minnow are also being performed. The results of most of these studies will be available for discussion in the Toxicological Review document and for development of the revised RfD, cancer, and ecological assessment for perchlorate.

The peer review will focus on the scientific data, methods, and analyses, along with the assumptions and uncertainties that are associated with the revised provisional RfD, cancer assessment, and ecological assessment for perchlorate. Following the peer review workshop, RTI will issue a report summarizing the workshop. EPA will consider the results of the workshop prior to issuing the revised Toxicological Review document for perchlorate. Although the completed risk assessment will be one of the factors considered in making future decisions regarding perchlorate contamination in the environment, these decisions and other risk management issues will not be a part of the peer review process.

Dated: September 23, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 98–26007 Filed 9–28–98; 8:45 am]

BILLING CODE 6560–50–P

[1] The PSG is a consortium of defense contractors and manufacturers including: Aerojet, Alliant Techsystems, American Pacific/Western Electrochemical Company, Atlantic Research Corporation, Kerr-McGee Chemical Corp. Lockheed Martin, Thiokol Propulsion Group, and United Technologies Chemical Systems.

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of a Matter To Be Withdrawn From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the ''discussion agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:30 p.m. on Tuesday, September 29, 1998, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W. Washington, D.C.:

Memorandum and resolution re:
Amendments to Part 362—Activities and Investments of Insured State Banks; Part 303—Applications, Requests, Submittals, Delegations of Authority, and Notice Required to be Filed by Statute or Regulation; and Section 337.4—Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 25, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–26145 Filed 9–25–98; 10:53 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–009648A–096.

Title: Inter-American Freight Conference (''IAFC'').

Parties:

A.P. Moller-Maersk Line
CSAV/Braztrans Joint Service
Crowley American Transport, Inc.
Ivaran Lines Limited d/b/a/ Ivaran Lines
Companhia Maritima Nacional
Companhia de Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas
Empresa de Navegacao Alianca S.A.
Columbus Line
Transportacion Maritima Mexicana S.A. De C.V.
Sea-Land Service, Inc.
APL Co. Pte. Ltd.
Transroll Navieras Express
Compagnie Generale Maritime S.A.
TNX Transportes Ltda.
Euroatlantic Container Line S.A.

Synopsis: The proposed modification would permit a new IAFC member to continue to honor its existing service contracts, provided that if the new member has or acquires a contractual right to terminate the service contract, or to cease accepting cargo thereunder, the new member must exercise such right when it arises. Any amendment to such a service contract must be approved by a two-thirds vote of the other member lines. The parties have requested expedited review.

Agreement No.: 203–011474–002.

Title: CSAV/CCNI Car Carrier Agreement.

Parties:

Compania Sud Americana de Vapores, S.A.
Compania Chilena de Navegacion

Interoceanica, S.A.

Synopsis: The proposed amendment would permit the parties to jointly charter space from third parties and expand the geographic scope of the Agreement to include inland and coastal points served via United States Atlantic and Gulf ports, as well as Caribbean ports of Colombia and Venezuela.

Agreement No.: 202–011632.

Title: Turkey/United States Rate Agreement.

Parties:

Farrell Lines, Inc.

Turkon Container Transport & Shipping Inc.

Synopsis: The proposed filing would authorize the parties to establish a conference agreement in the trade from ports and points in Turkey to United States Atlantic and Gulf Coast ports, and U.S. points served via those ports.

Agreement No.: 232–011633.

Title: NYKNOS/CSAV/CCNI Space Charter and Sailing Agreement.

Parties:

NYKNOS Joint Service (North/South) Agreement

Compania Sud Americana de Vapores, S.A.

Compania Chilena de Navegacion Interoceanica, S.A.

Synopsis: The proposed Agreement would permit the parties to charter space among themselves and to coordinate their vessel services for the carriage of wheeled and self-propelled cargoes in the trade between United States Atlantic and Gulf ports, and inland U.S. points via such ports, and Caribbean ports of Panama, Colombia, and Venezuela and Pacific Coast ports of Central and South America South of Balboa, Panama, and inland points served via such ports including Bolivia and Argentina. The parties have requested a shortened review period.

Dated: September 23, 1998.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25917 Filed 9–28–98; 8:45 am]

BILLING CODE 6730–01–M

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., Monday, October 5, 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.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26223 Filed 9–25–98; 3:34 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Transaction no.	ET req status	Party name
31–AUG–98	19983587	G	The B's Nest.
		G	Kenneth R. Thomson, a Canadian citizen.
		G	The Thomson Company, Inc.
	19984163	G	Group Maintenance America Corp.
		G	Romanoff Electric Corp.
		G	Romanoff Electric Corp.
	19984180	G	Land O'Lakes, Inc.
		G	Countrymark Cooperative, Inc.
		G	Countrymark Cooperative, Inc.
	19984233	G	Suiza Foods Corporation.
		G	Kenneth M. Woods.
		G	Consolidated Plastechs, Inc.
	19984275	G	Omnicare, Inc.
		G	Extendicare Inc.
		G	Extendicare Health Services, Inc.
	19984310	G	Oxford Industries, Inc.
		G	Blake Griffith.
		G	Next Day Apparel, Inc.
	19984311	G	RSM Investments, Ltd.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction no.	ET req status	Party name
		G	Midstream Fuel Service, Inc.
		G	Midstream Fuel Service, Inc.
	19984325	G	MTD Products Inc.
		G	Shiloh Industries, Inc.
		G	Shiloh Industries, Inc.
	19984329	G	National Sea Products Limited.
		G	John LaGalia.
		G	Italian Village Ravioli & Pasta Products, Inc.
		G	Floresta Pasta Products, Inc.
	19984332	G	Code, Hennessy & Simmons III, L.P.
		G	Quality Roofing Supply Company, Inc.
		G	Quality Roofing Supply Company, Inc.
	19984335	G	United Rentals, Inc.
		G	John J. Cowin.
		G	C & C Holding, Inc.
	19984341	G	Cypress Merchant Banking Partners L.P.
		G	Bruckner Supply Company, Inc.
		G	Bruckner Supply Company, Inc.
	19984342	G	Carlyle Partners II, L.P.
		G	CTS Duratek, Inc.
		G	GTS Duratek, Inc.
	19984343	G	Greenwich Street Capital Partners II, L.P.
		G	Domenic Gatto.
		G	Atlantic Express Transportation Group Inc.
	19984348	G	United States Filter Corporation.
		G	Ronald R. and Cynthia L. Rodgers.
		G	J.B. Rodgers Mechanical Contractors, Inc.
	19984352	G	Dollar Tree Stores, Inc.
		G	Gary & Janet Cino.
		G	Step Ahead Investments, Inc.
	19984353	G	ABS Capital Partners II, L.P.
		G	Phase Metrics, Inc.
		G	Phase Meterics, Inc.
	19984355	G	NationsRent, Inc.
		G	David Y. Upton.
		G	Reliable Rental & Supply Company, Inc.
	19984357	G	General Motors Corporation.
		G	One Touch Systems, Inc.
		G	One Touch Systems, Inc.
	19984359	G	River III, L.P.
		G	John B. Poindexter.
		G	Lowy Group, Inc.
	19984361	G	MBNA Corporation.
		G	CPB, Inc.
		G	Central Pacific Bank.
	19984369	G	Joseph Eiger.
		G	U.S. Industries, Inc.
		G	Sunlite Casual Furniture, Inc.
	19984370	G	George L. Argyros.
		G	Warburg, Pincus Capital Company, L.P.
		G	Verteq, Inc.
	19984373	G	Wherehouse Entertainment, Inc.
		G	Sumner M. Redstone.
		G	Blockbuster Music Holding Corporation.
		G	Blockbuster SC Holding Corporation.
	19984375	G	Electronic Arts Inc.
		G	Sumner M. Redstone.
		G	Westwood Studios, Inc.
02–SEP–98	19983895	G	Liberty Mutual Insurance Companyt
		G	The Crabbe Huson Group, Inc.
		G	The Crabbe Huson Group, Inc.
	19983972	G	L–3 Communications Holdings, Inc.
		G	Albert L. Cohen.
		G	Electronic Space Systems Corp.
	19984213	G	CMT Associates, L.P.
		G	Walker Group, Inc.
		G	Walker Systems, Inc.
	19984234	G	Brian L. Roberts.
		G	IDS/Jones Growth Partners 87–A, Ltd.
		G	IDS/Jones Growth Partners 87–A, Ltd.
	19984246	G	Republic Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction no.	ET req status	Party name
		G	Daniel Rosenthal.
		G	BLT Enterprises of Oxnard, Inc.
	19984252	G	Ralcorp Holdings, Inc.
		G	Nutcracker Brands, Inc.
		G	Nutcracker Brands, Inc.
	19984256	G	TransMontaigne Oil Company.
		G	West Shore Pipe Line Company.
		G	West Shore Pipe Line Company.
	19984265	G	Investors Financial Services Corp.
		G	BankBoston Corporation.
		G	BankBoston, N.A.
	19984290	G	Veritas Capital Fund, L.P. (The).
		G	Worthington Industries, Inc.
		G	Worthington Precision Metals, Inc.
	19984312	G	The PMI Group, Inc.
		G	CUNA Mutual Insurance Society.
		G	CMG Mortgage Insurance Company.
	19984313	G	Unitrin, Inc.
		G	John S. Gammill Revocable Living Trust dtd 11/5/98.
		G	NationalCare Insurance Company.
	19984319	G	Bucher Holding AG.
		G	The Black & Decker Corporation.
		G	The Black & Decker Corporation.
	19984322	G	Geac Computer Corporation Limited.
		G	News Holdings Corp.
		G	News Holdings Corp.
	19984339	G	Swiss Reinsurance Company.
		G	Life Re Corporation.
		G	Life Re Corporation.
	19984346	G	ConAgra, Inc.
		G	Stephen B. Singletary.
		G	Diversity Food Processing L.L.C.
	19984354	G	Intercapital Group Limited.
		G	Exco plc.
		G	Exco plc.
03–SEP–98	19984093	G	Dean Foods Company.
		G	Pro-Fac Cooperative, Inc.
		G	Agrilink Foods, Inc.
	19984094	G	Pro-Fac Cooperative, Inc.
		G	Dean Foods Company.
		G	Dean Foods Vegetable Company.
	19984221	G	Belk, Inc.
		G	W.D. Company, Inc.
		G	W.D. Company, Inc.
	19984223	G	W.D. Company, Inc.
		G	Belk, Inc.
		G	Belk, Inc.
04–SEP–98	19983464	G	Alcatel.
		G	DSC Communications Corporation.
		G	DSC Communications Corporation.
	19984089	G	Networks Associates, Inc.
		G	CyberMedia, Inc.
		G	CyberMedia, Inc.
	19984142	G	Brentwood Associates Buyout Fund II, L.P.
		G	Robert L. & Darlene H. Pope.
		G	Truck & Trailer Parts, Inc. & DHP Leasing, Inc.
	19984261	G	Citicorp.
		G	Dalton Corporation.
		G	Dalton Corporation Employee Stock Ownership Plan.
	19984273	G	Maurice Marciano.
		G	Guess?, Inc.
		G	Guess?, Inc.
	19984303	G	Walt Disney Company (The).
		G	Chancellor Media Corporation.
		G	Chancellor Media Corp. of Illinois.
	19984314	G	The SKM Equity Fund II, L.P.
		G	Pulsar Plastics, Inc.
		G	Pulsar Plastics, Inc.
	19984320	G	Jerry L. Woodsworth.
		G	Imasco Limited.
		G	Fast Food Merchandisers, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction no.	ET req status	Party name
	19984324	G	PSS World Medical, Inc.
		G	Gilbert X-Ray Company of Texas, Inc.
		G	Gilbert X-Ray Company of Texas, Inc.
	19984333	G	HIH Winterthur International Holdings Limited.
		G	PacifiCare Health Systems, Inc.
		G	Great States Insurance Company.
	19984351	G	Sonepar S.A.
		G	Eagle Electric Supply Company, Inc.
		G	Eagle Electric Supply Company, Inc.
	19984360	G	PMR Corporation, a Delaware corporation.
		G	Behavioral Healthcare Corporation.
		G	Behavioral Healthcare Corporation.
	19984371	G	Mueller Industries, Inc.
	19984371	G	Lincoln Brass Works, Inc.
		G	Lincoln Brass Works, Inc.
	19984372	G	Fred Meyer, Inc.
		G	Elangy Corporation.
		G	Elangy Corporation.
	19984377	G	Corporacion durango, SA. de C.V.
		G	Dennis Mehiel.
		G	Four M Corporation.
	19984378	G	Comfort Systems USA, Inc.
		G	The Fagan Company.
		G	The Fagan Company.
	19984379	G	Protective Life Corporation.
		G	Lincoln National Corporation.
		G	The Lincoln National Life Insurance Company.
		G	Lincoln Life & Annuity Company of New York.
	19984382	G	CBS Corporation.
		G	Joseph M. Field.
		G	Entercom Communications Corp.
	19984395	G	Nycomed Amersham, plc.
		G	Molecular Dynamics, Inc.
		G	Molecular Dynamics, Inc.
	19984399	G	Black Box Corporation.
		G	Diploma PLC.
		G	Diploma, Inc.
	19984401	G	H&R Block, Inc.
		G	Friedman Eisenstein Raemer and Schwartz, LLP.
		G	Friedman Eisenstein Raemer and Schwartz, LLP.
	19984403	G	WellPoint Health Networks Inc.
		G	Cerulean Companies, Inc.
		G	Cerulean Companies, Inc.
	19984406	G	David M. Conant, an individual.
		G	Ronald Gregoire, an individual.
		G	Cerritos Ford, Inc.
		G	Cerritos Isuzu, Inc.
		G	Cerritos Infiniti, Inc.
	19984408	G	Sidney B. DeBoer.
		G	Phil S. Camp.
		G	Camp Automative, Inc.
	19984411	G	Isaac Perlmutter.
		G	Toy Biz, Inc.
		G	Toy Biz, Inc.
	19984412	G	Dickstein & Co., L.P.
		G	Toy Biz, Inc.
		G	Toy Biz, Inc.
	19984428	G	The Dial Corporation.
		G	Bahrain International Bank.
		G	Sarah Michaels, Inc.
	19984442	G	Modine Manufacturing Company.
		G	Core Holdings, Inc.
		G	Core Holdings, Inc.
08–SEP–98	19984211	G	The Hearst Trust.
		G	Pulitzer Voting Trust.
		G	Pulitzer Publishing Company.
	19984374	G	McLeod Russel Holdings PLC.
		G	Trion, Inc.
		G	Trion, Inc.
	19984421	G	Anheuser-Busch Companies, Inc.
		G	Grupo Modelo, S.A. de C.V. (a Mexican company).

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction no.	ET req status	Party name
		G	Diblo S.A. de C.V.
	19984427	G	The Mayflower Corporation plc.
		G	Metrotrans Corporation.
		G	Metrotrans Corporation.
	19984431	G	Communities Investor Limited Partnership.
		G	Florida Design Communities, Inc.
		G	Florida Design Communities, Inc.
	19984432	G	Alfred Hoffman, Jr.
		G	Communities Investor Limited Partnership.
		G	D&A Communities, Inc.
	19984434	G	Sears, Roebuck and Co.
		G	FS Equity Partners IV, L.P.
		G	Advance Holding Corporation.
	19984435	G	FS Equity Partners IV, L.P.
		G	Sears, Roebuck and Co.
		G	Western Auto Supply Company.
	19984436	G	The Beacon Group III—Focus Value Fund, L.P.
		G	International Components Corporation.
		G	International Components Corporation.
	19984438	G	Marsh & McLennan Companies, Inc.
		G	KPMG Peat Marwick, LLP.
		G	KPMG Peat Marwick, LLP.
	19984452	G	NationsRent, Inc.
		G	Don R. O'Neal (''Don'').
		G	Arenco, L.L.C.
	19984453	G	NationsRent, Inc.
		G	Ray L. O'Neal.
		G	Ray L. O'Neal, Inc, d/b/a A–1 Rental.
	19984465	G	Republic Industries, Inc.
	19984465	G	Benno Hurwitz.
		G	Fox Chevrolet, Inc.
		G	Bill Ayares Chevrolet, Inc.
		G	Valley Chevrolet, Inc.
09–SEP–98	19983296	G	Dean Foods Company.
		G	U.C. Milk Company, Incorporated.
		G	U.C. Milk Company, Incorporated.
	19984307	G	Elan Corporation, plc.
		G	American Home Products Corporation.
		G	American Home Products Corporation.
	19984340	G	Novartis Seeds AG.
		G	Cadiz Land Company, Inc.
		G	American Sunmelon.
	19984356	G	The President and Fellows of Harvard College.
		G	Three Cities Fund II, L.P.
		G	NDC Holdings II, Inc.
10–SEP–98	19983401	G	The Earthgrains Company.
		G	Interstate Bakeries Corporation.
		G	Interstate Bakeries Corporation.
	19983402	G	Interstate Bakeries Corporation.
		G	The Earthgrains Company.
		G	The Earthgrains Company.
	19984315	G	Code, Hennessy & Simmons II, L.P.
		G	Marjorie L. Perfect.
		G	Reading Alloys, Inc.
	19984328	G	Newell Co.
		G	rotring international GmbH & Co KG.
		G	rotring international GmbH & Co KG.
	19984334	G	Powerwave Technologies, Inc.
		G	Hewlett-Packard Company.
		G	Hewlett-Packard Company.
	19984402	G	Harrah's Entertainment, Inc.
		G	Rio Hotel & Casino, Inc.
		G	Rio Hotel & Casino, Inc.
	19984413	G	Toy Biz, Inc.
		G	Marvel Entertainment Group, Inc.
		G	Marvel Entertainment Group, Inc.
	19984422	G	Kitty Hawk, Inc.
		G	James H. Bastian.
		G	SAT Group, Inc.
	19984426	G	Viag AG
		G	Bunge Foods Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction no.	ET req status	Party name
		G	Bunge Foods Corporation.
	19984430	G	Unocal Corporation.
		G	K Energy, Inc.
		G	NEC Acquisition Co.
	19984440	G	Roger S. Penske.
		G	Harris Corporation.
		G	Flash Comm, Inc.
	19984445	G	Imrex, LLC.
		G	The Chase Manhattan Corporation.
		G	Gichner Systems Group, Inc.
	19984450	G	Everett R. Dobson Irrevocable Family Trust.
		G	Sygnet Wireless, Inc.
		G	Sygnet Wireless, Inc.
	19884454	G	Kaynar Technologies, Inc.
		G	Orion Capital Holdings, L.P.
		G	Marcliff Corporation.
	19984462	G	PRIMEDIA Inc.
		G	The James Gartland Trust.
		G	Miramar Communications, Inc.
	19984461	G	PRIMEDIA Inc.
		G	Tim & Denise Novoselski.
		G	Miramar Communications, Inc.
	19984470	G	Ajax Holding Corporation.
		G	EFCO, Inc.
		G	EFCO, Inc.
	19984488	G	Alcatel Alsthom.
		G	Optec Dai-Ichi Denko Co., Ltd.
		G	Optec D.D. USA, Inc.
		G	Optec Sales, Inc. of America.
11–SEP–98	19984394	G	New York ands Presbyterian Healthcare System, Inc.
		G	Palisades Healthcare Systems, Inc.
		G	Palisades Healthcare System, Inc.
		G	Palisades Management Enterprises, Inc.
	19984415	G	Nordson Corporation.
		G	Martin A. Allen.
		G	BDL Holdings, Inc.
	19984416	G	Martin A. Allen.
		G	Nordson Corporation.
		G	Nordson Corporation.
	19984443	G	Danaher Corporation.
		G	ITT Industries, Inc.
		G	ITT Industries, Inc.
	19984468	G	Integrated Electrical Services, Inc.
		G	James B. Stephens.
		G	Davis Electrical Constructors, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26029 Filed 9–28–98; 8:45 am]

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register** .

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Transaction No.	ET req status	Party name
17–AUG–98	19983784	G	Parker-Hannifin Corporation.
		G	Fluid Power Industries, Inc.
		G	Fluid Power Industries, Inc.
18–AUG–98	19983777	G	Zebra Technologies Corporation.
		G	Eltron International, Inc.
		G	Eltron International, Inc.
	19983876	G	Suiza Foods Corporation.
		G	Horizon Organic Holding Corporation.
		G	Horizon Organic Holding Corporation.
	19983904	G	Arterial Vascular Engineering, Inc.
		G	C.R. Bard, Inc.
		G	C.R. Bard, Inc.
	19983954	G	Cascades Inc.
		G	Stratton Energy Associates Limited Partnership.
		G	Stratton Energy Plant.
	19983974	G	General Electric Company.
		G	Medical Protective Corporation.
		G	Medical Protective Corporation.
	19983983	G	Guardian Royal Exchange pic.
		G	ING Groep N.V.
		G	ING US P&C Corporation.
	19984062	G	United States Filter Corporation.
		G	Bruce Burrows.
		G	Hydrotech, Inc.
	19984082	G	John C. Malone.
		G	Tele-Communications, Inc.
		G	Tele-Communications, Inc.
	19984086	G	MUD Trust.
		G	ERLY Industries Inc.
		G	ERLY California Foods Inc.
	19984096	G	Bayer AG.
		G	Scios Inc.
		G	Scios Inc.
	19984098	G	Stryker Corporation.
		G	Creative BioMolecules, Inc.
		G	Creative BioMolecules, Inc.
	19984100	G	COM DEV International Ltd.
		G	Ducommun Incorporated.
		G	3dbm, Inc.
	19984102	G	Chase Manhattan Corporation (The).
		G	Newton R. Reynolds.
		G	Production Supply Company, Inc.
	19984104	G	The Hartford Financial Services Group, Inc.
		G	Stock Trust, governed by the Third Amended Stock Trust.
		G	MBL Life Assurance Corporation.
	19984105	G	Halpern Denny Fund II, L.P.
		G	E–Z Serve Corporation.
		G	E–Z Serve Corporation.
	19984106	G	LVD Invest n.v.
		G	IDEX Corporation.
		G	Strippit Management Co.
	19984107	G	Sunbelt Automotive Group, Inc.
		G	Boomershine Automotive Group.
		G	Boomershine Automotive Group.
	19984108	G	WinStar Communication, Inc.
		G	Bowne & Co., Inc.
		G	Bowne & Co., Inc.
	19984110	G	Brambles Industries Limited.
		G	Mr. Edward Hostetter.
		G	Federal Container Corporation.
	19984112	G	Industrial Holdings, Inc.
		G	A&B Bolt & Supply, Inc.
		G	A&B Bolt & Supply, Inc.
	19984113	G	Trustmark Insurance Company (Mutual).
		G	ReliaStar Financial Corp.
		G	ReliaStar Life Insurance Company.
	19984118	G	Gartner Group, Inc.
		G	NETG, Inc.
		G	NETG, Inc.
	19984119	G	Harcourt General, Inc.
		G	NETG, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	NETG, Inc.
	19984122	G	Budget Group, Inc.
		G	Ronald D. Romain.
		G	United Leasing, Inc.
	19984127	G	Standard Management Corporation.
	19984127	G	MC Equities, Inc.
		G	Midwestern National Life Insurance company of Ohio.
	19984148	G	Adventist Health System Healthcare Corporation.
		G	Central Texas Medical Center, Inc.
		G	Central Texas Medical Center, Inc.
19–AUG–98	19983371	G	Ivan E. Modrovich.
		G	Dade Behring Holdings, Inc.
		G	Dade Behring Inc.
	19984002	G	Marathon Fund Limited Partnership III.
		G	Junkunc Bros. American Lock Co.
		G	Junkunc Bros. American Lock Co.
	19984022	G	Gregory M. Shepard.
		G	American International Group, Inc.
		G	20th Century Industries.
	19984068	G	Consolidation Capital Corporation.
		G	W.E. Boyette.
		G	Welcon Management Co.
	19984080	G	USFreightways Corporation.
		G	David L. McGowan.
		G	Glen Moore Transport, Inc.
		G	GMT Services, Inc.
		G	DDE Investors, L.L.C.
	19984083	G	Tracy M. Shepard.
		G	American International Group, Inc.
		G	20th Century Industries.
	19984109	G	GTE Corporation.
		G	New Company (formerly Puerto Rico Telephone Company).
		G	New Company (formerly Puerto Rico Telephone Company).
	19984120	G	Popular, Inc.
		G	New Company (formerly Puerto Rico Telephone Company).
		G	New Company (formerly Puerto Rico Telephone Company).
	19984128	G	Madison Dearborn Capital Partners, L.P.
		G	Ralcorp Holdings, Inc.
		G	Beech-Nut Nutrition Corporation.
	19984129	G	Kooringal Holdings Curacao N.V.
		G	International Thouroughbred Breeders, Inc.
		G	Garden State Race Track, Inc.
	19984130	G	Craig O. McCaw.
		G	Level 3 Communications, LLC.
		G	Level 3 Communications, Inc.
		G	TransCoastal Marine Services, Inc.
		G	Fred E. Gallander, Jr.
		G	Dickson GMP International, Inc.
		G	Servicios y Construcciones Petroleras Ventura, C.A.
		G	Ventura Resources, Inc.
		G	Dickson Marine, Inc.
	19984140	G	Consolidated Graphics, Inc.
		G	Printing Corporation of America.
		G	Printing Corporation of America.
	19984143	G	Golder, Thoma, Cressey, Rauner Fund V, LP.
		G	Shaughnessy Crane Services, Inc.
		G	Shaughnessy Crane Services, Inc.
	19984146	G	Thomas H. Lee Equity Fund III, L.P.
		G	Priscilla B. Rogers.
		G	Systems Manufacturing Corporation.
	19984149	G	United Technologies Corporation.
		G	AES of Houston, L.C.
		G	AES of Houston, L.C.
	19984150	G	SFX Entertainment, Inc.
		G	Magicworks Entertainment Incorporated.
		G	Magicworks Entertainment Incorporated.
	19984151	G	United Technologies Corporation.
		G	Automatic Equipment Sales of Norfolk, Inc.
		G	Automatic Equipment Sales of Norfolk, Inc.
	19984152	G	United Technologies Corporation.
		G	Automatic Equipment Sales of Roanoke, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	Automatic Equipment Sales of Roanoke, Inc.
	19984153	G	United Technologies Corporation.
		G	Automatic Equipment Sales of Va., Inc.
		G	Automatic Equipment Sales of Va., Inc.
	19984154	G	United Technologies Corporation.
		G	Automatic Equipment Sales of Washington, Inc.
		G	Automatic Equipment Sales of Washington, Inc.
	19984155	G	United Technologies Corporation.
		G	AES of Oklahoma, Inc.
		G	AES of Oklahoma, Inc.
	19984156	G	United Technologies Corporation.
		G	AES of South Texas, L.C.
	19984156	G	AES of South Texas, L.C.
	19984157	G	The Walt Disney Company.
		G	Ronald A. Unkefer.
		G	First Broadcasting Company, L.P.
	19984158	G	Chemical Logistics Corporation.
		G	James M. Clepper.
		G	Houston Solvents and Chemicals Co., Inc.
		G	Dallas Solvents and Chemicals Co., Inc., SS&C Properties.
		G	Dallas Solvents and Chemicals Co., Inc.
	19984159	G	Chemical Logistics Corporation.
		G	Edward H. Pavlish.
		G	Chemical Solvents, Inc., Pavlish Real Estate Holding Company.
	19984160	G	Chemical Logistics Corporation.
		G	Brown Chemical Company, Inc.
		G	Brown Chemical Company, Brown Realty, Inc.
	19984161	G	Chemical Logistics Corporation.
		G	Tiley Family L.L.C.
		G	Tiley Chemical Company, Inc.
	19984167	G	Vestar Equity Partners, L.P.
		G	Pinnacle Automation, Inc.
		G	McHugh Software International, Inc.
	19984168	G	RehabCare Group, Inc.
		G	Ronald C. Stauber.
		G	Therapeutic Systems, Ltd.
	19984169	G	Snyder Communications, Inc.
		G	Clinical Communications Group, Inc.
		G	Clinical Communications Group, Inc.
	19984170	G	Corey A. Kupersmith.
		G	Snyder Communications, Inc.
		G	Synder Communications, Inc.
	19984179	G	Illinois Tool Works, Inc.
		G	Michael A. D'Amelio.
		G	TACC International Corporation.
	19984181	G	Fenway Partners Capital Fund, L.P.
		G	Simmons Holdings, Inc.
		G	Simmons Holdings, Inc.
20–AUG–98	19983990	G	Equilease Holding Corporation.
		G	Vestar Equity Partners, L.P.
		G	Clark-Schwebel Holdings, Inc.
	19984084	G	Amerian Home Products Corporation.
		G	Chiron Corporation.
		G	Chiron Corporation.
21–AUG–98	19984004	G	Stephen H. Winters.
		G	Columbia HCA Health Care Corporation.
		G	DeQueen Health Services, Inc. HCMH, Inc., Chino Comm. Hosp.
		G	Notami Hosp of California, Inc., Los Robles Regional Med Ctr.
	19984139	G	Larry Addington.
		G	Zeigler Coal Holding Company.
		G	Zeigler Coal Holding Company.
24–AUG–98	19983735	G	GS Capital Partners II, L.P.
		G	Garry Kieves.
		G	Anagram International, Inc.
	19983923	G	Hoak Communications Partners, L.P.
		G	Household International, Inc.
		G	Color Prelude, Inc.
	19984042	G	SPX Corporation.
		G	General Signal Corporation.
		G	General Signal Corporation.
	19984067	G	Vestor Partners, L.P.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	Unitog Company.
		G	Unitog Rental Services, Inc.
		G	Mechanics Uniform Rental Co.
	19984081	G	Theodore Baum.
		G	Tele-Communications, Inc.
		G	TCI of Roanoke Rapids, Inc.
	19984088	G	Home-Products International, Inc.
		G	Newell Co.
		G	Plastics, Inc.
	19984092	G	Eastern Environmental Services, Inc.
		G	Kimmins Corp.
		G	Kimmins Recycling Corporation.
	19984126	G	Nissen Chemitec Corporation.
		G	Worthington Industries, Inc.
		G	London Industries, Inc.
	19984136	G	Old Dominion Freight Line, Inc.
		G	Owen P. Marsh.
		G	Goggin Truck Line Company, Inc.
	19984137	G	Bell Atlantic Corporation.
		G	John W. Kluge.
		G	Metromedia Company.
	19984141	G	Consolidated Graphics, Inc.
		G	M. Francois Pinault.
		G	Rush Press, Inc., Arts & Crafts Press, Inc.
	19984145	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Raycom Media, Inc.
		G	Elcom of Ohio, Inc.
	19984162	G	General Electric Company.
		G	Hicks, Muse, Take & Furst Equity Fund III, L.P.
		G	Atrium Corporation.
	19984164	G	Vectura Holding Company LLC.
		G	Blackstone Dredging Partners, L.P.
		G	Great Lakes Dredge & Dock Corporation.
	19984166	G	Interlaken Investment Partners, L.P.
		G	OHP NP, LLC.
		G	Nicolaus Paper Inc.
	19984177	G	Ocean Group plc.
		G	William LaMothe.
		G	Road King, Inc. and Skyking Inc.
	19984187	G	Clear Channel Communications, Inc.
		G	J. Albert Dame.
		G	Dame Media, Inc.
	19984189	G	Code, Hennessy & Simmons III, L.P.
		G	Three Cities Fund, II, L.P.
		G	ValveCo Inc.
	19984196	G	Florida Progress Corporation.
		G	Richard D. Odle.
		G	Columbia Steel and Metal Company, Inc.
	19984197	G	Florida Progress Corporation.
		G	Robert A. Levy.
		G	Columbia Steel and Metal Company, Inc.
		G	R&R Equipment Leasing Company.
	19984198	G	SCF–IV, L.P.
		G	Charles W. Flint, Jr. Trust C–2.
		G	Flint Resources Company.
	19984199	G	Aderans Co., Ltd.
		G	Ronald O. Perelman.
		G	General Wig Manufacturers, Inc.
	19984200	G	Fingerhut Companies, Inc.
		G	Paul L. Baker and Alice C. Baker.
		G	Arizona Mail Order Company, Inc.
	19984202	G	Orgill, Inc.
		G	Frederick Trading Company.
		G	Frederick Trading Company.
	19984250	G	Consolidation Capital Corporation.
		G	Joseph M. Ivey.
		G	Ivey Mechanical Corporation, Ivey's Inc.
	19984283	G	Steven Lipson.
		G	HA–LO Industries, Inc.
		G	HA–LO Industries, Inc.
	19984284	G	HA–LO Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	Steven Lipson.
		G	Lipson Associates, Inc. d/b/a Lipson Alport Glass & Associate.
25–AUG–98.			
	19983945	G	Security National Financial Corporation.
		G	Consolidare Enterprises, Inc.
		G	Consolidare Enterprises, Inc.
	19984023	G	Service Corporation International.
		G	American Financial Group, Inc.
		G	Arkansas National Life Insurance Company.
		G	American Datasource, Inc.
		G	International Funeral Associate, Inc.
		G	American Memorial Life Insurance Company.
		G	Purple Cross Insurance Agency, Inc.
	19984024	G	American General Corporation.
		G	Houston Savings Bank, fsb.
		G	HSA Residential Mortgage Services of Texas, Inc.
	19984039	G	Swiss Reinsurance Company.
		G	Baloise-Holding.
		G	Baloise U.S. Holdings, Inc.
	19984043	G	Heritage Fund II, L.P.
		G	Gary Brown.
		G	One White Systems, Inc.
		G	G. Neil Companies International, Inc.
	19984044	G	Gary Brown.
		G	Heritage Fund II, L.P.
		G	20th Century Plastics, Inc.
	19984072	G	Brookside Capital Partners Fund, L.P.
		G	Steel Dynamics, Inc.
		G	Steel Dynamics, Inc.
	19984132	G	Lernout & Hauspie Speech Products N.V.
		G	Globalink, Inc.
		G	Globalink, Inc.
	19984135	G	FINOVA Group Inc. (The).
		G	United Credit Corporation.
		G	United Credit Corporation.
	19984182	G	General Electric Company.
		G	Lumbermens Mutual Casualty Company.
		G	Kemper Reinsurance Company.
	19984185	G	Gerling-Konzern Verisherungs-Beteligungs AG.
		G	EXOR Group S.A.
		G	ECOR–CRC Inc.
	19984192	G	Superior Services, Inc.
		G	Donald E. Hinz.
		G	Eagle Environment, Inc., Watson's Rochester Dispos Inc.
	19984193	G	Superior Services, Inc.
		G	Michael C. Hinz.
		G	Gopher Disposal, Inc., Watson's Rochester Disposal, Inc.
	19984208	G	Madison Dearborn Capital Partners II, L.P.
		G	Madison Dearborn Capital Partners, L.P.
		G	Minot Holding Corporation.
	19984209	G	United States Filter Coporation.
		G	Unit Instruments, Inc.
		G	Unit Instruments, Inc.
	19984210	G	Logitech International S.A.
		G	Jonathan Garber and Bonnie Fought.
		G	Connectix Corporation.
	19984216	G	The Interpublic Group of Companies, Inc.
		G	International Public Relations plc.
		G	International Public Relations plc.
	19984219	G	Genesis Direct, Inc.
		G	Cox Enterprises, Inc.
		G	Carol Wright Gifts, Inc.
	19984220	G	Cox Enterprises, Inc.
		G	Genesis Direct, Inc.
		G	Genesis Direct, Inc.
	19984224	G	Consolidated Graphics, Inc.
		G	Richard L. Royle.
		G	Royle Communications Group, Inc.
		G	Royle Enterprises, L.L.P.
		G	Royle Web II Limited Partnership.
	19984225	G	Consolidation Capital Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	Dennis R. Robinson.
		G	Robinson Mechanical Company.
	19984227	G	FPL Group, Inc.
		G	Central Maine Power Company.
		G	Central Securities Corp., Cumberland Securities Cor.
		G	The Union Water Power Company.
	19984230	G	McMoRan Oil & Gas Co.
		G	Freeport-McMoRan Sulphur Inc.
		G	Freeport-McMoRan Sulphur Inc.
	19984231	G	Heidrick & Struggles International, Inc.
		G	Heidrick & Struggles, Inc.
		G	Heidrick & Struggles, Inc.
	19984235	G	Duane Reade Inc.
		G	Rock Bottom Stores, Inc.
		G	Rock Bottom Stores, Inc.
	19984236	G	Sidney B. DeBoer.
		G	William N. Hutchins.
		G	Hutchins Imported Motors, Inc.
	19984248	G	The SKM Equity Fund II, L.P.
		G	Stanford Resources (US) Ltd.
		G	The Paper Factory of Wisconsin, Inc.
	19984255	G	BASF Aktiengesellschaft.
		G	Hoechst Aktiengesellischaft.
		G	Hoechst Aktiengesellischaft.
	19984259	G	The SKM Equity Fund II, L.P.
		G	Edwards Enterprises.
		G	Edwards Enterprises.
	19984260	G	The SKM Equity Fund II, L.P.
		G	S. Douglas and Rita Sukeforth.
		G	Mid State Machine Products.
	19984263	G	Thomas T. Gore, an individual.
		G	Racal Electronics, Plc.
		G	Racal Datacom, Inc.
	19984264	G	Consolidated Capital Corporation.
		G	Thomas Musser.
		G	Tri-M Corporation, Tri-M Information Systems Corp., al.
	19984271	G	CMG Information Service, Inc.
		G	Hollywood Entertainment Corporation.
		G	Hollywood Entertainment Corporation.
	19984276	G	United Rentals, Inc.
		G	Joseph Pustizzi, Jr.
		G	Trico Equipment, Inc., Trico Rentals, Inc., Trico Credit Corp.
	19984277	G	Argotyche, LP.
		G	Pacific-Sierra Research Corporation.
		G	Pacific-Sierra Research Corporation.
	19984278	G	Olympus Growth Fund II, L.P.
		G	Joint Venture Corporation.
		G	Joint Venture Corporation.
	19984280	G	Code, Hennessy & Simmons III, L.P.
		G	Code, Hennessy & Simmons Limited Partnership.
			KBA Holding, Inc.
	19984281	G	Newmall, Ltd., a U.K. plc.
		G	Chester C. Davenport.
		G	Envirotest Systems Corp.
	19984282	G	George L. Argyros.
		G	Louis H. Lauch, Jr.
		G	Kentucky Building Maintenance, Inc.
	19984287	G	Charterhouse Equity Partners II, L.P.
		G	Columbia/HCA Healthcare Corporation.
		G	Galen of West Virginia, Inc.
		G	Hospital Corporation of North Carolina.
26–AUG–98	19984079	G	Cargill, Incorporated.
		G	Plantation Foods, Inc.
		G	Plantation Foods, Inc.
	19984133	G	The Hitchcock Alliance.
		G	North Country Health Systems, Inc.
		G	North Country Health Systems, Inc.
	19984165	G	Laporte plc.
		G	Inspec Group plc.
		G	Inspec Group plc.
	19984175	G	George S. Hofmeister.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	MascoTech, Inc.
		G	MascoTech Coatings, Inc.
	19984178	G	Stone & Webster, Incorporated.
		G	William J. Blair, III.
		G	Nordic Warehouse, Inc.
		G	Buckeye Distribution Company, Inc.
		G	Nordic Rail Services, Inc.
		G	Nordic Transportation Services, Inc.
		G	Buckeye Management, Inc.
		G	American Warehouses, Inc.
		G	Nordic Acquisitions, Inc.
	19984205	G	Norhrop Grumman Corporation.
		G	Inter-National Research Institute, Inc.
		G	Inter-National Research Institute, Inc.
	19984218	G	May Department Stores, a Delaware Corporation.
		G	W.D. Company, Inc.
		G	Merchantile Stores Company, Inc.
	19984238	G	Abbott Laboratories.
		G	i–STAT Corporation.
		G	i–STAT Corporation
	19984245	G	Republic Industries, Inc.
		G	Bernard Huberman.
		G	BLT Enterprises of Oxnard, Inc.
	19984270	G	McCown De Leeuw & Co. IV, L.P.
		G	Electronic Manufacturing Systems, Inc.
		G	Electronic Manufacturing Systems, Inc.
27–AUG–98	19984116	G	HBO & Company.
		G	IMNET Systems, Inc.
		G	IMNET Systems, Inc.
	19984144	G	NationsRent, Inc.
		G	Rodger A. Renzulli.
		G	High Reach Company, Inc.
	19984229	G	Davel Communications Group, Inc.
		G	Peoples Telephone Company, Inc.
		G	Peoples Telephone Co., Inc.
	19984274	G	Davel Communications Group, Inc.
		G	PhoneTel Technologies, Inc.
		G	PhoneTel Technologies, Inc.
	19983818	G	IBP, Inc.
		G	Diversified Food Group, LLC.
		G	Diversified Food Group, LLC.
	19983953	G	Jerry Zucker.
		G	Isolyser Company, Inc.
		G	Isolyser Company, Inc.
	19984060	G	World Access, Inc.
		G	Telco Systems, Inc.
		G	Telco Systems, Inc.
	19984124	G	Telefonos de Mexico, S.A. de C.V.
		G	Carso Global Telecom S.A. de C.V.
		G	Prodigy Communications Corporation.
	19984147	G	WorldPort Communications, Inc.
		G	Gary Winnick.
		G	Campuslink Communications Systems, Inc.
	19984186	G	Larry C. Morgan.
		G	Anthony J. and Roberta A. Michel.
		G	Michel Tire Co.
	19984188	G	Tele-Communications, Inc.
		G	IDS/Jones Growth Partners II, L.P.
		G	IDS/Jones Growth Partners.
	19984212	G	Michael E. Pulitzer.
		G	The Hearst Trust.
		G	Hearst-Argyle Television, Inc.
	19984215	G	Welsh, Carson, Anderson & Stowe, VI, L.P.
		G	Welsh, Carson, Anderson & Stowe, VI, L.P.
		G	NHR.
	19984222	G	Fremont General Corporation.
		G	WellPoint Health Networks Inc.
		G	UNICARE Specialty Services, Inc.
	19984226	G	R&B Falcon Corporation.
		G	Lovencie J. Gambarella, Jr.
		G	G & B Marine, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	G & B Tugs, Inc.
	19984239	G	Merck & Co. Inc.
		G	Eastman Kodak Company.
		G	NanoSystems L.L.C.
	19984251	G	The Health Alliance of Greater Cincinnati.
		G	Fort Hamilton-Hughes Healthcare Corporation.
		G	Fort Hamilton-Hughes Healthcare Corporation.
	19984254	G	Schuff Steel Company.
		G	Wayne Harris.
		G	Six Industries, Inc.
	19984266	G	Lonnie C. Poole, Jr.
		G	Thomas C. Cannon.
		G	Trans Waste Services, Inc.
	19984279	G	Sara Lee Corporation.
		G	Quaker Oats Company (The).
		G	Continental Coffee Products Company.
	19984288	G	WinStar Communications, Inc.
		G	Cellular Vision USA, Inc.
		G	CellularVision of New York, L.P.
	19984291	G	Dawson Production Services, Inc.
		G	Hellums Services II.
		G	Hellums Services II.
	19984293	G	Fenway Partners Capitals Fund, L.P.
		G	New Creative Enterprises, Inc.
		G	New Creative Enterprises, Inc.
	19984295	G	Pentacon, Inc.
		G	West Coast Aero Products Holding Corp.
		G	West Coast Aero Products Holding Corp.
	19984301	G	Aviation Sales Company.
		G	Primark Corporation.
		G	Triad International Maintenance Corporation.
	19984302	G	Cox Enterprises, Inc.
		G	DWI Acquisition Corporation.
		G	DWI Acquisition Corporation.
	19984305	G	FS Equity Partners III, L.P.
		G	Thomas H. Lee Equity Partners, L.P.
		G	Cinnabon International, Inc.
	19984306	G	Hoechst AG.
		G	J. Roger Lumsden.
		G	Pye-Barker Welding Supply Company.
	19984308	G	Berkshire Cruise Holdings LLC.
		G	Phillip Levine.
		G	On-Board Media, Inc., Cruise Mgnt Intl, Inc., Boxer Medialnc.
	19984309	G	Continental AG.
		G	ITT Industries, Inc.
		G	ITT Industries, Inc.
	19984364	G	The Metzler Group, Inc.
		G	Peterson Consulting L.L.C.
		G	Peterson Consulting L.L.C.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26030 Filed 9–28–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0134]

Albertson's, 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 an 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 30, 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 Richard Liebeskind, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2441.

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 September 22, 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 The Draft Complaint, Proposed Consent Order, and Asset Maintenance Agreement to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Albertson's, Inc. (''Albertson's''), Locomotive Acquisition Corporation (''Locomotive''), Buttrey Food and Drug Store Company (''Buttrey''), and FS Equity Partners II, L.P. (''FS Equity Partners'')(collectively ''the proposed Respondents'') an Agreement Containing Consent Order (''the proposed consent order'') and an Asset Maintenance Agreement. Locomotive is a wholly-owned subsidiary of Albertson's, and FS Equity Partners owns a majority of the voting securities of Buttrey. The proposed consent order is designed to remedy likely anticompetitive effects arising from Albertson's and Locomotive's proposed acquisition of the outstanding shares of Buttrey.

II. Description of the Parties and the Proposed Acquisition

Albertson's, a Delaware corporation headquartered in Boise, Idaho, operates approximately 916 supermarkets in 23 Western, Midwestern, and Southern states. Albertson's supermarkets operate under the ''Albertson's'' and ''Max Food and Drug'' trade names. In the states where Albertson's competes with Buttrey, Albertson's operates nine supermarkets in Montana (eight directly compete with Buttrey stores) and nine supermarkets in Wyoming (seven directly compete with Buttrey stores). Albertson's total sales for the fiscal year ending January 29, 1998, were approximately $14.7 billion. At this time, based on total sales, Albertson's is the fourth largest supermarket chain in the United States.

Buttrey, a Delaware corporation headquartered in Great Falls, Montana, operates 44 supermarkets in Montana, Wyoming, and North Dakota. Buttrey operates supermarkets under the ''Buttrey Big Fresh,'' ''Buttrey Food & Drug,'' and ''Buttrey Fresh Foods'' trade names. Buttrey's total sales for the fiscal year ending January 31, 1998, were $391.4 million. FS Equity Partners owns 50.8% of the outstanding shares of Buttrey and is the ultimate parent entity. Freeman Spogli & Co., Inc., an investment firm, is the general partner of FS Equity Partners.

On or about January 19, 1998, Albertson's and Locomotive entered into an Agreement and Plan of Merger (''the proposed acquisition'') with Buttrey to acquire through a cash tender offer all of the outstanding common stock of Buttrey for $15.50 per share. Albertson's will also assume Buttrey's debt obligations. The total value of the proposed acquisition, including debt obligations, is approximately $174 million.

III. The Draft Complaint

The draft complaint accompanying the proposed consent order alleges that the proposed acquisition under which Albertson's and Locomotive would acquire all of the outstanding shares of Buttrey violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The draft complaint also alleges that the proposed acquisition would, if consummated, substantially lessen competition 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.

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units (''SkUs'')) as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood ''mom & pop'' grocery stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets because they operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

According to the draft complaint, the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition of Buttrey by Albertson's and Locomotive are the areas in and near following cities and towns: (a) Billings, Montana; (b) Bozeman, Montana, (c) Butte, Montana; (d) Great Falls, Montana; (e) Helena, Montana; (f) Missoula, Montana; (g) Casper, Wyoming; (h) Cheyenne, Wyoming; (I) Cody, Wyoming; (j) Gillette, Wyoming; and (k) Laramie, Wyoming.

According to the draft complaint, the relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as ''HHI'') or by two-firm and four-firm concentration ratios.[1] The acquisition would substantially increase concentration in each market. Albertson's and Buttrey have a combined market share of more than 35% in each geographic market. The post-acquisition HHIs in the geographic markets range from 2,264 to 10,000.

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

Albertson's and Buttrey are direct competitors in every geographic market. According to the draft complaint, Albertson's and Locomotive's proposed acquisition of Buttrey, if consummated, may substantially lessen competition in the relevant markets by eliminating direct competition between supermarkets owned or controlled by Albertson's and supermarkets owned or controlled by Buttrey; by increasing the likelihood that Albertson's will unilaterally exercise market power; or by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country. According to the draft complaint, entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

IV. Terms of the Agreement Containing Consent Order, i.e., the Proposed Consent Order

The proposed consent order attempts to remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, the proposed Respondents must divest fifteen specific supermarkets in the relevant markets. Six of the supermarkets that the proposed Respondents must divest are currently owned and operated by Albertson's (of which five operate under the ''Albertson's'' banner and one operates under the ''Max'' banner) and nine of the supermarkets are currently owned and operated by Buttrey (of which two operate under the ''Buttrey Big Fresh'' banner and seven operate under the ''Buttrey Fresh Foods'' banner). The proposed Respondents must divest thirteen supermarkets to Smith's Food & Drug Centers, Inc. (''Smith's''), a wholly-owned subsidiary of Fred Meyer, Inc., and two supermarkets to Supervalu Holdings, Inc., a wholly-owned subsidiary of Supervalu, Inc. (collectively ''Supervalu''). The specific supermarkets that the proposed Respondents must divest to Smith's and Supervalu are listed below.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that exists prior to the merger. When divestiture is an appropriate remedy in a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is satisfied that the purchasers presented by the parties are well qualified to run the divested stores and pose no separate competitive issues.

Although a supermarket chain is the proposed purchaser in many of the markets in this matter, this does not represent a Commission position that only large chains can be competitive in the supermarket business. Indeed, in several cases during the last few years, supermarkets required to be divested as a result of a Commission merger investigation have been sold to independent store operators (often with financial support from a wholesaler). See Jitney-Jungle Stores of America, Inc., Docket No. C–3784 (1998), Koninklijke Ahold nv, 122 F.T.C. 248 (1996), Schnuck Markets, Inc., 119 F.T.C. 798 (1995), Schwegmann Giant Super Markets, Inc., 119 F.T.C. 783 (1995), Red Apple Companies, Inc., 119 F.T.C. 273 (1995). With respect to the proposed divestiture in this matter, the proposed purchaser in Casper, Wyoming is Supervalu, Inc., itself a supplier of independent grocers.

Under the terms of the proposed consent order, the proposed Respondents must divest thirteen supermarkets to Smith's and two supermarkets to Supervalue either within ten days after the date on which Albertson's and Locomotive complete their proposed acquisition of the outstanding shares of Buttrey or four months after the date the proposed Respondents have signed the proposed consent order, whichever is earlier. Alternatively, the proposed Respondents shall divest the supermarkets to another acquirer that receives the prior approval of the Commission within three months after the proposed consent order becomes final. A sale to Smith's must be in accordance with the agreement between Albertson's and Smith's dated August 10, 1998. A sale to Supervalue must be in accordance with the agreement between Albertson's and Supervalu dated August 12, 1998. Supervalu cannot sell either of the two divested supermarkets within three years of when the proposed consent order becomes final to anyone without the prior approval of the Commission. If the proposed Respondents fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the proposed consent order.

Eight of the supermarkets that the proposed Respondents must divest are located in Montana—two in Billings, two in Butte, and one each in Bozeman, Great Falls, Helena, and Missoula. Seven of the supermarkets that the proposed Respondents must divest are located in Wyoming—two in Casper, two in Cheyenne, and one each in Cody, Gillette, and Laramie.

The thirteen supermarkets that the proposed Respondents must divest to Smith's in accordance with the agreement between Albertson's and Smith's dated August 10, 1998, are the following:

1. Buttery store no. 3925 operating under the ''Buttrey Big Fresh'' trade name, which is located at 1601 Marketplace Drive, Great Falls, MT 59404 (Cascade County).
2. Buttery store no. 3934 operating under the ''Buttrey Big Fresh'' trade name, which is located at 2825 West Main Street, Bozeman, MT 59715 (Gallatin County).
3. Buttery store no. 3824 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 1000 Boulder Avenue, Helena, MT 59601 (Lewis and Clerk County).
4. Albertson's store no. 226 operating under the ''Albertson's'' trade name, which is located at 1906 Brooks Street, Missoula, MT 59801 (Missoula County).
5. Buttery store no. 3930 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 3745 Harrison Avenue, Butte, MT 59701 (Silver Bow County).
6. Buttery store no. 3985 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 600 South Excelsior Street, Butte, MT 59701 (Silver Bow County).
7. Albertson's store no. 209 operating under the ''Albertson's'' trade name, which is located at 1633 Grand Avenue, Billing, MT 59102 (Yellowstone County).
8. Albertson's store no. 232 operating under the ''Albertson's'' trade name, which is located at 1531 Main Street, Billings, MT 59101 (Yellowstone County).
9. Albertson's store no. 805 operating under the ''Albertson's'' trade name, which is located at 1209 15th Street, Laramie, WY 82070 (Albany County).
10. Buttery store no. 3855 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 906 Camel Drive, Gillette, WY 82716 (Campbell County).
11. Albertson's store no. 863 operating under the ''Albertson's'' trade name, which is located at 3745 E. Lincoln

Way, Cheyenne, WY 82001 (Laramie County).

12. Albertson's store no. 1804 operating under the ''Max'' trade name, which is located at 1600 E. Pershing Blvd., Cheyenne, WY 82001 (Laramie County).

13. Buttery store no. 3941 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 1526 Rumsey Avenue, Cody, WY 82414 (Park County).

The two supermarkets that the proposed Respondents must divest to Supervalu in accordance with the agreement between Albertson's and Supervalu dated August 12, 1998, are the following:

1. Buttery store no. 3872 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 2101 East 12th Street, Casper, WY 82601 (Natrona County).

2. Buttery store no. 3878 operating under the ''Buttrey Fresh Foods'' trade name, which is located at 4075 Cy Avenue, Caspter, WY 82601 (Natrona County).

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are prohibited from acquiring, without prior notice to the Commission, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Cascade, Gallatin, Lewis and Clerk, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming. This provision does not prevent the proposed Respondents from constructing new supermarket facilities on their own; nor does it prevent the proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the proposed consent order also prohibits the proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if such supermarket was formerly owned or operated by the proposed Respondents in Cascade, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone counties in Montana, and Albany, Campbell, Laramie, Natrona, and Park counties in Wyoming. In addition, the proposed Respondents may not remove any equipment from a supermarket they own or operate in these counties prior to a sale, sublease, assignment, or change in occupancy in these counties, except in the ordinary course of business, or except as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty (30) days following the date on which they signed the proposed consent, every thirty (30) days thereafter until the divestitures are completed, and annually for a period of ten years. The obligations of FS Equity Partners under the proposed consent order will terminate upon consummation of the proposed acquisition between Albertson's, Locomotive, and Buttrey.

V. Terms of the Asset Maintenance Agreement

The proposed Respondents also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Albertson's and Locomotive acquire the outstanding stock of Buttrey until the divestitures have been completed, the proposed Respondents must maintain the viability, competitiveness and marketability of the assets to be divested, and must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability. The Asset Maintenance Agreement specifies these obligations in detail. The obligations of FS Equity Partners under the Asset Maintenance Agreement will terminate upon consummation of the proposed acquisition between Albertson's, Locomotive, and Buttrey.

VI. Opportunity for Public Comment

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty 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 consent order.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Smith's and Supervalu, to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement. This analysis is not intended to constitute an official interpretation of the proposed consent order or the Asset Maintenance Agreement, nor is it intended to modify the terms of the proposed consent order or Asset Maintenance Agreement in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26028 Filed 9–28–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following advisory subcommittees scheduled to meet during October 1998:

Name: Health Services Research Initial Review Group (Subcommittees: Health Systems Research, Health Care Quality and Effectiveness Research).

Date and Time: October 6, 1998, 8:30 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open October 6, 8:30 a.m. to 8:45 a.m.

Closed for remainder of meetings.

Purpose: The Health Systems Research Subcommittee is charged with the initial review of research applications relating to cost and financing of health care, health care markets, organizational and delivery system issues, and the provider workforce. The Health Care Quality and Effectiveness Research Subcommittee is charged with the initial review of research applications relating to clinical outcomes and effectiveness, quality and cost-effectiveness of health care, effectiveness research, evidence-based medicine, and quality of care research.

Agenda: The open sessions of these meetings on October 6, from 8:30 a.m. to 8:45 a.m., will be devoted to business meetings covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing research and demonstration grant applications relating to the delivery organization, and financing of health services. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain rosters of members, minutes of the meetings, or other relevant information should contact Jenny Griffith, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 ext. 1634.

Agenda items for all meetings are subject to change as priorities dictate.

John M. Eisenberg, M.D.,

Administrator.

[FR Doc. 98–25896 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1:30 p.m.–5:30 p.m., October 20, 1998. 8:30 a.m.–3:30 p.m., October 21, 1998.

Place: Holiday Inn Select Atlanta-Decatur Hotel & Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance and mix of intramural and extramural research, including laboratory research, and provides guidance on intramural and extramural scientific program matters, both present and future, particularly from a long-range viewpoint. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee recommends areas of research to be supported by contracts and provides concept review of program proposals and announcements.

Matters to Be Discussed: The Science and Program Review Work Group (SPRWG) will meet from 1:30 p.m. to 5:30 p.m. on October 20, 1998, to discuss (1) outcome of the August 11–12 ACIPC meeting; (2) grant awards for fiscal year 1998; (3) upcoming program announcements; (4) extramural grant review process; and (5) progress on standing Work Group issues. On October 21, 1998, from 8:30 a.m. to 3:30 p.m., the full Committee will meet to discuss (1) an update from the Director, National Center for Injury Prevention and Control (NCIPC); (2) an update on Safe America and Partnership Council; (3) a report from SPRWG regarding the October 20 oversight meeting; (4) national injury research agenda issues; and (5) a presentation on NCIPC's traumatic brain injury program and spinal cord injury registries.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas E. Blakeney, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Dated: September 22, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–25970 Filed 9–28–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Quarterly Performance Report, ORR–6.

OMB No.: 0970–0036.

Description: Data gathered from the Quarterly Performance Report (Form ORR–6) are used by ORR to estimate the number of months of Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) that ORR can provide based on appropriations; to determine priorities, and standards, budget requests, and assistance policies; to analyze data on service caseloads and program outcomes in order to monitor performance; and to compute refugee medical assistance (RMA) utilization rates.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Estimates (CMA)	48	4	3,875	744

Estimated Total Annual Burden Hours: 744.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Dated: September 22, 1998.

Office of Management and Budget,

Paperwork Reduction Project, 725 17th Street, NW., Attn: Ms. Wendy Taylor.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–25899 Filed 9–28–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0751]

Biosera, Inc.; Revocation of U.S. License No. 1059

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1059) and the product license issued to Biosera, Inc., for the manufacture of Source Plasma. Biosera, Inc., has facilities in Denver, CO, and San Diego and Orange, CA. In a letter to FDA dated April 2, 1998, the firm voluntarily requested revocation of its establishment and product licenses. In a letter dated May 12, 1998, FDA informed the firm that the establishment and product licenses for all its locations were revoked.

DATES: The revocation of the establishment license (U.S. License No. 1059) and the product license for all locations became effective May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 1059) and the product license for the manufacture of Source Plasma issued to Biosera, Inc., at the following locations: (1) 717 Yosemite Circle, Denver, CO 80220 (U.S. License 1059–001); (2) 9040 Friars Rd., suite 430, San Diego, CA 92108 (U.S. License 1059–002); and (3) 265 South Anita Dr., No. 10, Orange, CA 92668 (U.S. License 1059–003).

FDA inspected facilities of Biosera, Inc., in Denver, CO, from June 23, 1997, through August 11, 1997; in San Diego, CA, from June 23, 1997, through July 11, 1997; and in Orange, CA, from June 23, 1997, through September 3, 1997. These inspections revealed serious deviations from applicable Federal regulations. The deficiencies noted included, but were not limited to, the following: (1) Failure to maintain accurate records concurrently with the performance of each significant step in the collection, processing, storage, and distribution of blood and blood components so that all steps can be clearly traced (21 CFR 211.180, 600.12, 606.160, and 606.165); (2) failure to adequately determine the suitability of donors (21 CFR 640.3 and 640.63); (3) failure to have the selection and scheduling of the injection of the antigen performed by a qualified licensed physician (21 CFR 640.66); (4) failure to maintain and follow adequate standard operating procedures for all steps to be followed in the collection, processing, storage, and distribution of blood and blood components (21 CFR 211.100 and 606.100); (5) failure to report important proposed changes in manufacturing methods to the agency prior to implementation (21 CFR 601.12); (6) failure to maintain adequate records of reports of complaints of adverse reactions regarding each unit of blood or blood product arising as a result of blood collection or transfusion (21 CFR 606.170); and (7) failure to observe, standardize, and calibrate equipment used in the collection, processing, storage, and distribution of blood and blood components (21 CFR 606.60). In addition to the deficiencies noted previously, FDA obtained official samples of red blood cells for immunization from inventory during the inspection of the Orange, CA facility. Analysis by FDA revealed that vials of red blood cells for immunization were falsely labeled with incorrect donor information.

The deficiencies identified during the inspections represented a comprehensive failure of the firm to maintain control over critical aspects of its manufacturing process, as well as to exercise control over the establishment in all matters relating to compliance, and to assure that personnel were adequately trained and supervised and had a thorough understanding of the procedures they performed, as required by 21 CFR 211.25 and 600.10(a) and (b). In addition, FDA determined that the firm's red blood cells for immunization were misbranded within the meaning of sections 502(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(a)) and section 351(b) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(b)). The serious nature and extent of the deficiencies observed at Biosera, Inc., led the agency to conclude that they were the consequence of a careless disregard for the applicable regulations and the standards in the firm's license. FDA determined that these deficiencies constituted a danger to the public health that warranted suspension under § 601.6(a) (21 CFR 601.6(a)). By letter dated October 17, 1997, to Biosera, Inc., FDA suspended the firm's establishment license (U.S. License No. 1059) and product licenses for Source Plasma effective October 20, 1997. The letter stated that FDA intended to proceed under § 601.6(b) to revoke the establishment license and the product licenses.

In a letter to FDA dated October 22, 1997, Biosera, Inc., requested that the matter of license revocation be held in abeyance. In a letter to Biosera, Inc., dated March 13, 1998, FDA stated that the inspectional history of the firm demonstrated a distinct pattern of noncompliance with those requirements designed to ensure the safety, purity, identity, and quality of plasma, as well as the standards for donor protection that are intended to ensure a continuous and healthy donor population. FDA determined, under 601.5(b) (21 CFR 601.5(b)), that the firm had willfully acted with careless disregard of the applicable regulations and standards, and denied the firm's request that the revocation of license be held in abeyance. In the same letter, FDA provided notice to the firm of FDA's intent to initiate proceedings to revoke all establishment and product licenses encompassed under U.S. License No. 1059 issued to Biosera, Inc., and to issue a notice of opportunity for hearing under § 601.5(b). In a letter to FDA dated April 2, 1998, Biosera, Inc., requested voluntary revocation of U.S. License No. 1059, and thereby waived its opportunity for a hearing.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These letters are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under § 601.5(a), section 351 of the PHS Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1059) and the product licenses for the manufacture of the aforementioned product issued to Biosera, Inc., were revoked, effective May 12, 1998.

This notice is issued and published under 21 CFR 601.8 and the redelegation under 21 CFR 5.67(c).

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25914 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0294]

Determination of Regulatory Review Period for Purposes of Patent Extension; Silvacote K

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Silvacote K and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For food additives, the testing phase begins when a major health or environmental effects test involving the food additive begins and runs until the approval phase begins. The approval phase starts with the initial submission of a petition requesting the issuance of a regulation for use of the food additive and continues until FDA grants permission to market the food additive product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive Silvacote K (phosphorylated tall oil fatty acids). Silvacote K is indicated for use as pigment dispersants in polymeric films intended for use in contact with food. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Silvacote K (U.S. Patent No. 4,209,430) from SCM Chemicals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 21, 1997, FDA advised the Patent and Trademark Office that this food additive had undergone a regulatory review period and that the approval of Silvacote K represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Silvacote K is 5,990 days. Of this time, 4,608 days occurred during the testing phase of the regulatory review period, 1,382 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test (''test'') involving this food additive additive product was begun:* March 30, 1980. The applicant claims November 6, 1992, as the date the test was begun. However, FDA records indicate that the test was begun on March 30, 1980.

2. *The date the petition requesting the issuance of a regulation for use of the additive (''petition'') was initially submitted with respect to the food additive additive product under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348)*: November 9, 1992. The applicant claims November 6, 1992, as the date the petition for Silvacote K was initially submitted. However, FDA records indicate that the petition was submitted on November 9, 1992.

3. *The date the petition became effective*: August 21, 1996. FDA has verified the applicant's claim that the regulation for the food additive became effective on August 21, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,385 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 30, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 29, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 9, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–25908 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80G–0360]

James Flett Organization, Inc.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP C2182) proposing to affirm that the use of processed kraft paper and corrugated board as an ingredient in animal feeds is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6657.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 19, 1980 (45 FR 62552), FDA announced that a petition (GRASP C2182) had been filed by Flett Development Co. and Rumose Products Co., Divisions of the James Flett Organization, Inc., currently at 422 North Northwest Hwy., Park Ridge, IL 60068. This petition proposed to amend the GRAS regulations to affirm that use of processed kraft paper and corrugated board as an ingredient in animal feeds is GRAS. James Flett Organization, Inc., has now withdrawn the petition without prejudice to a future filing.

Dated: September 17, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–25915 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98N–0473, 98P–0215, 98P–0216, 98P–0275, and 98P–0338]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order denying four petitions requesting exemptions for five devices from the premarket notification requirements for certain class II devices. FDA is publishing this notice in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Pub. L. 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the World Wide Web on the CDRH home page at ''http://www.fda.gov/cdrh'' or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petitions

FDA has received the following petitions requesting an exemption from premarket notification for class II devices:

1. Sandhill Scientific Inc., 21 CFR 876.1725 *Gastrointestinal motility monitoring system*.
2. Welch Allyn, Inc., 21 CFR 886.1570 *Ophthalmoscope*.
3. Computerized Medical Systems, Inc., 21 CFR 892.5840 *Radiation therapy simulation system*, exemption requested only for Radiation Oncologist Data Entry Workstation.
4. Chemicon International Inc., 21 CFR 866.3175 *Cytomegalovirus serological reagents*, and 21 CFR 866.3900 *Varicella-zoster virus serological reagents*.

On July 21, 1998 (63 FR 39098), FDA published a notice announcing that

these petitions had been received and providing an opportunity for interested persons to submit comments on the petitions by August 20, 1998. FDA received no comments. FDA has reviewed these petitions and, for the following reasons, has determined that these devices do not meet the criteria for exemption described previously and is, therefore, issuing this order denying the petitions to exempt these devices from the requirements of premarket notification.

1. *Gastrointestinal motility monitoring system*. Gastrointestinal motility monitoring systems could include a wide variety of devices to measure and assess the functioning of the gastrointestinal tract. The gastrointestinal monitoring systems including such components as electronic instruments, recorders, displays, and software are viewed as integral components of the system and must be evaluated together with the monitoring probes or catheters. FDA believes that review of all components of the system is necessary to provide adequate labeling and to ensure the safety and effectiveness of these products in comparison to legally marketed devices of this type.

The submission has not provided sufficient information that demonstrates that the characteristics and labeling, which are necessary to determine acceptable device performance, are well established. Further, it is neither apparent, nor has it been established, that changes in the device that could affect safety and effectiveness, and lead to device errors, would either: (a) Be readily detectable by users by visual examination or other means, such as routine testing, before causing harm; or (b) not materially increase the risk of incorrect output potentially leading to incorrect diagnosis.

2. *Ophthalmoscope*. The petition, as presented, does not meet the criteria for exemption, because changes in the device that could affect safety and effectiveness would not be readily detectable by users by visual examination or routine testing. Specifically, hazards causing retinal phototoxicity have long been recognized to be associated with the retinal exposure of the light (including, especially, invisible infrared and ultraviolet wavelengths). In addition, FDA requires testing to determine the amount of light emitted and has established maximum exposure levels to mitigate this risk. The potential sight-threatening hazard from retinal phototoxicity due to exposure to the light from the ophthalmoscope cannot be determined without appropriate measurements of the exposure level. The need for special controls has been recognized nationally (American National Standards Institute) and internationally (International Standards Organization). In the near future, FDA intends to propose special controls for the ophthalmoscope and, at the same time, intends to propose to exempt them from the premarket notification requirements. Until the establishment of such controls, however, the characteristics of the device necessary for its safe and effective performance are not well established and changes in the use of the device may result in materially increasing the risk of injury. Accordingly, the device will not presently be exempt from premarket review.

3. *Radiation Oncologist Data Entry Workstation*. Radiation therapy and radiation therapy dose calculation is an exacting procedure. The goal is to maintain the actual dose to within 5 percent of that prescribed. The data entry workstation provides data input to the radiation treatment planning system (RTP) on patient contours and tumor volumes and boundaries. It, therefore, is providing measurement information to the computer that is specific to a particular patient and fundamental to the accuracy of any subsequent treatment planning. As such, the workstation must be regarded as an integral component of the RTP system.

Radiation therapy systems and RTP systems are high-risk devices. Providing an incorrect treatment dose that is too low can result in tumor regrowth. Providing an incorrect treatment dose that is too high can lead to unacceptable complications. Malfunctions of these device types have resulted in patient deaths.

The submission has not provided sufficient information to establish that the characteristics of the device necessary for its safe and effective performance are well established. Further, since that workstation operates by direct connection to the RTP system, it is neither apparent, nor has it been established, that changes in the device that could affect safety and effectiveness or device errors would either: (a) Be readily detectable by users by visual examination or other means such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

4. *Cytomegalovirus serological reagents*. Cytomegalovirus infection is the most common identified cause of congenital infection. It has been reported that fewer than 5 percent of these infants develop symptoms during the newborn period. Cytomegalovirus infections are frequent and occasionally severe in children and adults with congenital and acquired cellular immunity defects, such as those with acquired immunodeficiency syndrome (AIDS), in cancer patients (especially those with leukemia), and in those who have received organ transplants. FDA believes that errors caused by these devices could materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

5. *Varicella-zoster virus serological reagents*. Varicella-zoster infection may cause severe or fatal disease in individuals who are receiving immunosuppressive therapy or who have an immune response defect. A specific diagnosis of this infection in immunosuppressed individuals may guide the clinician in appropriate therapy. This device would also be useful to evaluate the effect of vaccine in patients. FDA believes that errors caused by these devices could materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

Dated: September 23, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–25916 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 21 and 22, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Tracy K. Riley or Angie Whitacre, Center for Drug

Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 21, 1998, the committee will participate in a general scientific discussion of clinical trial design questions for products intended for the treatment of psoriasis. On the morning of October 22, 1998, the committee will participate in a scientific discussion of clinical trial design issues for systemic immunomodulatory biological products intended for the treatment of psoriasis. On the afternoon of October 22, 1998, the committee will participate in a scientific discussion of clinical trial design questions for products intended for the treatment of tinea capitis.

Procedure: On October 21, 1998, from 8 a.m. to 5 p.m., and on October 22, 1998, from 9:30 a.m. to 11:30 a.m. and from 12 m. to 5 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 13, 1998. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m. on October 21, 1998, and between approximately 9:30 a.m. and 10 a.m. and between approximately 1 p.m. and 1:30 p.m. on October 22, 1998. Time allotted for each presentation may be limited. Those desiring to make oral presentations should notify the contact person before October 13, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 22, 1998, from 8 a.m. to 9:30 a.m., and from 11:30 a.m. to 12 m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) regarding pending investigational new drug applications issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–25906 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Good Manufacturing Practices for Dietary Supplements Working Group of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Good Manufacturing Practices for Dietary Supplements Working Group of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 16, 1998, 9 a.m. to 4 p.m.

Location: Ramada Plaza O'Hare, 6600 North Mannheim Rd., Rosemont, IL.

Contact Person: Karen F. Strauss, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5123, FAX 202–205–5295, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Working Group will meet to discuss and further develop a draft report on good manufacturing practices identity testing and recordkeeping. The draft report will be presented to the food advisory committee at a later date for public discussion and consideration as the committee's recommendations to FDA.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 8, 1998. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 8, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

This meeting is open to the public, but space is limited. For the convenience of the public, a block of 20-sleeping rooms has been set aside at a special rate on a first-come first-served basis. Members of the public who wish to reserve one of these rooms should call the hotel at 847–827–5131 and make reservations before October 8, 1998. The block is reserved as general public of the U.S. FDA.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–25912 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0746]

Guidance for Industry: Donor Screening for Antibodies to HTLV–II; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Donor Screening for Antibodies to HTLV–II.'' The guidance document provides information regarding human T-lymphotrophic virus type II (HTLV–II) screening tests for Whole Blood and blood components. This guidance document is a further effort of FDA to help ensure a safe blood supply for the United States of America (U.S.).

DATES: Written comments may be provided at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry: Donor Screening for Antibodies to HTLV–II'' to

the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gloria J. Hicks, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Donor Screening for Antibodies to HTLV–II.'' This guidance document gives recommendations to manufacturers of Whole Blood and blood components regarding screening tests for HTLV–II. Issues discussed in the guidance document include but are not limited to: (1) Implementation of screening for antibodies to HTLV–II; (2) handling of donations with repeatedly reactive enzyme immunoassay test results; (3) quarantine and disposition of units from prior collections from donors who subsequently test repeatedly reactive for anti-HTLV–I or anti-HTLV–II; (4) donor deferral; (5) donor notification and counseling and; (6) blood product labeling. The guidance document is intended to supplement previous information provided in letters to registered blood establishments dated November 29, 1988, and July 19, 1996, regarding HTLV–I and HTLV–II.

On August 15, 1997, FDA approved a test kit to detect antibodies to HTLV–I and HTLV–II in human blood. FDA made this guidance document available via the CBER Internet World Wide Web (WWW) site on August 15, 1997, as outlined in the agency's good guidance practices (see the **Federal Register** of February 27, 1997 (62 FR 8961)). This guidance document was released for immediate implementation so that blood establishments would have guidance at the time of licensure of the previous mentioned test kit. FDA believes that making this guidance document available as soon as possible after licensure of the test kit was necessary to help ensure the safety of the U.S. blood supply and therefore FDA did not circulate the document for comment before releasing it for use. However, FDA accepts comments on guidance documents at any time and will consider comments in future revisions of the document.

This guidance document represents the agency's current thinking with regard to donor screening for antibodies to HTLV–II. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the WWW. For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25907 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following national advisory body scheduled to meet during the month of October 1998.

Name: Advisory Committee on Infant Mortality

Date and Time: October 26, 1998, 9:00 a.m.–5:00 p.m. October 27, 1998, 8:30 a.m.–4:00 p.m.

Place: Holiday Inn at Georgetown 2101 Wisconsin Avenue, N.W. Washington, D.C., 20007, (202) 338–4600.

The meeting is open to the public.

Agenda: Topics that will be discussed include: Early Postpartum Discharge; Low-Birth Weight; Discrepancies in Infant Mortality; and the Healthy Start Program and Evaluation.

Anyone requiring information regarding the Committee should contact Dr. Peter C. van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2170.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Health Resources and Services Administration, Maternal and Child Health Bureau, Telephone (301) 443–2170.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1998.

Jane M. Harrison,

Director, Division of Policy, Review and Coordination.

[FR Doc. 98–25990 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following national advisory body scheduled to meet during the month of November 1998.

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 18–20, 1998; 8:00 a.m.–5:00 p.m.

Place: Parklawn Building, The Chesapeake Room, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public on Wednesday, November 18, from 9:00 a.m. to 10:00 a.m., and closed for the remainder of meeting.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, November 18, 1998 from 10:00 a.m., to the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or by telephone at (301) 443–2190.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1998.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–25991 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 39146–39151, July 26, 1996 as amended most recently at 63 FR 1112–1113, January 8, 1998) is amended to: (1) realign the equal employment opportunity function by establishing formally the Office of Equal Employment Opportunity and Civil Rights within the Office of the Administrator; and (2) revise the functional statement of the Office of Applied Studies (OAS) and establish a substructure organization within OAS.

Section M–20, Functions, is amended as follows:

Under the heading, *Immediate Office of the Administrator* (MA–1) delete item (2), ''carries out SAMHSA-wide functions relating to equal employment opportunity'' and renumber the items following this item as (2), (3), (4) and (5) respectively.

Under the heading, *Office of the Administrator (MA)*, insert the following title and functional statement after the functional statement for the *Office of Minority Health (MAE):*

Office of Equal Employment Opportunity and Civil Rights (MAF)

(1) Processes both informal and formal complaints of employment discrimination under three primary statutes as amended: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16); Section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); and Sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a); (2) plans and administers a coordinated Agency special emphasis/affirmative employment program focusing on minorities, women, and persons with disabilities; (3) develops, implements, and monitors affirmative employment plans for minorities and women and for persons with disabilities required by the Equal Employment Opportunity Commission; (4) manages the agency disability reasonable accommodations process; (5) provides guidance and logistical support for an employee EEO advisory council reporting to the Administrator; (6) promotes the awarding of contracts under Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and Executive Orders 12432 and 12138 to disadvantaged businesses and women-owned small businesses; advocate for civil rights and related principles; (7) develops internal civil rights compliance policy for the Agency and serves as the internal advocate for civil rights and related principles; and (8) assesses the Agency's compliance with applicable civil rights statutes, executive orders, regulations, policies and programs.

Under the heading, *Office of Applied Studies (MC)*, delete the functional statement and substitute the following functional statement:

(1) Collects information on the incidence, prevalence, trends, correlates, and consequences of substance abuse and mental health problems in the United States; (2) collects information on the number, characteristics, conduct, and performance of facilities and organizations providing prevention and treatment services for substance abuse at the national and local level; (3) plans, directs, and conducts studies based on data collected by the Office of Applied Studies and other organizations of issues associated with substance abuse and mental health problems; (4) designs and carries out special data collection and analytic projects to examine topical issues for SAMHSA and other Federal agencies; (5) conducts epidemiologic, statistical, and policy studies of existing or emerging issues; (6) coordinates planning for program evaluation activities of the Agency; (7) manages Agency activities associated with the Paperwork Reduction Act and Office of Management and Budget clearance of information collection activities; (8) prepares reports and disseminates findings through Agency publications, the press, scientific journals, and electronic systems.

After the functional Office for the *Office of Applied Studies (MC)*, add the following titles and functional statements:

Office of the Director (MC–1)

(1) Provides overall leadership to the Office of Applied Studies; (2) determines that data collection and analytic activities are consistent with the mission and priorities of the Department and the Agency; (3) advises the Administrator and other Agency officials and staff on policy and technical issues associated with collecting information on substance abuse and mental health problems; (4) serves as Agency liaison to the Office of the Secretary, the Office of National Drug Control Policy, the Drug Enforcement Administration, and other Federal agencies; to State and Local Government agencies; and to non-governmental organizations and institutions on matters related to the collection and analysis of data on substance abuse and mental health problems.

Division of Population Surveys (MCA)

(1) Plans, develops, and manages the National Household Survey on Drug Abuse (NHSDA) and other surveys of the population to obtain information on substance abuse and mental health problems; (2) develops, implements, and evaluates new statistical and data collection methods, questionnaires, and sampling strategies for surveys; (3) analyzes information obtained from surveys conducted by the Office of Applied Studies to determine the incidence, prevalence, correlates, and consequences of substance abuse; (4) analyzes data from the NHSDA and related sources of information to examine program and policy issues and evaluate the impact of various Federal initiatives related to substance abuse; (5) prepares statistical publications, special reports, and analyses based on information derived from the NHSDA

and other surveys of the population; and (6) serves as a source of expertise on substance abuse survey methods, sampling design, statistics, and analytic techniques for SAMHSA and the Department.

Division of Operations (MCB)

(1) Manages the operational activities of the Office of Applied Studies (OAS) including development of the budget, oversight of procurement, and personnel; (2) manages SAMHSA responsibilities under the Paperwork Reduction Act including the process for obtaining the Office of Management and Budget clearance for information collection activities; (3) coordinates the planning for an implementation of SAMHSA program evaluations authorized by Section 241 of the Public Health Service Act; (4) develops methods for and collects information through the Drug Abuse Warning Network (DAWN), the Drug and Alcohol Services Information System (DASIS), and other data collection projects on admissions to and services provided by treatment programs in the United States; (5) prepares statistical publications and reports based on data obtained from DAWN, DASIS, and other sources; (6) manages the process for clearing, publishing, and disseminating studies and reports produced by OAA; (7) provides computer support for OAS, including the development of special software to facilitate the analysis and dissemination of information; and (8) organizes and manages various meetings to obtain advice and assistance from States with respect to the structure and content of OAS surveys.

Division of Analysis (MCC)

(1) Conducts epidemiologic, behavioral, demographic, and economic studies on topics of major and immediate concern in the area of substance abuse and mental health care; (2) conducts policy research on issues relevant to the demand for treatment for substance abuse and mental health problems and the supply of services; (3) determines the annual allotment of Block Grant funds to States and Territories for substance abuse prevention and treatment and mental health services and provides information and expertise to SAMHSA, the Department, and the States on issues related to the formula in accordance with legislative authorities; (4) directs special studies to examine such questions as the validity of data collection strategies such as those employed by the Drug Abuse Warning Network and the Drug and Alcohol Services Information System, the costs and long term effects of substance abuse treatment, and the problems and access to care of special populations; (5) manages special contracts developed to analyze data from multiple sources; and (6) provides advice and expertise to other components of SAMHSA and the Department on research topics and the design of studies relevant to concerns in the areas of substance abuse and mental health.

Section M–40, Delegations of Authority. All delegations and redelegations of authority to officers and employees of SAMHSA that were in effective immediately prior to the effective date of this reorganization shall continue in effect in them.

Dated: September 23, 1998.

Nelba Chavez,

Administrator, SAMHSA.

[FR Doc. 98–25992 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary, DOI.

ACTION: Notice, Reestablishment of Advisory Committee.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 CFR 101–6.1015(a). Following consultation with the General Services Administration and the Office of Management and Budget, notice is hereby given that the Secretary of the Interior is administratively reestablishing an advisory committee known as the Alaska Land Managers Forum. The purpose of the committee is to advise the Secretary on Alaska land and resources issues.

FOR FURTHER INFORMATION CONTACT: Deborah L. Williams, Special Assistant to the Secretary of the Interior for Alaska, Office of the Secretary, Department of the Interior, 1689 C Street, Suite 100, Anchorage, Alaska 99501–5151, (907) 271–5485.

SUPPLEMENTARY INFORMATION:

In the 40 years since Statehood, land ownership and management in Alaska has undergone a massive change. In 1959, nearly all of Alaska (99.8 percent) was owned by the Federal Government, and most of this land (365 million acres) was public domain under the jurisdiction of the Bureau of Land Management. Today, the State has received title to 90 million acres of a 104.5 million acre entitlement. Alaska Natives, through village and regional corporations established under the Alaska Native Claims Settlement Act of 1971, have become major land holders (37 million acres interim conveyed or patented) with the eventual ownership of 45.5 million acres. Finally, over 145 million acres in Federal ownership are in national forests, parks, and wildlife refuges. These changes in land status have, in turn, generated changes in the roles and relationships of the State and Federal agencies in Alaska. Also, Native corporations, as owners of 12 percent of the State's land area, have become major participants in the complexities of land and resource management.

Since Statehood, there have been several different types of cooperative planning entities charged with making an overview of Alaska issues and developing comprehensive recommendations to the State and Federal Governments. None of these planning entities exist today. The Secretary of the Interior is reestablishing the Alaska Land Managers Forum Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), for the purpose of advising him on land and resource issues in Alaska.

Membership on the Forum consists of individuals appointed by the Secretary of the Interior. Appointed as cochairs are the Special Assistant to the Secretary of the Interior for Alaska as the Federal Cochair, the Lt. Governor of the State of Alaska as the State Cochair, and the President of the Alaska Federation of Natives (or designee) as the Alaska Native Cochair. In addition, the charter provides for appointing the commissioners or directors of specified State agencies, the State directors of specified Federal land management agencies, and the heads of two Alaska Native organizations.

Administrative establishment of the Alaska Land Managers Forum is necessary and in the public interest.

Dated: September 16, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–25973 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–RP–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Recovery Plan for Multi-Island Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Recovery Plan for Multi-Island Plants. This plan covers 26 plant taxa, 25 of which are listed as endangered and 1 as threatened. All 26 taxa are now found on one or more of the 8 main Hawaiian Islands; 2 of the taxa are also found on one or more of three Northwestern Hawaiian Islands.

DATES: Comments on the draft recovery plan received by November 30, 1998 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–131); and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Christa Russell, Listing and Recovery Programs Lead, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This draft Recovery Plan for Multi-Island Plants covers 26 plant taxa, 25 of which are listed as endangered and 1 as threatened. These 26 Hawaiian plant taxa are, or were, widely distributed across the island chain. All 26 taxa are now found on one or more of the 8 main Hawaiian Islands; 2 of the taxa are also found on one or more of three Northwestern Hawaiian Islands. The species listed as threatened is *Isodendrion longifolium* (aupaka). The plants listed as endangered are:

Scientific name	Common name
Achyranthes mutica	no common name (NCN)
Adenophorus periens	pendant kihi fern
Bonamia menziesii	(NCN)
Cenchrus agrimonioides	kamanomano
Centaurium sebaeoides	awiwi
Cyanea grimesiana ssp. *grimesiana*	haha
Cyperus trachysanthos	puukaa
Diellia erecta	NCN
Euphorbia haeleeleana	NCN
Flueggea neowawraea	mehamehame
Hibiscus brackenridgei	mao hau hele
Isodendrion laurifolium	aupaka
Mariscus pennatiformis	NCN
Neraudia sericea	maaloa
Panicum niihauense	lauehu
Phyllostegia parviflora	(NCN)
Plantago princeps	ale
Platanthera holochila	(NCN)
Sanicula purpurea	(NCN)
Schiedea hookeri	(NCN)
Schiedea nuttallii	(NCN)
Sesbania tomentosa	ohai
Solanum incompletum	thorny popolo
Spermolepis hawaiiensis	(NCN)
Vigna o-wahuensis	Oahu vigna

The 26 taxa included in this draft plan grow in a variety of vegetation (grasslands, shrublands, forests, and mixed communities), elevational zones (coastal to subalpine), and moisture regimes (dry to wet). Only one species, *Solanum incompletum*, is found in subalpine forest. These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by introduced

vegetation; habitat degradation by wild, feral, or domestic animals (deer, mouflon, goats, pigs, sheep and cattle); agricultural and recreational activities; habitat loss and damage to plants from fires; predation by animals (cattle, deer, mouflon, pigs, goats, sheep, rats, slugs and snails, and insects); and natural disasters such as volcanic activity. In addition, due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from naturally occurring events such as hurricanes.

The objective of the draft recovery plan is to provide a framework for the recovery of these 26 taxa so that their protection by the Endangered Species Act is no longer necessary. The interim objective is to stabilize all existing populations of the Multi-island plants. To be considered stable, each taxon must be managed to control threats (e.g., fenced) and be represented in an *ex situ* (such as a nursery or arboretum) collection. In addition, a minimum total of three populations of each taxon should be documented on islands where they now occur or occurred historically. Each of these populations must be naturally reproducing and increasing in number, with a minimum of 25 mature individuals per population for long-lived perennials (*Flueggea neowawraea, Schiedea hookeri*, and *Schiedea nuttallii)* and a minimum of 50 mature individuals per population for short-lived perennials (*Achyranthes mutica, Adenophorus periens, Bonamia menziesii, Cenchrus agrimonioides, Cyanea grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Deillia erecta, Euphorbia haeleeleana, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Mariscus pennatiformis, Neraudia sericea, Panicum niihauense, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Sanicula purpurea, Sesbania tomentosa, Solanum incompletum*, and *Vigna o-wahuensis). Centaurium sebaeoides* and *Spermolepis hawaiiensis* are annuals.

For downlisting, a total of five to seven populations of each taxon should be documented on islands where they now occur or occurred historically. In certain cases, however, a particular taxon may be eligible for downlisting even if all five to seven of the populations are on only one island, provided all of the other recovery criteria have been met and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range.

Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials and a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of 5 consecutive years before downlisting is considered. A total of 8 to 10 populations of each taxon should be documented on islands where they now occur or occurred historically. As with downlisting, there may be certain cases in which a particular taxon may be eligible for delisting even if all 8 to 10 of the populations are on only one island, provided all of the other recovery criteria have been met and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials and a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of 5 consecutive years.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 23, 1998.

David J. Wesley,

Regional Director,

U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 98–25964 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) has submitted the Indian Child Welfare Act (ICWA) Annual Report information collection request for reinstatement with changes to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 5, 1998 the BIA published a notice in the **Federal Register** for sixty days requesting comments on the proposed information collection. The comment period expired on August 5, 1998 during which no public comments were received. The BIA is requesting OMB approval of the collection of information on a regular basis, within 30–60 days.

FOR FURTHER INFORMATION CONTACT: Copies of the collection of information and related self-explanatory form may be obtained by contacting Larry Blair, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4603–MIB, Washington, DC 20240. Phone (202) 208–2479.

DATES: OMB is required to respond to this request within 60 days after publication of this notice in the **Federal Register**, but may respond after 30 days, therefore your comments should be submitted to OMB on or before October 29, 1998 in order to assure maximum consideration.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to the attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–7340. Please provide a copy of your comments to Larry Blair, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS–4603–MIB, Washington, DC 20240. Telephone (202) 208–2479.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection required by the use of this form is necessary to comply with Pub. L. 95–608, ''The Indian Child Welfare Act'' and as codified in 25 CFR Part 23—Indian Child Welfare Act. This information is collected through the use of a consolidated caseload form by tribal

Indian Child Welfare Act program directors who are the providers of ICWA services. The information is used to determine the extent of service needs in local Indian communities, assessment of the Indian Child Welfare program effectiveness, and to provide data for the annual program budget justification. The responses to this collection of information are voluntary and the aggregated report is not considered confidential. The public is not required to respond unless a currently valid OMB control number is displayed.

II. Request for Comments

We specifically request your comments be submitted to the address provided above with a copy to the Bureau of Indian Affairs within 30 days on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

III. Data

Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Indian Child Welfare Act Annual Report.

OMB Number: 1076–0131.

Affected Entities: Individual members of Indian tribes who are living on or near a tribally, or legally defined service area.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 554.

Estimated Time per Application: one-half hour.

Estimated Total Annual Burden Hours: 277 hours.

Dated: August 24, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–25981 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to the Office of Management and Budget for Review under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, DOI.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) in accordance with the Paperwork Reduction Act (44 U.S.C. 3506 (c)(2)(A) has submitted the proposed information collection request to the Office of Management and Budget for approval of a form for the Indian Service Population and Labor Force Estimates. On June 5, 1998, the BIA published a Notice in the **Federal Register** requesting comments. The comment period closed on August 5, 1998 and no comments were received.

FOR FURTHER INFORMATION CONTACT: Copies of the documents contained in the information collection request may be obtained by contacting Miss Elizabeth Colliflower, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS–4603–MIB, Washington, DC 20240. Telephone: (202) 208–7435.

DATES: OMB is required to respond to this request within 60 days after publication of this Notice in the **Federal Register**, but may respond after 30 days; therefore, your comments should be submitted to OMB by October 29, 1998 to assure maximum consideration.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW, Washington, DC 20503. Telephone: (202)–395–7340. Please provide a copy to Elizabeth Colliflower, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS–4603–MIB, Washington, DC 20240. Telephone: (202) 208–7435.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is mandated by Congress through Pub. L. 102–477, Indian Employment, Training and Related Services Demonstration Act of 1992, Section 17. The Act requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population, by gender, income level, age, service area, and availability for work. The information is used by the U. S. Congress, other Federal Agencies, State and local governments and private sectors for the purpose of developing programs, planning, and to award financial assistance to American Indians. An agency may not conduct or sponsor, nor is any person required to respond to a collection of information unless it displays a currently valid OMB control number.

II. Request for Comments

We specifically request your comments be submitted to OMB at the address provided above with a copy to the Bureau of Indian Affairs by October 29, 1998 concerning the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

III. Data

Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Estimates.

OMB Number: 1076-(new).

Affected Entities: Indian tribes and members who are living on or near a tribally, or by law, a legally defined service area.

Frequency of Response: Biennially.

Estimated Number of Annual Responses: 557.

Estimated Time per Application: ½ hour.

Estimated Total Annual Burden Hours: 279 hours.

Dated: August 24, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–25982 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00-P]

Notice for Publication; AA–9257, AA–9264, AA–9303, AA–9307, AA–9308, AA–9319, AA–9323, and AA–9331; Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(h)(1), will be issued to the Calista Corporation, for 8 sites aggregating approximately 1,873.58 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 1 S., R. 101 W ., T. 1 S., R. 102 W., T. 3 S., R. 97 W., T. 4 S., R. 98 W., T. 5 S., R. 98 W., T. 1 N., R. 102 W., T. 2 N., R. 101 W.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, shall have until October 29, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

Jerri Sansone,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–25969 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–0315]

Call for Nominations on National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for one seat on the Bureau of Land Management (BLM), National Historic Oregon Trail Interpretive Center Advisory Board. The vacancy is for the representative of county or local elected office.

The Advisory Board, created in 1997 by the Secretary of the Interior, provides advice to BLM on matters pertinent to the Bureau of Land Management's responsibilities for the management of the National Historic Oregon Trail Interpretive Center. Nominations should be received 30 days from the publication date of this notice. In making appointments to Advisory Board, the Secretary will also consider nominations made by the Governor of Oregon. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to establish advisory councils to provide advice on land use planning and issues related to management of lands administered by BLM. In order to reflect a fair balance of viewpoints, the membership of the National Historic Oregon Trail Interpretive Center Advisory Board must be representative of the various interests concerned with the management of the National Historic Oregon Trail Interpretive Center. These include:

1. The Wallows Whitman Forest Supervisor or his designee.
2. A representative from Trail Tenders, Inc.
3. A representative from the Oregon Trail Preservation Trust.
4. A representative from the business community.
5. A representative of county or local elected office.
6. Two members of public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of Oregon. Nominees will be evaluated based on their demonstrated ability to analyze and interpret data and information, evaluate proposals, identify problems, and promote the use of collaborative management techniques; such as, long-term planning from and further development of the Interpretive Center, interagency coordination, management across jurisdictional boundaries, data sharing, information exchange, and partnerships. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks for the nominee's qualifications. The nomination period will also be announced through news releases issued by the BLM Vale District, Oregon office. Nominations for the Advisory Board should be sent to National Historic Oregon Trail Interpretive Center Advisory Board, Attention: Dave Hunsaker, PO BOX 987, Baker City OR, 97814.

DATES: All nominations should be received on or before November 6, 1998.

FOR FURTHER INFORMATION AND APPLICATION FORMS CONTACT: Dave Hunsaker, BLM Baker District, PO BOX 987, Bake City OR 97814.

Completed Nomination/Background Forms should be returned to the same address listed above.

Richard T. Watts,

Associate District Manager.

[FR Doc. 98–26016 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–415]

Notice of Investigation

In the Matter of Certain Mechanical Lumbar Supports and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 19, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of McCord Winn Textron Inc. of Manchester, New Hampshire. An amended complaint was filed on September 14, 1998. A supplementary letter was filed on September 16, 1998. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mechanical lumbar supports and products containing same by reason of infringement of claims 15 or 16 of U.S. Letters Patent 5,518,294. The amended

complaint further alleges that an industry in the United States exists or is in process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, as amended and supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained 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).

FOR FURTHER INFORMATION CONTACT: Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 23, 1998, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mechanical lumbar supports and products containing same by reason of infringement of claims 15 or 16 of U.S. Letters Patent 5,518,294, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

McCord Winn Textron Inc., 645 Harvey Road, Manchester, New Hampshire 03103

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

SchUkra Manufacturing Inc., 310 Carlingview Drive, Etobicoke, Ontario Canada M9W 5G1
SchUkra of North America Ltd., 1361 Ouellette Avenue, Windsor, Ontario Canada N8X 1J7
SchUkra U.S.A., Inc., 15045 Fogg Street, Plymouth, Michigan 48170
SchUkra Berndorf GmbH, Leobersdorfer Strasse 26, A2560 Berndorf, Austria
SchUkra Automobil-Erstausstatungs-GmbH, Gebertstrasse 5A, D90411 Nürnberg, Germany

(c) Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–P, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR. § 210.13. Pursuant to 19 CFR. §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: September 23, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–25965 Filed 9–28–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree and Stipulated Amendment Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and in accordance with section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), notice is hereby given that on September 11, 1998, a proposed Consent Decree in *United States* v. *City of Fort Lauderdale, Florida, et al.,* Civil Action No. 98–6982 was lodged with the United States District Court for the Southern District of Florida.

In this action the United States alleges that the defendants are liable under CERCLA for costs incurred by the United States in conducting response actions at the Wingate Superfund Site (the ''Site'') located in Fort Lauderdale, Broward County, Florida. The United States seeks injunctive relief for the remedy specified in the Record of Decision (''ROD'') and the recovery of response costs incurred in connection with the release of hazardous substances from the Site into the environment.

This consent decree represents a settlement for conducting the remedy at the Site and the recovery of response costs. The proposed settlement involves thirty-six settling defendants which comprise a group entailing the owner/operator, generators, and transporters of hazardous substances released at the Site. The proposed consent decree requires the settling defendants to finance and conduct the remedial design and remedial action (''RD/RA''), which includes construction of a geosynthetic membrane cap over the Site property. The proposed settlement provides the defendants with an orphan share compromise in an amount equal to past response costs ($1.8 million), plus projected future oversight costs ($1.6 million). Fourteen parties will also receive *de minimis* covenants from the United States limited to the remedy selected in the ROD, based upon the volume and toxicity of their representative waste contributions to the Site.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the proposed Second Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Fort Lauderdale, Florida, et al.,* Wingate Superfund Site), D.J. Ref. 90–11–2–1176. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of the Resources Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Florida, 500 E. Broward Boulevard, Fort Lauderdale, Florida 33394; Region 4, Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $31.25 (without exhibits), $53.25 (with exhibits) (25 cents per page reproduction cost) payable to the Treasurer of the United States.

Walker Smith,

Deputy Chief, Environment and Natural Resources Division.

[FR Doc. 98–26018 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq.

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a third proposed consent decree in *United States* v. *Reilly Industries, Inc.,* Civil Action No. IP–93–1045–C, was lodged on August 27, 1998, with the United States District Court for the Southern District of Indiana.

The proposed Consent Decree concerns the Reilly Tar and Chemical Superfund Site (''Site''), which is located on approximately 120 acres at 1500 South Tibbs Avenue, in Indianapolis, Indiana. Pursuant to the proposed consent decree and section 106 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606, Reilly Industries will implement all Remedial Design and Remedial Action activities needed to implement the Third, Fourth and Fifth Operable Unit remedies at the Site. The remedies include Soil Vapor Extraction (''SVE'') treatment of contaminated soils, placement of appropriate final covers over all remaining soil contamination at the property, recording of use restrictions on the property as an institutional control, as well as continued pumping and treatment of ground water until cleanup standards are attained. Reilly Industries will also pay the United States for unreimbursed past costs at the Site, pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in the amount of $171,159.29 and will pay all future response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Reilly Industries, Inc.,* DOJ Ref. ı90–11–2–1273.

The proposed consent decree may be examined at the Office of the United States Attorney, United States Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204; the Region V Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check (25 cents per page reproduction costs) in the amount of $23.75 for the consent decree only (95 pages) or $82.50 for the consent decree plus appendix (330 pages), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief Environmental Enforcement Section.

[FR Doc. 98–26019 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Department Policy, 28 C.F.R. § 50.7, notice is hereby given that a Consent Decree in *United States* v. *Ralph Riehl Jr. et al.,* Civil Action No. 89–226E was lodged with the United States District Court for the Western District of Pennsylvania on September 17, 1998. This Consent Decree resolves the United States' claims against EMI Company under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607(a), for response costs incurred at the Millcreek Dump Superfund Site in Millcreek Township, PA. The Consent Decree requires EMI Company to pay $875,000 in reimbursement of response costs relating to the Millcreek Dump Superfund Site cleanup. The Decree also requires EMI Company to pay a $100,000 civil penalty, pursuant to Section 106 of CERCLA, 42 U.S.C. 9606 for its failure to comply with a Unilateral Administrative Order issued by the Environmental Protection Agency on March 31, 1992, requiring cleanup at the Site.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl Jr. et al.,* DOJ No. 90–11–3–519.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 100 State Street, Suite 302, Erie, PA 16507; EPA Region III, 1650 Arch Street, Philadelphia, PA 91903; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $6.50, and please

reference *United States* v. *Ralph Riehl, Jr. et al.* DOJ No. 90–11–3–519.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 98–26035 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium (''ALABC'')

Notice is hereby given that, on July 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Lead-Acid Battery Consortium (''ALABC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, FIAMM SpA, Montecchio, ITALY; and Southern Coalition for Advanced Transportation (SCAT), Atlanta, GA have been added as parties to this venture. Also, Omni Oxide, L.L.C., Indianapolis, IN; and Kyungwon Battery Co., Ltd, Kyungki-do, KOREA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Lead-Acid Battery Consortium (''ALABC'') intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, Advanced Lead-Acid Battery Consortium (''ALABC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of July 29, 1992 (57 FR 33522). The last notification was filed with the Department on April 9, 1998.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26051 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Magnesium Alloys Production Process Venture Team (''AMAPP'')

Notice is hereby given that, on May 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 431 *et seq.* (''the Act''), Advanced Magnesium Alloys Production Process Venture Team (''AMAPP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Crucible Research Center, Pittsburgh, PA has been added as a party to this venture. Also, Manufacturing Sciences Corporation, Oak Ridge, TN; and Iowa State University, Ames, IA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Magnesium Alloys Production Process Venture Team (''AMAPP'') intends to file additional written notification disclosing all changes in membership.

On December 23, 1997, AMAPP Venture Team filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 24, 1998 (63 FR 9262).

The last notification was filed with the Department on April 29, 1998. A notice has not been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26045 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Agile Precision Sheet Metal Stamping (''Near Zero Stamping'')

Notice is hereby given that, on May 6, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Agile Precision Sheet Metal Stamping (''Near Zero Stamping'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Troy Design and Manufacturing Company, Redford, MI has been added as a party to this venture. Also, Classic Companies, Troy, MI has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Agile Precision Sheet Metal Stamping (''Near Zero Stamping'') intends to file additional written notification disclosing all changes in membership.

On September 14, 1995, Agile Precision Sheet Metal Stamping (''Near Zero Stamping'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 31, 1996 (61 FR 3463).

The last notification was filed with the Department on January 3, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6038).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26036 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biosynthesis of Chemical Intermediates

Notice is hereby given that, on July 10, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ('' the Act''), Biosynthesis of Chemical Intermediates has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust

plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Henkel Corporation, Cincinnati, OH; and General Electric Company, Schenectady, NY. The nature and objectives of the venture are to develop and demonstrate a biocatalyst and process for the production of novel chemical intermediates.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–26044 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research & Development Corporation (''BRDC'')

Notice is hereby given that, on June 12, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''). Biotechnology Research and Development Corporation (''BRDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Seminis Vegetable Seeds, Inc., Woodland, CA has been added as a party to this venture.

On May 20, 1998, BRDC issued to Seminis Vegetable Seeds, Inc. (''Seminis''), and Seminis purchased from BRDC, 746⅔ shares of common stock, without par value, of BRDC. Simultaneously, with the issuance and purchase of the shares of the common stock, BRDC and Seminis entered into an Agreement to be bound by the terms and conditions of the BRDC Master Agreement effective as of June 10, 1998, by and among BRDC and its common stockholders. Seminis has the rights set forth in the BRDC Master agreement in all project technology made, discovered, conceived, developed, learned, or acquired by or on behalf of BRDC in connection with, or arising out of, or as the result of, a research project in existence while Seminis is a common stockholder of BRDC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Biotechnology Research and Development Corporation (''BRDC'') intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, Biotechnology Research and Development Corporation (''BRDC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on May 9, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 5, 1997 (62 FR 30882).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26039 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation (''BRDC'')

Notice is hereby given that, on March 9, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Biotechnology Research and Development Corporation (''BRDC'') has filed written notifications simultaneously with the Attorney general and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Schering-Plough Animal Health Corporation, Madison, NJ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Biotechnology Research and Development Corporation (''BRDC'') intends to file additional written notification disclosing all changes in membership.

On April 12, 1998, Biotechnology research and Development Corporation (''BRDC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1998 (53 FR 16919).

The last notification was filed with the Department on May 9, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 5, 1997 (62 FR 30882).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–26047 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Collaborative Decision Support for Industrial Process Control

Notice is hereby given that, on April 1, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Collaborative Decision Support for Industrial Process Control has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Celanese Corporation, Dallas, TX; and Union Carbide Corporation, Danbury, CT have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Collaborative Decision Support for Industrial Process Control intends to file additional written notification disclosing all changes in membership.

On May 9, 1995, Collaborative Decision support for Industrial Process Control filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 1995 (60 FR 32169).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26037 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Consortium for Non-Contract Gauging (''CNCG'')

Notice is hereby given that, on July 23, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Consortium for Non-Contact Gauging (''CNCG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Eaton Corporation, Cleveland, OH has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Consortium for Non-Contact Gauging (''CNCG'') intents to file additional written notification disclosing all changes in membership.

On March 7, 1995, The Consortium for Non-Contact Gauging (''CNCG'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 24, 1995 (60 FR 27559).

The last notification was filed with the Department on March 17, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act of April 29, 1997 (62 FR 23267).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26041 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum (GURF) Project No. 3

Notice is hereby given that, on March 20, 1998, pursuant to Section 6(a) of the National Cooperation Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (GURF) Project No. 3, titled ''Floating LNG Production Vessel Study'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Amoco Production Co., Houston, TX; BG plc Research and Technology, Leicestershire, LE11 3GR, ENGLAND; BP Exploration Operating Company Limited, Middlesex, TW16 7LN, UNITED KINGDOM; Chevron Petroleum Technology Company, San Ramon, CA; Conoco Inc., Houston, TX; Gaz de France, Nantes Cedex 1, FRANCE; Statoil, N–7005 Trondheim, NORWAY; and VICO Enterprises, Inc., Houston, TX. The purpose of the venture is to investigate the economic and technical feasibility of establishing a vessel as a floating LNG facility designed to liquefy and export approximately 500 million standard cubic feet of liquefied natural gas per day. The general objectives of the venture are to evaluate the possible liquefaction processes for use on a vessel, develop a preliminary production vessel configuration and definition of both a steel hull and a concrete hull vessel; a concept safety assessment; and preliminary capital and preliminary operating cost estimates for the production vessel.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26054 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—General Motors Corporation/Extrude Hone Corporation

Notice is hereby given that, on April 16, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Motors Corporation/Extrude Hone Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Pontiac, MI; and Extrude Hone Corporation, Irwin, PA. The nature and objectives of the venture are to develop and demonstrate the use of the three-dimensional printing process for the direct fabrication of automotive tooling for lost foam castings.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26043 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on May 27, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3M Electronics Products Division, Austin, TX; Compeq Manufacturing Co., Taoyuan Hsien, TAIWAN; Ericsson Telecom AB, Stockholm, SWEDEN; Fairchild Semiconductor, Portland, ME; Flextronics International, San Jose, CA; Fujitsu Computer Packaging, San Jose, CA; LSI Logic, Milpitas, CA; MicroModule Systems, Cupertino, CA; SGS Thompson, Cedex, FRANCE; Silicon Graphics Computer Co., Mountain View, CA; and Symbosis Logic, Fort Collins, CO have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on April 23, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 5, 1997 (62 FR 30882).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–26046 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for Aids Drug Development

Notice is hereby given that, on July 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Inter Company Collaboration for Aids Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Trimeris, Inc., Durham, NC has been added as a party to this venture. Also, Hoechst AG/Hoechst Marion Roussel has been dropped as a party to this venture. In addition, the Dupont Merck Pharmaceutical Company has changed its name to Dupont Pharmaceuticals Company.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for Aids Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for Aids Drug Development filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on September 15, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 31, 1997 (62 FR 58982).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26048 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 23, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Focused Research, Inc., Santa Clara, CA has been added as a party to this venture. Also, SDL, Inc., San Jose, CA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, the National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on April 10, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 1998 (63 FR 33419).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26040 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electrical Manufacturers Association (''NEMA'')

Notice if hereby given that, on March 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Electrical Manufacturers Association (''NEMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Diasonics Vingmed, Santa Clara, CA; DICOMIT Imaging Systems Corporation, Richmond Hill, Ontario, CANADA; and Secure Archive, Boulder, CO have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Electrical Manufacturers Association (''NEMA'') intends to file additional written notification disclosing all changes in membership.

On November 14, 1997, National Electrical Manufacturers Association (''NEMA'') filed its original notification pursuant to Section 6(a) of the Act. A notice has not been published.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–26057 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum E&P Research Cooperative (''Cooperative'')

Notice is hereby given that, on July 14, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 16 U.S.C. 4301 *se seq.* (''the Act''), Petroleum E&P research Cooperative (''Cooperative'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications

were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BP Exploration Operating Company Limited, Sunbury, Thames, UNITED KINGDOM; and Chevron Petroleum Technology Company, Houston, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petroleum E&P Research Cooperative (''Cooperative'') intends to file additional written notification disclosing all changes in membership.

On January 16, 1997, Petroleum E&P Research Cooperative (''Cooperative'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a Notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 13, 1997 (62 FR 6801).

The last notification was filed with the Department on August 22, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63389).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26055 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environment Research Forum (''PERF'')

Notice is hereby given that, on June 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Koch Refinging Company, St. Paul, MN; and Coastal Biotechnology, Inc., Roanoke, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petroleum Environmental Research Forum (''PERF'') intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, Petroleum Environmental Research Forum (''PERF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on November 12, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 1997 (62 FR 63959).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26042 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'') Project No. 97–08

Notice is hereby given that, on July 23, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Petroleum Environmental Research Forum (''PERF'') Project No. 97–08: Scientifically-Sound-Based Decision Tools for E&P Sites has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Gas Research Institute, Chicago, IL; and American Petroleum Institute, Washington, DC have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Petroleum Environmental Research Forum (''PERF'') Project No. 97–08: Scientifically-Sound-Based Decision Tools for E&P Sites intends to file additional written notification disclosing all changes in membership.

On January 26, 1998, the Petroleum Environmental Research Forum (''PERF'') Project No. 97–08: Scientifically-Sound-Based Decision Tools for E&P Sites filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 14, 1998 (63 FR 18226).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26053 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on July 30, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, POSC amended its Certificate of Incorporation to extend voting privileges to all of its members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation (''POSC'') intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation (''POSC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on April 24, 1998. The notice has not been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26052 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on April 24, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Datasim Education B.V. Amsterdam, THE NETHERLANDS has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation (''POSC'') intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation (''POSC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on March 2, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 13, 1998 (63 FR 37589).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–26056 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the Natiional Cooperative Research and Production Act of 1993—Praxair, Inc.

Notice is hereby given that, on June 2, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Praxair, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Phillips Petroleum Company, Bartlesville, OK has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Praxair, Inc. intends to file additional written notification disclosing all changes in membership.

On November 13, 1997, Praxair, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 19, 1998 (63 FR 8477). No other notifications have been filed.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26038 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation (''SRC'')

Notice is hereby given that, on March 12, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Research Corporation (''SRC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lucent Technologies, Murray Hill, NJ; Northrop Gruman, Baltimore, MD; and Neo Linear, Inc., Pittsburgh, PA have been added as parties to this venture. Also, American Telephone & Telegraph Company, Murray Hill, NJ; ANACAD Electrical Engineering Software, San Jose, CA; FAMTECH/Speedfam, Chandler, AZ; Ford Motor Company, Dearborn, MI; LV Software, San Jose, CA; Meta-Software, Sunnyvale, CA; MicroUnity Systems Engineering, Sunnyvale, CA; SEMATECH, Inc., Austin, TX: Technology Modeling Associates, Sunnyvale, CA; and Westinghouse Electric Corporation, Pittsburgh, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remain open, and Semiconductor Research Corporation (''SRC'') intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation (''SRC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on December 1, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 1998 (63 FR 7180).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–26050 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Universal Instruments Corporation (''Universal'')

Notice is hereby given that, on March 20, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Universal Instruments Corporation (''Universal'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Universal Instruments Corporation, Binghamton, NY; Allen-Bradley Co., Inc., Mayfield Hts., OH; AMKOR Electronics Inc., Chandler, AZ; Cabletron Systems Inc., Rochester, NY; Flip Chip Technologies, Phoenix, AZ; Digital Equipment Corporation, Hudson, MA; Eastman Kodak Company, Rochester, NY; ERICSSON RADIO SYSTEMS AB, Stockholm, SWEDEN; Heller Industries, Florham Park, NJ; IBM Corporation, Endicott, NY; Kester

Solder Div., Litton Systems, Inc., DesPlaines, IL; LSI Logic, Milpitas, CA; Nokia Mobile Phones, Ltd., Salo, FINLAND; Philips Consumer Communications, LeMans, FRANCE; Photo Stencil, Colorado Springs, CO; Robert Bosch GmbH, Stuttgart, GERMANY; VLSI Corporation, San Jose, CA; SGS-Thomson Microelectronics, Inc., Carrollton, TX; and Plexus Corporation, Neenah, WI. The nature and objectives of the venture are to acquire an in-depth understanding of all the material interactions and process limitations affecting Chip Size Packaging (''CSP'') and Direct Chip Attach (''DCA'') technologies which can be used to produce high quality products at high yields in the electronics industry. The overall objective of the venture is to provide fully documented processes which can be used to produce high quality product at high yields.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–26049 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1953–98; AG Order No. 2181–98]

RIN 1115–AE26

Redesignation of Liberia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice redesignates Liberia under the Temporary Protected Status (TPS) program in accordance with section 244(b)(1) of the Immigration and Nationality Act, as amended (the Act). This notice also describes the procedures with which eligible aliens who are nationals of Liberia (or who have no nationality and who last habitually resided in Liberia) must comply to register for TPS.

The Attorney General initially designated Liberia for TPS effective March 7, 1991, and redesignated Liberia for TPS effective April 7, 1997. The designation and redesignation expired on September 28, 1998. This new redesignation of Liberia makes TPS available to eligible Liberian TPS applicants who have continuously resided in the United States since September 29, 1998, and who have been continuously physically present in the United States since September 29, 1998.

EFFECTIVE DATE: This Liberian TPS redesignation is effective from September 29, 1998, until September 28, 1999. The registration period for this redesignation begins on September 29, 1998 and will remain in effect until March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Statutory Provisions for Redesignation of TPS

Section 308(a)(7) of Pub. L. 104–132 renumbered section 244A of the Act. Under this section, renumbered as section 244 of the Act (8 U.S.C. 1254), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Subsection 244(b)(1) of the Act implicitly permits the Attorney General to ''redesignate'' (that is, to designate under the TPS program a country that has been previously designated), as well as designate for the first time, if she first finds that the required conditions are met. The act of redesignation is referenced in subsection 244(c)(1)(A)(I), which requires that ''the alien has been continuously physically present since the effective date of the *most recent designation* of that state.'' (Emphasis added.) This provision thus explicitly contemplates more than one designation.

The TPS statute imposes a requirement that, in order to be eligible for TPS, an alien must have been continuously physically present in the United States since the effective date of the most recent designation. This means that, regardless of when a designation may have been extended, in order to receive TPS an alien must have been physically present in the United States from the date of initial designation or from the date of any redesignation. Section 244(c)(1)(A)(I) of the Act. The statute also authorizes the Attorney General to impose an additional requirement that an alien must have continuously resided in the United States since such date as the Attorney General may designate. Section 244(c)(1)(A)(ii) of the Act.

The required September 29, 1998, residence date will apply to all applicants. Certain trips from the United States after September 29, 1998, will be allowed under the definitions of ''continuously physically present'' and ''continuous residence.'' See definitions at 8 CFR 244.1, formerly 8 CFR 240.1.

The initial registration period for this TPS redesignation continues from September 29, 1998 until March 29, 1999, in accordance with the required 180-day minimum period. Section 244(c)(1)(A)(iv) of the Act.

Redesignation of Liberia Under the TPS Program

On March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months. 56 FR 12746. The Attorney General subsequently extended the designation of Liberia under the TPS program for additional periods, with the last extension valid until September 28, 1998. On March 31, 1998, the Attorney General published a Notice of Termination of Designation of Liberia under the TPS program effective September 28, 1998. 63 FR 15437. This determination was based on the understanding that the Department of State would review security conditions in Liberia prior to the September 28, 1998, expiration date of the TPS designation and redesignation for Liberia. The recent recurrence of armed conflict in Liberia and the Department of State review of conditions has caused the Attorney General to reconsider TPS status for Liberia and recommend the redesignation of TPS for Liberia.

In her discretion, the Attorney General has determined that, in light of renewed conflict in Liberia, the temporary conditions that exist in Liberia warrant redesignation. Therefore, pursuant to section 244(b)(1) of the Act, this notice grants Liberia a redesignation of TPS.

By operation of statute, this redesignation extends the availability of TPS only to Liberians who have been continuously physically present in the United States from the effective date of this redesignation, September 29, 1998.

Notice of Redesignation of Liberia Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254), and pursuant to the discretion vested in the Attorney General under subsection 244(b)1) of the

Act, I have consulted with the appropriate agencies of the U.S. Government concerning redesignation of Liberia under the Temporary Protected Status program. From these consultations I find that, due to renewed conflict in Liberia and ongoing insecurity, there exist extraordinary and temporary conditions that prevent aliens who are nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) from returning to Liberia in safety. In consideration of these consultations and other relevant factors, and in the exercise of my discretion, I order redesignation of Liberia as follows:

(1) Liberia is redesignated under section 244(b)(1)(C) of the Act. Nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have ''continuously resided in the United States'' since September 29, 1998, and have been ''continuously physically present'' since [September 29, 1998, whichever is later] may apply for Temporary Protected Status within the registration period which begins September 29, 1998 and ends on March 29, 1999.

(2) I estimate that there are no more than 10,000 nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who are currently in nonimmigrant or unlawful status (including the earlier Liberian TPS registrants) and are, therefore, eligible for Temporary Protected Status under this redesignation.

(3) Except as specifically provided in this notice, applications for TPS by nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) must be filed pursuant to the provisions of 8 CFR part 244, formerly 8 CFR 240. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on September 29, 1998 and will remain in effect until March 29, 1999.

(4) The Attorney General has determined that there will be no fee for an Application for Temporary Protected Status, Form I–821, filed in connection with this redesignation of Liberia under the TPS program.

(5) TPS registrants must submit a Form I–765 along with Form I–821 as part of the registration process. If a TPS registrant intends to work, he or she must obtain employment authorization. The filing fee for all Employment Authorization Documents (Forms I–765) received by the Service before October 13, 1998, is seventy dollars ($70). On October 13, 1998, the Immigration and Naturalization Service will implement a revised fee schedule and the prescribed fee for all Forms I–765, received by the Service on or before October 13, 1998, will be on hundred dollars ($100). Form I–765 may be submitted without the required fee if a properly documented fee waiver requests in accordance with 8 CFR 244.20, formerly 8 CFR 240.20, accompanies the form.

(6) Information concerning the TPS redesignation program for nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: September 24, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–26033 Filed 9–28–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Parole Commission

[6P04091]

Sunshine Act Meeting; Public Announcement—Pursuant to The Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice United States Parole Commission.

DATE AND TIME: 9:30 a.m., Thursday, October 1, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately four cases decided by the national Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 24, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–26124 Filed 9–25–98; 10:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

[6P04091]

Sunshine Act Meeting; Public Announcement—Pursuant to The Government tn the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 11:00 a.m. Thursday, October 1, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion and proposal to conform 28 CFR § 2.80 to the Guideline Worksheet Instructions.
4. Discussion and proposal to revise the Procedures Manual, appendix 9, in regard to transfer treaty cases.
5. Discussion and proposal to revise the procedures at § 2.76 regarding reduction in minimum sentences for District of Columbia prisoners.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–4596.

Dated: September 24, 1998.

Rockne Chickinell,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 98–26125 Filed 9–25–98; 10:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Applications for Approval of Sanitary Toilet Facilities

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 can 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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Applications for Approval of Sanitary Toilet Facilities. MSHA is particularly interested in comments which:

*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.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before November 30, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Management Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tamale@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

A sanitary toilet is required by 30 CFR 71.500 at surface coal mines at a location that is convenient to each work site and by 30 CFR 75.1712–6 in underground coal mines within 500 feet of each working place where miners are regularly employed. The standards further require that only sanitary toilet facilities, approved by MSHA, be used. Manufacturers may either call or write to MSHA to learn what information is required to be included on applications for approval. To obtain approval, a manufacturer of sanitary toilet facilities, must submit an application and provide sufficient information for an effective evaluation of the sanitary features of the facilities. Applications are submitted to the Division of Health, Coal Mine Safety and Health, MSHA.

II. Current Actions

MSHA uses the information to properly ascertain if the mine operator is in compliance with the applicable standards.

Type of Review:

Agency: Mine Safety and Health Administration.

Title: Applications for Approval of Sanitary Toilet Facilities.

OMB Number: 1219–0101 (extension).

Agency Number: MSHA 209.

Affected Public: Business or other for profit.

Total Respondents: 2.

Frequency: On occasion.

Average Time per Response: 8.

Total Burden Hours: 16.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 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 information collection request; they will also become a matter of public record.

Dated: September 24, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–25998 Filed 9–28–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hoist Operators Physical Fitness; and Physical Requirements for Mine Rescue Teams and Man Hoist Operators

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 can 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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Hoist Operators Physical Fitness; and Physical Requirements for Mine Rescue Teams. MSHA is particularly interested in comments which:

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before November 30, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Mrs. Theresa O'Malley, Program Analysis Office, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR Sections 56.19057 and 57.19057 require the annual certification of hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyances is dependent upon the attentiveness and physical capabilities of the hoist operators, especially in emergency evacuations. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. Unlike other industries, the hazards of mining are not reduced in small operations because of the volume of material to be processed and the heavy equipment used. This precludes making exceptions to safety standards for small mines in order to reduce the burden imposed by the standard. However, small mine operators are likely to have fewer hoist operators.

Section 49.7(a) requires each mine rescue team member to be examined annually by a physician who shall certify that he/she is physically fit to perform mine rescue and recovery work for a prolonged period under extreme conditions. Small operators are not exempt from the requirement for a medical examination for mine rescue personnel; however, they are allowed to provide an approved alternative mine rescue capability.

II. Current Actions

Title 30 CFR Sections 56.19057 and 57.19057 require the annual certification of hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyance is dependent upon the attentiveness and physical capabilities of the hoist operators, especially during emergency evacuations. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. Small mine operators are likely to have fewer hoist operators.

Section 49.7(a) requires each member of a mine rescue team to be examined annually by a physician who shall certify that he/she is physically fit to perform mine rescue and recovery work for a prolonged period under strenuous conditions.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Record of all Certified and Qualified Persons; Hoist Operators Physical Fitness; and Physical Requirements for Mine Rescue Teams.

OMB Number: 1219–0049.

Agency Number: MSHA 221.

Record keeping: At least one year from the time that certification is obtained.

Affected Public: Business or other for-profit Cite/Reference/Form: 30 CFR 56/57.19057 and 30 CFR 49.7.

Total Respondents: 1.154.

Frequency: On occasion.

Total Responses: 18,206.

Averge Time per Response: 50 minutes.

Estimated Total Burden Hours: 1,511.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $5,277,703.

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 information collection request; they will also become a matter of public record.

Dated: September 24, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–25999 Filed 9–28–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Records of All Certified And Qualified Persons; and Man Hoist Operators Physical Fitness

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 can 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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of all Certified and Qualified Persons; and Man Hoist Operators Physical Fitness. MSHA is particularly interested in comments which:

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before November 30, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT:

Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR Sections 75.155, 75.159, 75.160, 75.161, 77.105, 77.107, 77.107–1, and 77.106. Sections 75.155 and 77.105 explain the qualifications to be a qualified hoisting engineer or a qualified hoist man on a slope or shaft sinking operation. These requirements are necessary so that it can be determined who is qualified to perform these tasks and how they can become qualified.

Sections 75.159 and 77.106 requires the operator of a mine to maintain a list of all certified and qualified persons designated to perform certain duties around a mine. This list must be posted.

II. Current Actions

30 CFR 75.155, 75.159, 75.161, and 77.105, 77.106, and 77.107–1, require coal operators to maintain a list of persons who are certified and those who are qualified to perform duties which requires specialized expertise at underground and surface coal mines, i.e., conduct test for methane and oxygen deficiency, conduct tests of air flow, perform electrical work, repair energized surface high-voltage lines, and perform duties of hoisting engineer. The regulations also require the mine operator to have an approved training plan so that the qualified and certified people can properly perform their tasks. The recorded information is necessary to ensure that only persons who are properly trained and have the required number of years of experience are permitted to perform these duties. MSHA does not specify a format for the recordkeeping; however, it normally consists of the names of the certified and qualified person listed in two columns on a sheet of paper. One column is for certified persons and the other is for qualified persons.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Records of All Certified And Qualified Persons; and Man Hoist Operators Physical Fitness.

OMB Number: 1219–0049 (current OMB number; however, OMB will be requested to provide a new number pending reapproval because the Agency is separating these sections from the currently approved 1219–0049).

Recordkeeping: One year.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
75.155	0	0	0	0	0
75.159	1,064	4	4,256	5 minutes	353
75.161	1,064	1	1,064	8 hrs	8,512
77.105	0	0	0	0	0
77.106	1,699	4	6,796	5 minutes	564
77.107–1	1,699	1	1,699	8 hrs	13,592
Totals	5,526	10	13,815	16.16 hours	23,021

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $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 information collection request; they will also become a matter of public record.

Dated: September 24, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–26000 Filed 9–28–98; 8:45 am]

BILLING CODE 4510–43–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Collection, Comment Request Entitled Small Business Competitiveness Demonstration Program

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

ACTION: Notice of request for public comment regarding the reinstatement, with changes, of a previously approved collection (OMB Clearance 9000–0100) for which approval is now being requested by OFPP.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), OFPP is notifying the public concerning a request to reinstate, with changes, a previously approved information collection requirement concerning the Small Business Competitiveness Demonstration Program.

DATES: Comments may be submitted on or before November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 202–395–3302.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Administrator, Office of Federal Procurement Policy, Room 352, OEOB, Washington, DC 20503. Please cite the Small Business Competitiveness Demonstration Program.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100–656), as amended, established the Small Business Competitiveness Demonstration Program (Program). The Program was established (1) to demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targeted goaling and management technques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. Section 401 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) extends the Program indefinitely.

Under the current Federal Acquisition Regulation (FAR), small businesses are

required only to represent their status (i.e., whether small, small disadvantaged, or women-owned small businesses). Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size as well as the status of the small business concern receiving any award for services in the four designated industry groups and products or services in the agencies' ten targeted industry categories. The size of the small businesses is collected in terms of the number of employees or dollar volume of sales. The number of employees is based on the average of the pay periods for the last twelve months. The volume of sales is based on the average annual gross revenue for the last three fiscal years (see FAR 19.101). The size information is collected during the solicitation process as part of the representation requirement. This data will be used to evaluate the small business impact of the Program.

The former information collection requirements set forth in section 714(b) of the Small Business Competitiveness Demonstration Program Act, pertaining to the simplified system to collect data on the participation of small business concerns as subcontractors under prime contracts for architectural and engineering (A&E) services, expired on September 30, 1997. Accordingly, this proposed reinstatement excludes that data collection requirement.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time to gather the information and complete the solicitation provision. The annual reporting burden is estimated as follows: Respondents, 603,524; responses per respondent, 1; total annual responses, 603,524; preparation hours per response, .08333, and total response burden hours, 50,273.

Obtaining Copies of Proposals

A copy of the Paperwork justification is available from the Office of Federal Procurement Policy, Room 352, OEOB, Washington, DC 20503. Please cite the Small Business Competitiveness Demonstration Program in all correspondence.

Deidre A. Lee,

Administrator.

[FR Doc. 98–26058 Filed 9–28–98; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 98–131]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

DATES: All comments should be submitted on or before November 30, 1998.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of review: Extension.

Need and Uses: NASA is required to account for Government-owned/contractor-held property in accordance with SFFAS #6. NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 1400.

Responses Per Respondent: 1.

Annual Responses: 1400.

Hours Per Request: 400 @ 16 hrs ea 1000 @ 2 hrs ea.

Annual Burden Hours: 8,400.

Frequency of Report: annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–25901 Filed 9–28–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–134]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR). Some members of the Task Force will be participating via teleconference.

DATES: Tuesday, November 3, 1998, 10:00 a.m.–3:00 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 5H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis McSweeney, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4556.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the results of the IOR Task Force Working Group on International Space Station Software assessment.
—Review the results of the IOR Task Force Working Group on International Space Station Training assessment.
—Receive a briefing from the International Space Station Program Office on the current status of the International Space Station.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: September 18, 1998.

Mathew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–25900 Filed 9–28–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–132)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, November 12, 1998, 9:00 a.m. to 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Room 5W40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Notify Mr. Norman B. Starkey, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4453, if you plan to attend.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will meet to deliberate topics for inclusion in its Annual Report for 1998. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The Aerospace Safety Advisory Panel is currently chaired by Richard D. Blomberg and is composed of 9 members and 6 consultants. The meeting will be open to the public up to the capacity of the room (approximately 40 persons including members of the Panel).

Dated: September 21, 1998.

Matthew M. Crouch,

NASA Advisory Committee Management Officer.

[FR Doc. 98–25902 Filed 9–28–98; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request; Institute of Museum and Library Services

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services 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. 3508(2)(A)]. This program helps to ensure that requested data can 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 Institute of Museum and Library Services is soliciting comments concerning the proposed Conservation Assessment Program evaluation questionnaires.

A copy of the proposed information collection request 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 30, 1998.

IMLS is particularly interested in comments that 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: Dr. Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 802, Washington, D.C. 20506. Dr. Danvers can be reached on (202) 606–2478 or at *rdanvers@imls.fed.us.*

SUPPLEMENTARY INFORMATION:

I. Background

The Museum and Library Services Act, Pub. L. 104–208 enacted on September 30, 1996, authorized the IMLS to make grants to improve library and museum services. As part of its continuing efforts to ensure that all grant programs achieve their goals, the Institute has embarked on a project to evaluate all of its grant programs. This evaluation focuses on the Conservation Assessment Program. The Conservation Assessment Program (CAP) provides eligible museums with a source of general conservation survey grants. The general conservation survey or assessment provides an overview of all of the museum's collections, as well as its environmental conditions, and policies and procedures relating to collections care. The assessment report assists the institution by:

- Providing recommendations and priorities for conservation actions, both immediate and long-term;
- Facilitating the development of long-range institutional plans for the care and preservation of the collections; and
- Serving as a fundraising tool for future conservation projects.

II. Current Actions

This is a new information collection. The data collection is needed to assess the effectiveness of the Conservation Assessment Program.

Agency: Institute of Museum and Library Services.

Title: Conservation Assessment Program Data Collection.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time only.

Affected Public: Museum personnel, conservation professionals.

Number of Respondents: 2500.

Estimated Time Per Respondent: 1 hour average per respondent.

Total Burden Hours: 2500.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, telephone (202) 606–4648.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 98–25921 Filed 9–28–98; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[IA–98–047]

In the Matter of MR. David Milas; Order Prohibiting Involvement in NRC-Licensed Activities

I

Mr. David Milas (Mr. Milas) was formerly employed by the Commonwealth Edison Company (ComEd or Licensee) at the Dresden Nuclear Station (Dresden or facility) and was an applicant for a reactor operator's (RO) license at that facility. ComEd is the holder of License Nos. DPR–19 and DPR–25 issued by the Nuclear

Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize ComEd to operate Dresden Units 2 and 3 in accordance with the conditions specified therein.

II

On July 1, 1996, officials at Dresden notified the Commission that the NRC examination for reactor operator licenses, due to be administered at Dresden on July 8, 1996, appeared to have been compromised, as portions of that examination had been found in a copy machine. The NRC Office of Investigations (OI) immediately began an investigation into this matter. The OI investigation indicated that the NRC examination was compromised and originally identified only one individual that was involved, an applicant for an NRC senior reactor operator's (SRO) licensee. Upon further investigation, OI also identified Mr. Milas, an applicant for an NRC RO license, as being directly involved with the compromise of the NRC examination.

The OI investigation found that on June 29, 1996, Mr. Milas and the SRO license applicant were studying for their respective examinations in the Dresden Training Building. During that day, they entered the unlocked office of the Dresden licensing instructors to look for written evaluations that their instructors had made of them. According to both individuals, instructors had previously informed their class that study materials could be found in the instructors' office, and the instructors had indicated where the keys could be found for locked cabinets and desks in their office. The two individuals obtained the necessary keys in the instructors' office, unlocked desks and cabinets, and found the NRC operator licensing examination. The SRO applicant photocopied the NRC examination, while Mr. Milas posted himself at a window to watch for anyone entering the training building.

OI also determined that Mr. Milas returned to the same photocopy machine on June 30, 1996, and made another copy of the examination from the copy he had obtained on June 29, 1996.

The OI investigators coordinated the results of their investigation with the U.S. Attorney, Chicago, Illinois, and Mr. Milas was subsequently prosecuted for compromising the NRC examination. On May 14, 1998, Mr. Milas pleaded guilty in the United States District Court for the Northern District of Illinois to a criminal charge involving the compromise of a written examination for NRC reactor operators' licenses. As a part of his guilty plea, Mr. Milas agreed to never reapply for a position as a reactor operator at any facility under the jurisdiction, administration, or control of the NRC.

III

The NRC must be able to rely on a facility licensee and its employees to comply with all NRC rules and regulations. Based on the OI investigation and the criminal conviction, the NRC has concluded that Mr. Milas violated the NRC's rules prohibiting deliberate misconduct at nuclear power facilities and the compromise of the integrity of NRC examinations. Specifically, 10 CFR 50.5(a)(1), ''Deliberate Misconduct,'' prohibits any employee of an NRC licensee (ComEd) from engaging in deliberate misconduct that causes or, but for detection would have caused, a licensee to be in violation of any rule or regulation issued by the Commission. Additionally, 10 CFR 55.49, ''Integrity of Examinations and Tests,'' provides in part that applicants for NRC RO and SRO licenses and facility licensees (ComEd) shall not engage in any activity that compromises the integrity of any test or examination required by 10 CFR Part 55, ''Operator's Licenses.'' The NRC has concluded that Mr. Milas'' actions constituted deliberate misconduct and also constituted a deliberate violation of 10 CFR 55.49. Mr. Milas' deliberate actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to refrain from deliberately violating NRC rules and regulations.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Milas were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Milas be prohibited from any involvement in NRC-licensed activities for a period of five years from the effective date of this Order. If Mr. Milas is involved with another licensee in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Milas is required to notify the NRC of his first employment in NRC-licensed activities in the five years following the prohibition period.

IV

Accordingly, pursuant to sections 57, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered that:*

1. David Milas is prohibited for five years from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Milas is involved with another licensee in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of five years after the five-year period of prohibition has expired, Mr. Milas shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Milas shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Milas of good cause.

V

In accordance with 10 CFR 2.202, David Milas must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause

for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Milas or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to Mr. Milas, if the answer or hearing request is by a person other than Mr. Milas. If a person other than Mr. Milas requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Milas or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 18th day of September 1998.

For the Nuclear Regulatory Commission.

William D. Travers,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98–25996 Filed 9–28–98; 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 29, 1998.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirement (TSR) for the Feed Facility Autoclave Manual Isolation System. USEC proposes to add a specific condition and required action to TSR 2.2.4.13 that specifies the actions to be taken if the actuation device located in the Area Control Room (ACR) is inoperable. The autoclave manual isolation system provides a mechanism to remotely isolate all the autoclaves in the feed facility in the event of a uranium hexafluoride release from piping outside the autoclave.

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 change to add a condition and required action for the autoclave manual isolation system will have no effect on the generation or disposition of effluents. Therefore, the proposed TSR modification 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 TSR revision will not change or increase maintenance, testing or operational requirements for the affected equipment; implementation of the revised TSR will not increase exposure. The change does not relate to controls used to minimize occupational radiation exposures. Therefore, the changes will not result in a significant increase in individual or cumulative occupational 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 additional condition and required action provide specific required actions in the event of ACR actuation device inoperability. The change provides additional assurance that the autoclave manual isolation system will be available to perform its mitigation function. The system is not involved in any precursor to an evaluated accident. Therefore, this change 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 modification will add a new condition and required action to the TSR that covers inoperability of the ACR actuation device. The other two (local) actuation devices are already covered by the TSR. The proposed change 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 autoclave manual isolation system enhances the ability to isolate the feed autoclave in the event of a leak. The addition of the ACR actuation device to the TSR provides additional assurance that the autoclave manual isolation system will be available to perform its mitigation function. Therefore, the change does 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 change does 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 2.2.4.13 to add a condition and required action covering the inoperability of the ACR actuation device of the autoclave manual isolation system.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 4th day of September 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–25997 Filed 9–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the Nuclear Regulatory Commission on nuclear waste disposal issues. This includes facilities covered under 10 CFR Parts 61 and the proposed Part 63 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the internet at *http://www.nrc.gov/ACRSACNW*. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend the meeting may contact the Chief of the Nuclear Waste Branch, ACNW, prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted (telephone: 301/415–7366) between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official at least five days prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee.

Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled and the time allotted to present oral statements can be obtained by contacting the Chief of the Nuclear Waste Branch, ACNW (telephone: 301/415–7366) between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the ACNW meeting presentations and discussions, questions may be asked by ACNW members, Committee consultants, NRC staff, and the ACNW staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW*.

(g) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACNW Working Group Meetings

ACNW Working Group meetings will also be conducted in accordance with these procedures, as appropriate. When Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: September 23, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–25995 Filed 9–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act. These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with the Federal Advisory Committee Act; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Chief of the Nuclear Reactors Branch, ACRS, prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items

may do so by sending a readily reproducible copy addressed to the Chief of the Nuclear Reactors Branch specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Chief of the Nuclear Reactors Branch at least five days prior to a meeting to allow time for reproduction and distribution.

Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Chief of the Nuclear Reactors Branch, ACRS, (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the presentations and discussions at ACRS meetings, questions may be asked only by ACRS members, ACRS consultants and staff, and the NRC staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

(g) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

ACRS Subcommittee meetings will also be conducted in accordance with the above procedures, as appropriate. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: September 23, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–25994 Filed 9–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 28, October 5, 12, and 19, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of September 28

There are no meetings the week of September 28.

Week of October 5—Tentative

Wednesday, October 7

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Thursday, October 8

10:30 a.m.
Briefing by the Executive Branch (Closed—Ex. 1)

Week of October 12—Tentative

Thursday, October 15

11:30 a.m.
Affirmative Session (Public Meeting) (if needed)

Week of October 19—Tentative

Tuesday, October 20

10:00 a.m.
Briefing on Improvements to the Plant Assessment Process (Public Meeting) (Contact: Mike Johnson, 301–415–1241)

Thursday, October 22

11:30 a.m.
Affirmative Session (Public Meeting) (if needed)

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.

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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.

* * * * *

Dated: September 25, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–26202 Filed 9–25–98; 2:39 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of September 1, 1998, of 25 rescission proposals and eight deferrals contained in three special messages for FY 1998. These messages were transmitted to Congress on February 3, February 20, and July 24, 1998.

Rescissions (Attachments A and C)

As of September 1, 1998, 25 rescission proposals totaling $25 million had been transmitted to the Congress. Congress approved 21 of the Administration's rescission proposals in P.L. 105–174. A total of $17.3 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1998, $1,317 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1998.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 7004, Wednesday, February 11, 1998

63 FR 10076, Friday, February 27, 1998

63 FR 41303, Monday, August 3, 1998

Jacob J. Lew,

Director.

BILLING CODE 3110–01–P

ATTACHMENT A

STATUS OF FY 1998 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President	25.3
Rejected by the Congress	---
Amounts rescinded by P.L. 105-174, the FY 1998 Supplemental Appropriations and Rescissions Act	-17.3
Currently before the Congress	8.0

ATTACHMENT B

STATUS OF FY 1998 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President	4,833.0
Routine Executive releases through September 1, 1998 (OMB/Agency releases of $3,515.6 million, partially offset by cumulative positive adjustment of $0.3 million)	-3,515.3
Overturned by the Congress	---
Currently before the Congress	1,317.7

ATTACHMENT C
Status of FY 1998 Rescission Proposals - As of September 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R98-1		223	2-20-98	223	4-28-98	223	P.L. 105-174
Animal and Plant Health Inspection Service								
Salaries and expenses	R98-2		350	2-20-98	350	4-28-98	350	P.L. 105-174
Food Safety and Inspection Service								
Salaries and expenses	R98-3		502	2-20-98	502	4-28-98	502	P.L. 105-174
Grain Inspection, Packers and Stockyards Administration								
Salaries and expenses	R98-4		38	2-20-98	38	4-28-98	38	P.L. 105-174
Agricultural Marketing Service								
Marketing services	R98-5		25	2-20-98	25	4-28-98	25	P.L. 105-174
Farm Service Agency								
Salaries and expenses	R98-6		1,080	2-20-98	1,080	4-28-98	1,080	P.L. 105-174
Natural Resources Conservation Service								
Conservation operations	R98-7		378	2-20-98	378	4-28-98	378	P.L. 105-174
Rural Housing Service								
Salaries and expenses	R98-8		846	2-20-98	846	4-28-98	846	P.L. 105-174
Food and Nutrition Service								
Child nutrition programs	R98-9		114	2-20-98	1/			
Forest Service								
National forest systems	R98-10		1,094	2-20-98	1,094	4-28-98	1,094	P.L. 105-174
Reconstruction and construction	R98-11		30	2-20-98	30	4-28-98	30	P.L. 105-174
Forest and rangeland research	R98-12		148	2-20-98	148	4-28-98	148	P.L. 105-174
State and private forestry	R98-13		59	2-20-98	59	4-28-98	59	P.L. 105-174
Wildland fire management	R98-14		148	2-20-98	148	4-28-98	148	P.L. 105-174

ATTACHMENT C
Status of FY 1998 Rescission Proposals - As of September 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources	R98-15		1,188	2-20-98			1,188	P.L. 105-174
Oregon and California grant lands	R98-16		2,500	2-20-98			2,500	P.L. 105-174
Mineral leasing and associated payments	R98-25	5,200		7-24-98				
Bureau of Reclamation								
Water and related resources	R98-17		532	2-20-98	1/			
Bureau of Mines								
Mines and minerals	R98-18		1,605	2-20-98			1,605	P.L. 105-174
United States Fish and Wildlife Service								
Construction	R98-19		1,188	2-20-98			1,188	P.L. 105-174
National Park Service								
Construction	R98-20		1,638	2-20-98			1,638	P.L. 105-174
Bureau of Indian Affairs								
Construction	R98-21		737	2-20-98			737	P.L. 105-174
DEPARTMENT OF TRANSPORTATION								
Office of the Secretary								
Payments to air carriers	R98-22		2,499	2-20-98			2,499	P.L. 105-174
Payments to air carriers (Airport and airway trust fund)	R98-23		1,000	2-20-98			1,000	P.L. 105-174
Maritime Administration								
Maritime guaranteed loan (Title XI) program account	R98-24		2,138	2-20-98	1/, 2/			
TOTAL, RESCISSIONS		**5,200**	**20,060**			**4,921**	**17,276**	

1/ Funds were never withheld from obligation.

2/ GAO's report to the Congress, dated May 11, 1998, indicated that agency officials stated that funds were being withheld from obligation, but not on an apportionment schedule. Subsequent discussions between OMB and agency officials confirm that there has been no withholding of funds. Rather, the lower demand in recent years for these loan guarantees has resulted in large available balances. For this reason, no withholding was required, either by OMB or by the agency.

ATTACHMENT D
Status of FY 1998 Deferrals - As of September 1, 1998
(AMOUNTS IN THOUSANDS OF DOLLARS)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congres-sionally Required	Congres-sional Action	Cumulative Adjust-ments	Amount Deferred as of 9-1-98
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D98-1	2,330,098		2-3-98	2,249,540			328	80,885
International military education and training	D98-2	43,300		2-3-98	43,300				0
Foreign military financing program	D98-3	1,483,903		2-3-98	1,169,718				314,185
Foreign military financing loan program	D98-4	60,000		2-3-98	0				60,000
Foreign military financing direct loan financing account	D98-5	657,000		2-3-98	0				657,000
Agency for International Development									
International disaster assistance, Executive	D98-6	135,697		2-3-98	20,250				115,447
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D98-7	115,640		2-3-98	32,782				82,858
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D98-8	7,369		2-3-98					7,369
TOTAL, DEFERRALS		**4,833,007**	**0**		**3,515,591**			**328**	**1,317,744**

[FR Doc. 98–26059 Filed 9–28–98; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23464; 812–11212]

France Growth Fund, Inc.; Notice of Application

September 23, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF THE APPLICATION: Applicant, The France Growth Fund, Inc., a registered closed-end management investment company, requests an order to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for quarterly distributions of a fixed percentage of the applicant's net asset value (''NAV'').

FILING DATE: The application was filed on July 2, 1998 and amended on September 3, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 19, 1998, and should be accompanied by proof of service on the applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicant, c/o Ernest V. Klein, Esq., Hale and Dorr LLP, 60 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant is registered under the Act as a closed-end management investment company and is organized as a Maryland corporation. Applicant's investment objective is long-term capital appreciation through investments primarily in French equity securities. Applicant's shares are listed and traded on the New York Stock Exchange. Applicant's investment adviser is Indocam International Investment services (''Adviser''), an investment adviser registered under the Investment Advisers Act of 1940.

2. On June 9, 1998, applicant's board of directors (''Board'') adopted a distribution plan with respect to applicant's common stock that calls for distributions, on a quarterly basis, of at least 3% of applicant's NAV determined as of the end of the prior calendar year, for a total distribution of at least 12% annually (the ''Distribution Plan''). Applicant states that the Distribution Plan will provide a steady cash flow to its shareholders and, during periods when its per share NAV is increasing, a means for shareholders to receive, on a periodic basis, some of the appreciation in the value of their shares. Applicant also believes that the Distribution Plan will help reduce the discount from NAV at which applicant's shares trade. Applicant's Board has provided for the Distribution Plan to remain in effect for a minimum of three years, to allow the Board to evaluate the Distribution Plan's effect on applicant's discount.

3. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect the Distribution Plan.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions that Applicant may make with respect to any one year, would prevent the normal operation of its Distribution Plan whenever applicant's realized net long-term gains in any year exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. As a result, applicant states that it must fund these quarterly distributions with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to cover quarterly distributions). Applicant further asserts that the long-term capital gains in excess of the fixed quarterly distributions permitted by rule 19b–1 then must either be added as an ''extra'' to one of the permitted capital gains distributions, thus exceeding the total minimum amount called for by the Distribution Plan, or be retained by the applicant, with the applicant paying taxes on the amount retained. Applicant believes that the application of rule 19b–1 to its Distribution Plan may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include such gains.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of the concerns leading to the adoption of the rule was that shareholders might not be able to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicant states that it will fully describe the Distribution Plan, including that quarterly distributions called for by the Distribution Plan will include returns of capital to the extent that applicant's net investment income and net realized capital gains are insufficient to meet the fixed dividends, in each of applicant's periodic reports to shareholders. Shareholders will receive the first such periodic report prior to the implementation of the Distribution Plan. In accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gain or turn of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividends reinvestment plan). In addition, a statement showing the amount and source of each

distribution during the year will be included with the applicant's annual tax information reporting distributions for that year and sent to each shareholders who receive distributions during the year, including shareholders who have sold shares during the year.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividends'') where the distribution would result in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end management investment companies, such as applicant, which do not continuously distribute their shares. Applicant further asserts that if it makes a rights offering to its shareholders, the rights offering will be timed so that share issueable upon exercise of the rights will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend could not occur as a matter of timing. Applicant further states that any offering by applicant of transferable rights will comply with all Commission and staff guidelines concerning such offering. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

Applicant's Condition

Applicant agrees that any Commission order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than:

(i) A rights offering with respect to applicant's common stock in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectors for the rights offering makes it clear that the shareholders exercising the rights will not be entitled to receive such dividend, and (c) the applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of applicant; unless applicant has received from the staff of the Commission assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–26020 Filed 9–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIIES AND EXCHANGE COMMISSION

[Release No. 34–40456; File No. SR–MSRB–97–15, Amdt. No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rules G–11, on Sales of New Issue Municipal Securities During the Underwriting Period, G–12, on Uniform Practice, and G–8, on Books and Records

September 22, 1998.

On August 18, 1998, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 1 to its File No. SR–MSRB–97–15 (hereafter referred to as ''Amendment No. 1''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith Amendment No. 1 to its previously proposed amendment to Rule G–11(g)(i), on sales of new issue municipal securities during the underwriting period. Amendment No. 1 retains the requirement of the previously proposed amendment to Rule G–11(g)(i) to complete the allocation of securities within 24 hours of the sending of the commitment wire. Amendment No. 1 further provides that, if the bond purchase agreement is not yet signed or if the award is not yet made at the time allocations are made, such allocations are subject to the signing of the bond purchase agreement or the award of bonds and the purchaser must be informed of this fact.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for Amendment No. 1 and discussed any comments it received on Amendment No. 1. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 23, 1997, the Board filed with the Commission proposed amendments to Rules G–11, G–12 and G–8 to strengthen further the integrity of the syndicate practices process. One of the amendments to Rule G–11(g) would require the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire. The Board adopted this amendment to ensure a timely allocation process in the industry.

Notice of the proposed rule change appeared in the **Federal Register** on April 21, 1998.[3] The Commission received three comment letters in response to the notice. One of the commenters was the City of New York.[4] The City of New York states that it is a mistake to assume that the bond purchase agreement will be signed prior to the completion of the allocation. It notes that it is the City's practice to sign a bond purchase agreement on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 39873 (April 14, 1998), 63 FR 19775.

[4] The Board responded to issues raised in comment letters to the Commission from The Bond Market Association and Salomon Smith Barney by letter dated June 10, 1998, to Mignon McLemore, Attorney, from Ronald W. Smith, Senior Legal Associate.

second day following the verbal award of its refunding bonds and that, due to the complexity of the City's refundings, it would be virtually impossible to complete the work necessary to permit a bond purchase agreement to be signed within 24 hours of the verbal award. The letter notes that the City of New York has been advised that allocations may be completed (and investors can be given notice of the allocations) prior to the signing of the bond purchase agreement. In such cases, the allocations are made subject to execution of a bond purchase agreement and investors are so notified. The letter states that underwriters have advised the City of New York that this is a fairly common practice.

The City of New York does not want the amendment to Rule G–11(g) to be interpreted as requiring that a bond purchase agreement be signed within 24 hours of the sending of the commitment wire. It suggests that the rule language be amended to state: ''Within 24 hours of the sending of the commitment wire, complete the allocation of securities (which may be made subject to execution of a bond purchase agreement).'' As an alternative, the City of New York states that the Board could provide an exemption to the proposed requirement by allowing a 48-hour period for allocations of refunding bonds.

The Board agrees with the City of New York that the proposed amendment does not require that the bond purchase agreement be signed within 24 hours of the sending of the commitment wire. In many instances, the bond purchase agreement is signed within 24 hours of the sending of the commitment wire, but there are circumstances in which this is not done (*e.g.*, the City of New York example of refunding delays and when the issuing authority is unable to schedule a meeting to approve the final pricing until two to three days after the sending of the commitment wire). The Board also agrees that, prior to the signing of the bond purchase agreement in a negotiated offering or the official award of bonds in a competitive sale, any allocations made must be subject to the execution of the bond purchase agreement or the award, as appropriate. Moreover, the Board believes it is important that investors be made aware of this fact. Although the signing of the bond purchase agreement or the adoption of the award resolution is often viewed as a technicality, if the market moves dramatically before the signing or adoption, prices may change or the deal may not be finalized.

Therefore, the Board determined to adopt Amendment No. 1 to the proposed rule change to revise the language of the proposed amendment to Rule G–11(g)(i). The revised amendment retains the requirement to complete the allocation of securities within 24 hours of the sending of the commitment wire. It further provides that, if the bond purchase agreement is not yet signed or if the award is not yet made at the time allocations are made, such allocations are subject to the signing of the bond purchase agreement or the award of bonds and the purchaser must be informed of this fact.

In addition, the Board wishes to remind dealers about a prior Board interpretation regarding the sending of confirmations prior to the signing of the bond purchase agreement or date of award. Rule G–15, on confirmation, clearance and settlement of transactions with customers, requires that a confirmation be sent in all transactions, whether the transaction is done ''when, as and if issued'' or ''regular-way.''[5] Rule G–12(c), on uniform practice, requires that, for transactions effected on a ''when, as and if issued'' basis, initial confirmations be sent within two business days following the ''trade date.''[6] In a published interpretive letter on Rule G–12,[7] the Board stated that, for purposes of this requirement, ''trade date'' should be understood to refer to, in the case of a competitive new issue, a date no earlier than the date of award of the new issue of municipal securities, and, in the case of a negotiated new issue, a date no earlier than the date of signing of the bond purchase agreement. Therefore, Board rules do not allow ''when, as and if issued'' confirmations reflecting the allocation of new issue securities to ''pre-sale'' orders to be sent to customers before the date of award or of signing of the bond purchase agreement. The Board stated that, in reaching this conclusion, it does not intend to call into question the validity of a ''pre-sale'' order received for a syndicate's securities or the practice of soliciting such orders. The Board recognizes that such orders are expressions of the purchaser's firm intent to buy the new issue securities in accordance with the stated terms, and that such orders may be filled and confirmed immediately upon the award of the issue or the execution of a bond purchase agreement. The Board is of the view, however, that such orders cannot be deemed to be executed until the time of the award of the new issue or the execution of a bond purchase agreement on the new issue. Mailing of confirmations on such orders prior to this time, therefore, is a representation that the orders have been filled before this actually occurs, and, as such, may be deceptive or misleading to the purchasers.

The Board believes Amendment No. 1 is consistent with Section 15B(b)(2)(C) of the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that Amendment No. 1 would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to Amendment No. 1 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[5] Rule G–15(a)(iii) further states that a dealer may send a confirmation for a ''when, as and if issued'' transaction executed prior to determination of settlement date. If such a confirmation is sent, it must include all the information required by Rule G–15(a) with the exception of settlement date, dollar price for transactions executed on a yield basis, yield for transactions executed on a dollar price, total monies, accrued interest, extended principal and delivery instructions.

[6] Pursuant to Rule G–12(a), any inter-dealer transaction that is submitted to NSCC for comparison is exempt from Rule G–12(c).

[7] MSRB Manual, General Rules, MSRB Interpretation (CCH) ¶ 3556.55.

[8] Section 15B(b)(2)(C) states that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles for trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

arguments concerning the foregoing, including whether Amendment No. 1 is consistent with Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–15, Amendment No. 1 and should be submitted by October 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25920 Filed 9–28–98; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40455; File No. SR–NASD–98–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4, Relating to the NASD's Rules Regarding Electronic Communications Networks, Locked and Crossed Markets, and a Member's Obligation to Provide Nasdaq with Certain Information

September 22, 1998.

I. Introduction

On January 27, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] a proposed rule change to amend the NASD's rules on locked and crossed markets and to propose a new rule to require NASD members to provide Nasdaq staff with certain information upon request. Nasdaq filed Amendment No. 1 to the proposal on June 8, 1998,[2] Amendment No. 2 on June 30, 1998,[3] and Amendment No. 3 on July 16, 1998.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 24, 1998.[5] The Commission received three comment letters on the proposal. On August 26, 1998, in response to issues raised by commenters, Nasdaq filed Amendment No. 4 to the proposal.[6] The Commission is publishing this notice and order to solicit comments on Amendment No. 4 and to approve the proposed rule change, as amended.

II. Background

SEC Rule 11Ac1–1(c)(5) (''ECN Rule''),[7] requires a Nasdaq market maker to reflect in its public quotes any superior prices for orders that the market maker privately places within an electronic communications network (''ECN''). A market maker will be deemed to have complied with the ECN Rule if the ECN in which the market maker has place a superior priced order displays the best ECN prices in Nasdaq's quote montage and provides broker-dealers that do not subscribe to the ECN's service access, through Nasdaq, to those publicly displayed prices. To accommodate this ''ECN Display Alternative,'' Nasdaq allowed ECNs to display their best prices from market makers and other ECN subscribers in the Nasdaq quote. It created a link to its SelectNet service to permit Nasdaq members to access those prices by sending orders to ECNs through SelectNet.

Based on its experience with the ECN Rule and operation of the SelectNet linkage, Nasdaq determined that it was necessary to revise certain NASD rules. For instance, certain ECN procedures regarding reserved quotation size appear to cause an increased incidence of locked and crossed markets, particularly at the market opening. Moreover, Nasdaq did not have an adequate mechanism in place to obtain important regulatory information from NASD members on a timely basis. Nasdaq, therefore, proposed to amend NASD Rules 4613(e) and 4623, as well as adopt new NASD Rule 4625, to address these issues.

III. Description

Nasdaq proposes to amend NASD Rule 4613(e) to clarify that if, at or after 9:25:00 a.m. Eastern Time, a market maker or ECN enters a quotation that would lock or cross the market at the opening,[8] that market maker or ECN must act (such as by sending a SelectNet order to take out the quotation that will be crossed or locked, or canceling its own quotation) to avoid locking or crossing the market at the opening, but in no case later than 30 seconds thereafter (*i.e.*, 9:30:30 a.m.). The 9:25 a.m. benchmark will permit market makers and ECNs to determine which party entered a market-locking/crossing quotation, and thus which party is obligated to unlock or uncross the market at the opening. The 9:30:30 provision establishes a deadline by when the market participant must resolve the locked or crossed market.

Nasdaq is also proposing to amend NASD Rule 4623 regarding ECNs. Under proposed NASD Rule 4623(c), if an ECN displays in Nasdaq an order having a reserved size and a market participant attempts to access that order by sending an order that is larger than the displayed size, the ECN would be required to execute the Nasdaq-delivered order: (1) Up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portion) is the same size as or large than the Nasdaq-delivered order; or (2) up to the size of the ECN order (including the reserved size and displayed portion), if the Nasdaq-delivered order is the same size as or larger than the ECN order (including the reserved size and displayed portion).[9]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, dated June 5, 1998.

[3] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division, SEC, dated June 29, 1998.

[4] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Richard Strasser, Assistant Director, Division, SEC, dated July 15, 1998.

[5] *See* Securities Exchange Act Release No. 40227 (July 17, 1998), 63 FR 39919 (July 24, 1998).

[6] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Richard Strasser, Assistant Director, Division, SEC, dated August 25, 1998. Amendment No. 4 clarifies that ECNs are not required to register manually in each security with Nasdaq Market Operations.

[7] The ECN Rule is embodied in SEC Rule 11Ac1–1. 17 CFR 240.11Ac1–1.

[8] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

[9] Nasdaq also proposed to amend NASD Rule 4623(b)(4) to specify an ECN's obligation to register with Nasdaq Market Operations. As discussed

Nasdaq is also proposing to adopt new NASD Rule 4625, which will authorize Nasdaq staff to request information in specific circumstances and will obligate members to comply with such requests. Specifically, under proposed new NASD Rule 4625, Nasdaq staff (*i.e.*, Nasdaq MarketWatch or Market Operations staff) would be permitted to request from a member information directly related to an SEC or NASD rule that the Nasdaq department is responsible for administering, or other duties or responsibilities imposed on the Nasdaq department by the Plan of Allocation and Delegation of Function or otherwise delegated by the Association to the Nasdaq department. Failure to comply with a request for information under the proposed new rule in a timely, truthful and complete manner could be deemed to be conduct inconsistent with just and equitable principles of trade.

IV. Summary of Comments

The Commission received three comment letters on the proposal. Two letters were from entities that operate ECNs, Bloomberg, L.P. (which owns Bloomberg Tradebook LLC) and Instinet Corporation, and one letter was from Morgan Stanley & Co. Inc., a large broker-dealer and Nasdaq market maker.[10]

ECN Registration

Two commenters opposed Nasdaq's proposed amendment to NASD Rule 4623(b)(4), discussing ECNs' obligation to register with Nasdaq Market Operations.[11] The commenters interpreted the proposed amendment as requiring ECNs to register with Nasdaq Market Operations for each security as an ECN prior to entering prices and sizes in the SelectNet linkage on that security.[12]

Preventing Locked and Crossed Markets

All commenters supported the proposed amendment to NASD Rule 4613(e) to reduce the instances of locked and crossed markets at the opening. Additionally, one commenter believed the proposal to require ECNs to execute against reserve size will reduce the number of market maker and ECN quotations that lock or cross the market throughout the day and bring greater stability to the Nasdaq market.[13] Two commenters were concerned, however, with the proposed requirement in NASD Rule 4623(c) that ECNs provide non-subscribers access to the reserve size to reduce intraday locking and crossing.[14] One commenter was concerned that providing unlimited access to reserve size to broker-dealers that do not subscribe to the ECN's service creates a credit risk for the ECN.[15] This commenter, therefore, suggested that non-subscriber access be limited to 10,000 shares to better balance the advantages of access with any counterparty risk an ECN might assume.[16] In the alternative, this commenter suggested that the credit risk could be lessened by requiring the National Securities Clearing Corporation (''NSCC'') to take responsibility for a trade from the moment NSCC receives the executed trade. One commenter opposed this provision of the proposal because it was concerned that requiring ECNs to execute against reserve size creates a disparate standard for ECNs vis-a-vis dealers that are given large orders to ''work.'' [17]

Obligation to Provide Information to Nasdaq Staff

The two commenters that addressed the NASD's proposed new Rule 4625, which would require NASD members to provide Nasdaq staff with regulatory information, generally supported the proposal.[18] One commenter noted, however, that the proposal, by requiring ECNs and market makers to divulge sensitive client information to Nasdaq, could alter the working relationship among ECNs, market makers, and Nasdaq's MarketWatch.[19] Another commenter, while supporting the proposed new rule, cautioned staff against setting unrealistic deadlines for receiving the requested information.[20] This commenter proposed that Nasdaq apply a ''good faith'' test to any disciplinary action brought against an NASD member for not producing the requested information in a timely manner.

V. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD. In particular, the proposal is consistent with sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C) of the Act.

Section 15A(b)(6) requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[21]

Section 15A(b)(11) requires that the NASD as a national securities association have rules that govern the form and content of quotations relating to securities in the Nasdaq market.[22] Such rules must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations. Sections 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient executive of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure fair competition among brokers and dealers.[23]

Specifically, both the requirement to avoid locking and crossing the market at the opening and to permit market participants to execute against reserve size are consistent with sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C). The Commission believes that these proposals will reduce the frequency of locked and crossed markets, which should provide more informative quotation information and contribute to the maintenance of a fair and orderly market. These improvements should benefit the markets and investors.

below, this provision was further amended in Amendment No. 4.

[10] *See* Letters to Jonathan G. Katz, Secretary, SEC, from Kevin M. Foley, Bloomberg L.P., dated August 14, 1998 (''Bloomberg Letter''); from Douglas Atkin, Chief Executive Officer, Instinet Corporation, dated August 17, 1998 (''Instinet Letter''); and from Jill W. Ostergaard, Counsel, Morgan Stanley & Co. Inc., dated August 19, 1998 (''Morgan Stanley Letter'').

[11] *See* Bloomberg and Instinet Letters.

[12] As discussed below, Nasdaq filed Amendment No. 4 with the Commission to clarify that ECNs need not register separately for each security.

[13] *See* Morgan Stanley Letter.

[14] *See* Bloomberg and Instinet Letters.

[15] *See* Bloomberg Letter.

[16] *Id.*

[17] *See* Instinet Letter. *But see* Morgan Stanley Letter, which noted that the proposal does not go far enough in leveling the playing field between ECNs and market makers. This commenter noted that to provide unfettered competition among all market participants, market makers should be allowed to charge fees to market participants that access their quotations as ECNs are currently permitted to do.

[18] *See* Bloomberg and Morgan Stanley Letters.

[19] *See* Bloomberg Letter.

[20] *See* Morgan Stanley Letter.

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78*o*–3(b)(11).

[23] 15 U.S.C. 78k–1(a)(1)(C).

The Commission believes, as do two commenters, that continued locking and crossing of the market can negatively impact market quality.[24] As the Commission has previously stated, market makers and ECNs are required to use reasonable means to avoid locking and crossing the market.[25] Consequently, Nasdaq market makers and ECNs must use ''reasonable means'' to take out the quote that their quote, if immediately posted, would lock or cross. NASD has interpreted ''reasonable means'' to include referencing a SelectNet order to the firms at the bid or offer.[26] Experience has shown, however, that ECNs increasingly are remaining at the inside quote after executing an incoming order at the displayed size even when the incoming order exceeds the displayed ECN order size. As a result, the incidence of locked and crossed markets has increased.

The Commission believes that the proposal to require ECN orders having reserve size to interact with incoming orders from SelectNet will help reduce the frequency of locked and crossed markets on Nasdaq and, as a result, improve market quality. Moreover, the Commission believes that requiring an ECN to accept a SelectNet order for larger than the ECN's displayed size balances the interest to reduce the frequency of locked and crossed markets with market participants' desire to display only portion of a large order.

One commenter expressed concern that the proposal increases an ECN's counterparty risk by allowing non-participant broker-dealers (with whom the ECN has no contractual relationship) to access the ECN's reserve size.[27] The Commission notes, however, that the risk is no greater than that involved in any other broker-to-broker transaction. Moreover, the SEC's broker-dealer capital requirements as well as NSCC's novation of executed trades should greatly reduce the risk of non-performance that ECNs may face. Moreover, since the SEC implemented its Order Handling Rules, non-subscriber broker-dealer non-performance resulting from permitting non-subscriber access in those instances.

The Commission believes that the proposed provision applying the restrictions against locking or crossing the market at the opening should help to clarify NASD members' responsibilities, including setting a deadline for required action. As a result, the proposed provision should promote a more orderly opening in Nasdaq securities.

The Commission believes that the proposal to adopt NASD Rule 4625, regarding a member's obligation to supply Nasdaq MarketWatch and Market Operations staff with certain information upon request, is consistent with the NASD's regulatory responsibilities under section 15A of the Act. The Commission believes that to properly fulfill its obligation to administer NASD and SEC rules, as well as other applicable requirements, Nasdaq staff must be able to obtain information regarding matters such as locked and crossed markets, trade reports, trading activity, and erroneous transactions on a timely basis from market participants.

In response to two commenters who were concerned with the proposal requiring ECNs to register independently for each security, Nasdaq filed Amendment No. 4 to the proposal.[28] This amendment clarifies that ECNs are required to register with Nasdaq Market Operations prior to being included in Nasdaq as an ECN but are not required to register manually in each security. According to the NASD, in practice, once an ECN registers with Nasdaq Market Operations, Nasdaq systems allow the ECN to enter quotations in all Nasdaq securities. The Commission believes that this amendment addresses the commenters' concerns that the rule change, as originally proposed, would unnecessarily burden ECNs by requiring them to register on a per-security basis.

The Commission believes that Amendment No. 4 should be approved on an accelerated basis because it does not impose any requirements in addition to those originally proposed and published for comment. In fact, Amendment No. 4 revised the NASD's proposal so that the ECN registration requirement is consistent with the current practice that once an ECN registers with Nasdaq Market Operations Nasdaq systems allow the ECN to enter quotations in all Nasdaq securities.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to the NASD,[29] and, in particular, with sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C) of the Act. In addition, the Commission finds good cause for approving Amendment No. 4 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2),[30] that the proposed rule change (SR–NASD–98–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25918 Filed 9–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40454; File No. SR–NASD–98–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq Market Distributors or Vendors

September 22, 1998.

I. Introduction

On May 14, 1998,[1] the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the

[24] *See* Instinet and Morgan Stanley Letters.

[25] *See* Letter to Joseph R. Hardiman, President, NASD, from Richard R. Lindsey, Director, Division, SEC, dated November 22, 1996 (noting that, in the OTC market, a Nasdaq market maker holding a limit order that is marketable against another market maker's or ECN's quote may send a SelectNet message to the market maker or ECN displaying the existing quote. However, after using reasonable efforts to execute against the existing quote, the market maker should display the limit order even if it locks the market).

[26] *See* NASD Notice to Members 97–49.

[27] *See* Bloomberg Letter.

[28] In Amendment No. 4, Nasdaq is withdrawing the previously proposed amendment to NASD Rule 4623(b)(4) and is proposing to replace it with the following (new language is italicized; deletions are bracketed):

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the (electronic communications network) *ECN* so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the (electronic communications network) *ECN, and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ECN.*

[29] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] The NASD initially submitted this proposal on March 16, 1998. However, a substantive amendment was requested to clarify the applicability of the proposed fee. The NASD filed Amendment No. 1 on April 28, 1998. *See* letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Mignon McLemore, Esq., Division of Market Regulation, SEC, dated April 28, 1998 (''Amendment No. 1''). On May 14, 1998, the Board

Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend NASD Rule 7010, on system services. The proposed rule change establishes an annual, scaled administrative fee, payable by Nasdaq market data distributors or vendors, for data usage monitoring costs and other administrative expenses incurred by Nasdaq. A notice of the proposed rule change appeared in the **Federal Register** on June 3, 1998.[4] The Commission received no comment letters concerning the proposed rule change. The Commission is approving the proposed rule change.

Nasdaq has established an annual, scaled fee for Nasdaq real-time market data distributors or vendors to cover the expenses Nasdaq incurs to administer and monitor market data usage.

Previous, Nasdaq real-time market data distributors or vendors were required to submit annually a list, certified by a public accountant and paid for by the distributor or vendor, of all subscribers receiving real-time Nasdaq data.[5] Alternatively, a Nasdaq real-time market data distributor or vendor could elect to pay a lower fee and have its service usage verified by an on-site review (''OSR'') conducted by Nasdaq staff. The purpose of both the accountant certification and the OSR was to provide Nasdaq with independent confirmation of Nasdaq data usage. Nasdaq has eliminated the certified-list requirement and OSR alternative, and thus their attendant costs, and replaced them with the annual scaled administrative fees proposed in this filing.[6] Nasdaq will retain the right, however, to demand a certified usage report, paid for by the distributors or vendor, in cases involving discrepancies in distributor or vendor reporting.[7]

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder.[8] Specifically, the Commission believes that the approval of the proposed rule change is consistent with section 15A(b)(5)[9] of the Act. Instead of requiring a public accountant's certification from its members verifying usage of Nasdaq market data, the Nasdaq will assess them an annual administrative fee which will be used to conduct Nasdaq-initiated OSRs, manage distributor applications, monitor vendor services, and perform other compliance activities. The revenue generated from this fee will benefit all Nasdaq members as it will allow Nasdaq staff to equitably and uniformly apply its expertise when conducting an OSR of any member. This fee structure should also reduce members' expenses as it is priced at levels similar to current OSR fees which, being consistently less expensive than the cost of obtaining an independent verification of data usage from a certified public accountant, are used by the majority of Nasdaq real-time market data distributors or vendors. As such, the Commission believes this administrative fee will not result in a material increase in overall monitoring fees paid by most Nasdaq data distributors or vendors.[10]

III. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with section 15A(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–98–25) be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–M

filed another substantive amendment modifying the proposed rule language. *See* letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Division of Market Regulation, SEC, dated May 14, 1998 (''Amendment No. 2'').

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 40035 (May 27, 1998), 63 FR 30276.

[5] Once this administrative fee becomes effective, Nasdaq will suspend indefinitely its current contractual requirement that Nasdaq real-time data distributors or vendors provide an annual accountant-certified list of their subscribers who receive Nasdaq data.

[6] Distributors using per-quote and usage based reporting will have their monitoring fees determining by having their monthly payment totals divided by the professional subscriber fee rate, resulting in a terminal equivalent. For example, a distributor or vendor that is being charged $1,000 month for its per-quote usage of Nasdaq Level 1 Service will have that $1,000 fee divided by the existing $20 monthly Level 1 per-terminal fee which results in a terminal equivalent of 50 with an annual monitoring fee of $500. For 1998 billing purposes only, Nasdaq will not impose those administrative fees on any firm that incurs costs and submits a certified usage report in 1998 prior to the effective date of Nasdaq's new fee schedule. *See* Amendment No. 2, *supra* note 1.

[7] Similarly, the submission of an unrequested, accountant-certified usage list will not preclude Nasdaq from conducting its own OSR nor will it exempt a distributor or vendor from payment of the administrative fee.

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. This new fee structure should allow Nasdaq staff to directly and uniformly apply its expertise in monitoring data usage. The new fee structure also establishes a more efficient means of fee collection. Moreover, this terminal-based fee, compared to that of a CPA certification, should provide vendors and distributors with a reduction in expenses. 15 U.S.C. 78c(f).

[9] Section 15A(b)(5) requires the Commission to determine that the Association's rules are designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

[10] According to Nasdaq, it does not currently require delayed data distributors to meet audit requirements or pay an OSR fee. Nasdaq believes that the imposition of new minimal charges on delayed distributors is justified to compensate Nasdaq for the resources expended in initiating, managing and monitoring vendors' accounts to ensure they are in compliance with Nasdaq requirements, particularly those designed to protect investors. *See* letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated September 14, 1998 (detailing the allocation of Nasdaq resources used in monitoring delayed data usage).

Nasdaq also advises that those vendors who receive both delayed and real-time data, will not be billed separately for each type of data but will only pay for the highest level of service received. This practice will continue for Nasdaq's proposed administrative fees as well. *See* Amendment No. 1, *supra* note 1.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Small Business Administration

Interim Policy Directive, Small Business Competitiveness Demonstration Program

AGENCY: Office of Federal Procurement Policy (OFPP); Small Business Administration (SBA).

ACTION: Interim policy directive with request for comments.

SUMMARY: The OFPP and SBA are revising the interim policy directive and test plan dated April 16, 1993, (which revised the final policy directive and test plan dated August 31, 1989) to implement amendments to the Small Business Competitiveness Demonstration Program made by the Small Business Reauthorization Act of 1997, Pub. L. 105–135. Section 401 of Pub. L. 105–135 extends the Program indefinitely; section 402 requires monitoring of goal attainment on an annual basis; and sections 403–405 contain other technical changes to the

Program. This interim policy directive implements conforming revisions to reflect these amendments and also responds to comments that we received on the April 16, 1993, interim policy directive and test plan.

DATES: Effective: September 29, 1998.

Comment Date: Comments on the interim policy directive should be submitted to the addresses shown below on or before November 30, 1998.

ADDRESSES: Comments on the policy directive should be submitted to: Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Room 352, Old Executive Office Building, Washington, DC 20503.

Comments on the information collection requirements contained in Sections III.D.4. and III.E.7. of the policy directive should be submitted both to the OFPP Administrator at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503—Attention: Desk Officer for the Federal Acquisition Regulation.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator (202) 395–3302.

SUPPLEMENTARY INFORMATION:

A. Background

Congress established the Small Business Competitiveness Demonstration Program in 1988 to test the effectiveness of eliminating small business set-asides in certain industries. (See Pub. L. 100–656 the Small Business Competitiveness Demonstration Program Act of 1988 (''Act''), as amended, at 15 U.S.C. 644 note.) The program has two primary objectives: (1) To demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targeted goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. A separate program to expand small business participation in the dredging industry, to be overseen by the Department of the Army, was also included in the Act. As originally established, the Demonstration Program extended through December 31, 1992.

To implement the Program, Congress in section 715(a) of the Act, authorized the OFPP Administrator to issue a test plan pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). In addition, in section 715(b), Congress directed the OFPP Administrator, in cooperation with the SBA Administrator, to issue a policy directive (binding on all participating agencies) to ensure consistent government-wide implementation of the Act in the Federal Acquisition Regulation (FAR).

After requesting public comment on an interim policy directive and test plan 53 FR 52889 (December 29, 1988), OFPP implemented the Program by issuing a final policy directive and test plan dated August 31, 1989. 54 FR 37741 (September 12, 1989). In accordance with section 715(b) of the Act, the policy directive and test plan were implemented in the Federal Acquisition Regulation (48 CFR Subpart 19.10).

In 1992, Congress in Sections 201–203 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366; ''1992 Act''), extended the Demonstration Program through September 30, 1996, and made amendments to the Program. To carry out these amendments, Congress in Section 202(I) of the 1992 Act directed the OFFP Administrator to issue conforming modifications to the test plan and policy directive. The conforming modifications were issued in an interim policy directive with request for comments (58 FR 19849, April 16, 1993), and were incorporated into the Federal Acquisition Regulation (48 CFR Subpart 19.10). In 1996, Congress extended the Demonstration Program for one year, through September 30, 1997. Pub. L. 104–208, Div. D, Title I, Sec. 108. In 1997, Congress also extended the aspect of the Program covering expansion of small business participation in the dredging industry. Pub. L. 105–18, Title II, Sec. 2002.

In December 1997, the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) was enacted into law (''1997 Act''). Sections 401–405 of the 1997 Act made the Demonstration Program permanent, and made further amendments to the Program.

In order to respond to the comments that we received on the April 1993 interim policy directive and test plan, and to make conforming changes to reflect the amendments made by the 1997 Act, we are now issuing a newly revised interim OFPP policy directive and implementation plan. In addition to making conforming revisions to reflect the amendments made by Congress in the 1997 Act, we also have made non-substantive revisions in various parts of the document, which are intended to improve its clarity. For ease of reading, we are re-issuing the interim policy directive and implementation plan in its entirety for comment.

B. Comments on April 16, 1993, Policy Directive and Test Plan

OFPP received three comment letters in response to the request for comments on the April 16, 1993, interim policy directive and test plan. The main issues and concerns raised in the comments are summarized below:

1. *Comment:* The policy directive should establish goals for small and small disadvantaged business participation as a requirement of all solicitations with no restricted competition at all.

Response: This comment suggests that several economic and practical benefits would result from such an approach. However, elimination of all restricted competition is not within the scope of the Small Business Competitiveness Demonstration Program. The legislation that governs the Program requires that set-asides be reinstituted if agencies do not meet established small business goals; consequently, it does not authorize the elimination of set-asides altogether. See section 713(b) of the Act, at 15 U.S.C. 644 note.

2. *Comment:* Awarding agencies, rather than the General Services Administration, should be given credit for awards under multiple award schedule contracts.

Response: This comment appears to be based on a misinterpretation of the Program. Contract awards made under multiple award schedule contracts are not covered by the Program. We did not include these contracts because SBA historically did not count such awards toward agencies' attainment of the government-wide small business goals.

3. *Comment:* The Defense Acquisition Regulation requirement that small disadvantaged business set-asides be utilized conflicts with the Program's requirements for the use of unrestricted competition.

Response: The requirement in question is based on 10 U.S.C. 2323 (formerly section 1207 of the Fiscal Year 1987 National Defense Authorization Act). Procurements under section 2323 are exempt from the Program's requirement for unrestricted competition. (See section 713(a) of the Act, at 15 U.S.C. 644 note.)

4. *Comment:* The $25,000 reserve amount for emerging small businesses should be raised for the construction industry because a vast majority of construction projects are above that amount.

Response: The emerging small business reserve amount is set at $25,000 by law (see section 712(b) of the

Act, at 15 U.S.C. 644 note). OFPP is authorized to adjust the reserve amount if agencies do not attain the statutory goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry group. The 15 percent goal has consistently been exceeded for the construction industry. Accordingly, raising the reserve amount is not appropriate.

5. *Comment:* FAR architectural and engineering (A&E) service selection methods do not include small or small disadvantaged business preferences; as a result, there is still no protection for emerging small business A&E firms under the Program.

Response: The Program, which is implemented in the FAR at 48 CFR subpart 19.10, provides that all contracts under $50,000 for A&E services shall be set-aside for emerging small businesses. Accordingly, we do not agree that there is no protection for emerging small business A&E firms under the Program.

6. *Comment:* The Defense Mapping Agency should be included under the Program.

Response: The test plan exempts the Defense Mapping Agency (now the National Imagery and Mapping Agency (NIMA)) from the Program. We received a comment suggesting that the rule be revised to require that all surveying and mapping activities of NIMA comply with the Program. The commenter relied on subsection 202(c) of Pub. L. 102–366 which requires that ''solicitations for the award of contracts for architectural and engineering services (including surveying and mapping) issued by a Military Department or a Defense agency'' comply with 10 U.S.C. sections 2855(a) and (b). Section 2855(a) requires that ''contracts for architectural and engineering services and construction design in connection with a military family housing project'' be awarded in accordance with 40 U.S.C. section 541 (the Brooks A–E Act). Section 2855(b) generally establishes thresholds for setting aside the contracts described in section 2855(a) for award to small business concerns. In our opinion, neither Pub. L. 102–366 nor 10 U.S.C. section 2855 support the commenter's position. We read these provisions to apply only to those contracts specifically described in 10 U.S.C. 2855(a), i.e., contracts for A&E services and construction design in connection with military construction or family housing projects. The NIMA does not conduct such procurements.

C. Revisions to the April 16, 1993 Interim Policy Directive and Test Plan

In the Small Business Reauthorization Act of 1997, Congress made several changes to the Act, which are summarized below and incorporated into the interim policy directive.

Section 401 of the 1997 Act amends section 711(c) of the Small Business Competitiveness Demonstration Program Act (the Act) to make the Program permanent. We have revised Section III.A.1 of the Implementation Plan (formerly the ''Test Plan'') to delete the Program's expiration date.

Section 402 of the 1997 Act amends section 712(d)(1) of the Act to require participating agencies to monitor the attainment of their small business participation goals on an annual basis. An annual review and reports to the Small Business Administration (SBA) must be completed by each participating agency not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. We have revised section IV.A.1. of the Implementation Plan to reflect annual monitoring of goal attainment.

Section 403 of the 1997 Act amends section 716(a) of the Act to transfer to the Small Business Administration the responsibility for reporting to Congress the results of the Program. Reports to Congress are due within 180 days after data for each of fiscal years 1991 through 2000 are available from the Federal Procurement Data Center. The section also updates the name of the Committee on Government Reform and Oversight of the House of Representatives.

Section 404 of the 1997 Act amends section 722(a) of the Act to make the dredging program permanent. As indicated above, under the Act, the Department of the Army (Corps of Engineers) is responsible for conducting the dredging program.

Section 405 of the 1997 Act amends section 717 of the Act to recognize that either the standard industrial classification (SIC) codes or the successor North American Industrial Classification System (NAICS) codes may be used to identify the designated industry groups covered by the Program. OMB issued the NAICS codes in 1997 (62 FR 17288 (April 9, 1997). The Implementation Plan will continue to reference SIC codes until SBA and the FAR Council implement the NAICS codes.

One provision of the Act that has expired is section 714(b), which required the OFPP Administrator to develop a simplified data collection system to collect data on the participation of small business concerns as subcontractors under prime contracts for A&E services. It also set a temporary 35 percent small business participation goal for A&E services until the simplified data collection system was implemented. The purpose of the system was to collect subcontracting data below the first tier of subcontracting to demonstrate if the actual rate of small business participation under A&E prime contracts was substantially higher than was reflected in the government's existing subcontracting data collection system. OFPP implemented the simplified data collection data on October 27, 1993 (58 FR 57869). The requirement for this system expired on September 30, 1997. Accordingly, the Implementation Plan excludes the subcontracting reporting system previously described in Section V.C.1. of the April 16, 1993, Interim Policy Directive. It also deletes the reference in section III.C.1. to the temporary 35 percent goal for A&E services.

This interim Policy Directive also recognizes that section 4201 of the Federal Acquisition Streamlining Act of 1994 authorizes agencies to use competition to ''the maximum extent practicable'' for procurements below the simplified acquisition threshold. Accordingly, we revised the implementation plan to substitute ''unrestricted competition'' for ''full and open competition'' throughout the document. This allows agencies to use the ''maximum practicable competition'' standard for procurements below the simplified acquisition threshold but above the emerging small business reserve. Agencies will continue to use full and open competition for unrestricted procurements above the simplified acquisition threshold.

This interim Policy Directive also authorizes prime contract awards to small businesses pursuant to the HUBZone Act of 1997, Title VI of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135), to count toward goal attainment. In addition, the interim Policy Directive recognizes that participating agencies may set aside procurements in the DIGs, under the HUBZone Empowerment Contracting Program, that exceed the emerging small business reserve amount even though the agency's 40 percent small business goal is being attained. (This is consistent with the Small Business Regulations implementing the HUBZone Act, 63 FR 31896, 31902.) We revised Sections III.C.3., III.D.1, III.D.2, and IV.A.6 of the Implementation Plan to reflect these changes.

We also made two minor changes as follows: (1) Section III.D.3.a. was revised to reflect that the emerging small business reserve amount for A&E services has been raised to $50,000, and (2) the citations to the Code of Federal Regulations (C.F.R.) at section III.E.4 have been updated.

Finally, to improve the clarity of the document, we have made non-substantive changes in various parts of the text.

We intend to issue a final policy directive by April 30, 1999.

D. Cumulative Report on the Demonstration Program for Fiscal Years 1991–1995

Section 716(a) of the Act, as amended by the Omnibus Consolidated Appropriations Act of 1997 (Pub. L. 104–208, Division D, Section 108), required a cumulative report of the results of the Demonstration Test Program for FYs 1991–1995. The report indicated that, at the macro level, small and emerging small businesses could maintain a significant market share without the benefits of preferences. In three of the four industries, awards to small and emerging small businesses exceeded the 40 and 15 percent goals set by the Program, respectively. Upon examination at the micro level, however, it appeared that the market share of these firms declined to some extent without preferences, compared to their share prior to the commencement of the Program. Therefore, although the Test Program demonstrated that small and emerging small businesses could maintain a significant market share without preferences, the Program also appeared to have reduced total small business awards in the construction, refuse, A&E services and non-nuclear ship repair industries. When viewed collectively, both the small business and emerging small business shares declined for every DIG from FYs 1991–1995.

SBA will continue to evaluate the economic impact of the Program in its subsequent reports to Congress.

E. Regulatory Flexibility Act and E.O. 12866

This interim policy directive incorporates changes to the Small Business Reauthorization Act of 1997 (Sections 401–405 of Pub. L. 105–135). This Act merely extended the Program indefinitely and modified the reporting procedures of the participating Federal agencies. The Act made no substantive changes to the Program as originally designed.

The changes required by the Act do not impose any new requirements or additional burdens on small businesses and are unlikely to have an annual economic effect of $100 million or more, result in a major increase in cost or prices, or have a significant effect on competition in the U.S. economy. Accordingly, this directive is not considered a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. In addition, because this interim policy directive makes ministerial changes to conform the directive to amendments mandated by the 1997 Act (which amendments were effective upon the date of enactment), we have determined that advance comment on these conforming changes is unnecessary and thus we are issuing this document on an interim basis. We will respond to any comments received in the coming months.

F. Paperwork Reduction Act

The information collection requirements related to this policy directive and implementation plan were previously approved by OMB and assigned OMB control number 9000–0100. A revised information collection request has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

September 21, 1998.

MEMORANDUM FOR:
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF DEFENSE
THE SECRETARY OF ENERGY
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF TRANSPORTATION
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
THE ADMINISTRATOR OF GENERAL SERVICES
THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
THE SECRETARY OF VETERANS AFFAIRS

SUBJECT: The Small Business Competitiveness Demonstration Program

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100–656), as amended by Sections 23–27 of the Business Opportunity Development Reform Act Technical Corrections Act (Public Law 101–37), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), Section 108 of the Omnibus Consolidation Appropriation Act of 1997 (Public Law 104–208), and Sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

2. *Authority.* This memorandum is issued pursuant to Section 715 of Public Law 100-656, which requires that the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR); Section 202(i) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), which requires appropriate modifications to the policy directive to conform to amendments made by that Act; Sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135), which further amends Title VII; and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal, Subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting into areas where small businesses do not traditionally obtain a significant share of procurement awards.

4. *Policy.* The goals of the Program are to assess the ability of small businesses in certain designated industry groups to retain a fair proportion of procurement awards in unrestricted competition in those industry groups and to expand small business participation in a broader range of industry categories. The Act designates the Small Business Administration as OFPP's executive agent to monitor the Program. The procedures for implementing the Program are set forth in the attached implementation plan.

5. *Implementation.* This policy directive shall be implemented in FAR Part 19. Pursuant to Section 715(a) of the Small Business Competitiveness Demonstration Program Act, provisions of the FAR that are inconsistent with this policy directive and the attached implementation plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program has no expiration date.

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

Small Business Competitiveness Demonstration Program Implementation Plan

I. Purpose

This document implements the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100–656), as amended by Sections 23–27 of the Business Opportunity Development Reform Act Technical Corrections Act (Public Law 101–37), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), Section 108 of the Omnibus Consolidation Appropriations Act of 1997 (Public Law 104–208), and Sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135). The Program seeks to assess whether or not the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. In addition, the Program attempts to assess whether or not the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. The Program further seeks to assess whether or not expanded use of unrestricted competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

II. Authority

The Program is established pursuant to the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100–656), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), Sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135), and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413.

III. Program Requirements

A. Applicability

1. The Program began on January 1, 1989 and consists of two major components: (1) unrestricted competition in four Designated Industry Groups, and (2) enhanced small business participation in agencies' ten Targeted Industry Categories. Contracts resulting from solicitations issued on or after January 1, 1989 and any subsequent modifications to such contracts, are covered by this Program.

2. Contract awards in the following designated industry groups are covered by this Program:

a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216);

b. Refuse systems and related services, including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205;

c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the ''Brooks A–E Act''); and

d. Non-nuclear ship repair—ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

3. Upon regulatory implementation by SBA and the FAR Council, the North American Industrial Classification (NAIC) Coding System will be substituted for SIC codes.

4. Targeted industry categories for enhanced participation are determined by each participating agency, in conjunction with SBA.

5. Contract awards under the Federal Schedule Program are not covered by the Program.

6. Contract awards to educational and non-profit institutions or governmental entities are not covered by the Program.

B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,
2. The Department of Defense, except the National Imagery and Mapping Agency,
3. The Department of Energy,
4. The Department of Health and Human Services,
5. The Department of Transportation,
6. The Environmental Protection Agency,
7. The General Services Administration,
8. The National Aeronautics and Space Administration,
9. The Department of Veterans Affairs, and
10. The Department of the Interior.

C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for construction major group 15, major group 16, and major group 17; A&E services; refuse systems and related services; and non-nuclear ship repair. The 40 percent goal applies to each construction major group. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.

2. The Small Business Competitiveness Demonstration Program Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the procurement. Subject to the requirements of paragraph III.D.3 below, contract opportunities in the four designated industry groups, which have an estimated award value equal to or less than the reserve amount established for emerging small businesses, are reserved for such businesses.

3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135); and sole source awards, count toward attainment of goals.

D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Unrestricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. Subject to the requirements of the Competition in Contracting Act of 1984 and section 4201 of the Federal Acquisition Streamlining Act of 1994, participating agencies are required to use unrestricted competition for all solicitations in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act; or is set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135). Each participating agency shall continue to use unrestricted competition as long as annual reviews show that the agency's 40 percent goal is being attained. The continued use of unrestricted competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.

b. Notwithstanding the provisions of paragraph III.D.1.a., above, the Department of Defense shall solicit contracting opportunities for A&E services (including surveying and mapping), in accordance with the provisions of subsections (a) and (b) of section 2855 of title 10, United States Code.

2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. If any participating agency's annual review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goal for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition restricted to eligible small businesses only at the organizational unit(s) within the agency that failed to attain the small business participation goals. (Organizational unit(s) shall be no larger than the major agency components or services, e.g., Army, Air Force, Navy, etc. for Department of Defense, regional offices for the General Services Administration, or space flight and research centers for the National Aeronautics and Space Administration.) Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135) shall be conducted in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).

b. Agencies shall return to the use of unrestricted competition upon determining, after their annual review, that their contract awards to small business concerns again meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstituting unrestricted competition) shall be made as soon as practicable, but no later than 30 days following completion of the review indicating the need for such change. The reinstitution of restricted competition or unrestricted competition shall be announced to the public through a notice published in the **Federal Register** if restricted or unrestricted competition is to be reimposed broadly by a participating agency. ''Special notices'' in the *Commerce Business Daily* shall be used periodically to supplement such **Federal Register** notices, and may be used as an alternative means of providing such notices, if the reinstitution of restricted competition or unrestricted competition will affect only a limited number of buying activities.

3. Reserve Program for Emerging Small Businesses

a. The emerging small business reserve amount is $25,000, or such higher amount as OFPP sets in the event that emerging small concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. The emerging small business reserve amount for architectural and engineering services is $50,000 (56 FR 46656, September 13, 1991). Any required adjustments to the emerging small business reserve amount will be made annually by industry group.

b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in accordance with FAR 19.5 or FAR 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over $25,000, requirements over $25,000 will be processed in accordance with paragraphs III.D.1 and III.D.2 above.

c. The use of simplified acquisition procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work of contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

d. Each solicitation under the Program that utilizes simplified acquisition procedures shall include the applicable SIC code and size standard for the procurement.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups

a. The provision set forth in FAR 52.219–19 entitled ''Small Business Concern Representation for the Small Business Competitiveness Demonstration Program'' shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The provision set forth in FAR 52.219–20 entitled ''Notice of Emerging Small Business Set-Aside'' shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs for Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial

quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the **Federal Register**, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories. Each participating agency shall notify SBA of any additions or deletions to the ten targeted industry categories. Subsequent to the SBA notification, the participating agency shall publish the changes in the **Federal Register**.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 CFR §§ 121.103(f) and 121.105(b)).

5. Participating agencies shall report to SBA on the results of the expansion program regarding the ten targeted categories on the same annual schedule as required for the four designated industry groups.

6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms. Participating agencies may use the format in Attachment A to report accomplishments.

7. The provision set forth in FAR 52.219–21 entitled ''Small Business Size Representation For Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program'' shall be inserted in full text in any solicitation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000.

8. The face of each award issued in any of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

IV. Monitoring and Reporting for Four Designated Industry Groups

A. Monitoring of Goals for the Four Designated Industry Groups

1. Each participating agency shall monitor attainment of its small business and emerging small business participation goals on an annual basis and provide the information in a written report to SBA. The report shall specify the industry groups for which restricted or unrestricted competition have been imposed. Agencies shall complete their annual reviews and submit their reports not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. The Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service.

2. Monitoring and reporting of goal attainment will be based on awards (and any subsequent modifications to those awards) in the individual codes comprising the industry, as specified in paragraph IV.B., below.

3. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's small business participation goals (instituting restricted competition or reinstituting unrestricted competition) will be accomplished for each of the industry groups as follows:

a. Construction (excluding dredging)
   i. Major group 15
   ii. Major group 16
   iii. Major group 17

b. Refuse systems and related services.

c. A&E services (including surveying and mapping), limited to contracts awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the ''Brooks A–E Act'').

d. Non-nuclear ship repair.

However, if goal attainment for any individual FPDS service code within the A&E services or non-nuclear ship repair industry groups falls below 35 percent, the agency shall reinstitute set-asides for that individual service code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the industry group is 40 percent or more. In addition, if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the major group is 40 percent or more.

4. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) all U.S. business firms, (b) small U.S. business concerns and (c) emerging small U.S. business concerns. Awards to educational and non-profit institutions or governmental entities are not part of the Program and do not count towards goal attainment.

5. SBA will closely monitor the Program to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry group. Data shall be monitored using the format set forth at Attachment A.

6. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135); and sole source awards, count toward attainment of goals.

B. Codes for Monitoring and Reporting Goal Attainment for the Four Designated Industry Groups

1. Refuse Systems and Related Services

The Small Business Competitiveness Demonstration Program Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SIC codes 4212 and 4953 include services that should not be included in the Program. The Program is designed to assess small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse, and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities, and garbage processing and recycling activities,

should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services—including portable sanitation services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services

a. The Small Business Competitiveness Demonstration Act of 1988 provides that A&E services (including surveying and mapping) shall include contracts assigned SIC codes 8711, 8712, 8713, and 7389 (if identified as mapping), and awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the ''Brooks A–E Act''). Since SIC code 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:

T002 Cartography services
T004 Charting services
T008 Photogrammetry services
T009 Aerial photographic services
T014 Topography services

b. Participating agencies shall use the following FPDS service codes to monitor A&E services under SICcodes 8711, 8712, and 8713:

C111 Administrative and Service Buildings
C112 Airfield, Communication and Missile Facilities
C113 Educational Buildings
C114 Hospital Buildings
C115 Industrial Buildings
C116 Residential Buildings
C117 Warehouse Buildings
C118 Research and Development Facilities
C119 Other Buildings
C121 Conservation and Development
C122 Highways, Roads, Streets and Bridges
C123 Electric Power Generation (EPG)
C124 Utilities
C129 Other Non-Building Structures
C130 Restoration
C211 Architect—Engineer Services (non-construction)
C212 Engineering Drafting Services
C213 A&E Inspection Services (non-construction)
C214 A&E Management Engineering Services
C215 A&E Production Engineering Services
C216 Marine A&E Services
C219 Other Architect and Engineering Services
R404 Land Surveys, Cadastral Services—non-construction

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC code 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

4. Construction

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment A.

V. FPDS Data Collection Requirements

Participating agencies shall maintain and report procurement data to the Federal Procurement Data System (FPDS) in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of $25,000

For contract awards in excess of $25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns and small disadvantaged business concerns, as required by section 714(c) of the Small Business Competitiveness Demonstration Program Act of 1988. However, for purposes of the Program, the FPDS reporting requirements have been revised to also:

1. Distinguish awards resulting from solicitations issued under the Program from awards resulting from solicitations issued prior to January 1, 1989, in the four designated industry groups. A distinction must be made between contract actions awarded from solicitations issued under the Program and contract actions awarded from solicitations issued prior to January 1, 1989.

2. Distinguish emerging small business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value of awards in the four designated industry groups to emerging small businesses.

3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of $25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.

4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry categories and ten targeted industry categories. Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories. The number of employees shall be based on the average of the pay periods for the last twelve months. The volume of sales shall be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).

5. Limit A&E services to contracts awarded under the qualification-based selection procedures of 40 U.S.C. 541 *et seq.* (the ''Brooks A–E Act'').

6. Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

B. Awards of $25,000 or Less

Each award of $25,000 or less made by a participating agency for the procurement of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of $25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of $500 or less are not reportable to the FPDS.

Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

Attachment A

Report on Small Business Participation Under the Small Business Competitiveness Demonstration Program for Designated Industry Groups

Fiscal Year _____ Quarter _____

Agency: _____

Subagency (if applicable) _____

Designated Groups	Total U.S. Business actions/dollars	Small business *actions/dollars**	Percentage of dollars	Small disadvantaged business actions/dollars	Percentage of dollars	Emerging small business actions/dollars	Percentage of dollars
I. Construction, excluding dredging (Dollars in Thousands; Percentage in Whole Numbers)							
SIC Group 15:							
1521							
1522							
1531							
1541							
1542							
Subtotal.							
SIC Group 16:							
1611							
1622							
1623							
1629							
Subtotal							
SIC Group 17:							
1711							
1721							
1731							
1741							
1742							
1743							
1751							
1752							
1761							
1771							
1781							
1791							
1793							
1794							
1795							
1796							
1799							
Subtotal							
Grand Total							
II. Refuse Systems and Related Services (Dollars in Thousands; Percentages in Whole Numbers)							
PSC S205							
Total							
III. Architectural and Engineering Services, including mapping and surveying (Dollars in Thousands; Percentages in Whole Numbers)							
SIC 7389:							
PSC T002							
PSC T004							
PSC T008							
PSC T009							
PSC T014							
Subtotal							
SIC 8711 or SIC 8712 or 8713:							
PSC C111							
PSC C112							
PSC C113							
PSC C114							
PSC C115							
PSC C116							
PSC C117							
PSC C118							
PSC C119							
PSC C121							
PSC C122							
PSC C123							
PSC C124							
PSC C129							
PSC C130							
PSC C211							
PSC C212							

Designated Groups	Total U.S. Business actions/dollars	Small business *actions/dollars**	Percentage of dollars	Small disadvantaged business actions/dollars	Percentage of dollars	Emerging small business actions/dollars	Percentage of dollars
PSC C213							
PSC C214							
PSC C215							
PSC C216							
PSC C219							
PSC R404							
Subtotal							
Grand Total							
IV. Non-nuclear Ship Repair (Dollars in Thousands; Percentages in Whole Numbers)							
SIC 3731:							
PSC J998							
PSC J999							
Total							

*Small Business Dollars include dollars to Emerging Small Businesses.

[FR Doc. 98–26060 Filed 9–28–98; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 34–1, Fuel Venting and Exhaust Emissions Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This notice invites public comment on a proposed Advisory Circular that provides guidance for implementing the fuel venting and exhaust emission requirements for turbine engine powered airplanes.

DATES: Comments must be received on or before December 1, 1998.

ADDRESSES: Send all comments on the proposed Advisory Circular to: Curtis Holsclaw, Manager of Research and Engineering, AEE–110, Office of Environment and Energy, 800 Independence Ave., S.W., Washington, DC 20591. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward McQueen, Research and Engineering Branch, AEE–110, Office of Environment and Energy, 800 Independence Ave., S.W., Washington, DC 20591; telephone (202) 267–3560; E-mail: edward.mcqueen@faa.gov

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject Advisory Circular may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed Advisory Circular by submitting such written data, views, or arguments, as they may desire. Commentors must identify the title of the Advisory Circular and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered before issuing the final Advisory Circular.

Discussion

Advisory Circular (AC) 34–1, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes, has been written to provide section-by-section guidance on 14 CFR Part 34. The AC is intended to provide a better understanding of the provisions of the Part 34, and to facilitate standardized implementation of the Part 34 throughout the aviation industry. The AC contains information concerning the standards and requirements for aircraft fuel venting and engine emission certification, and presents explanatory information and guidance, as necessary, to identify acceptable means of compliance. The information contained in the AC sets forth acceptable means, but not the sole means, by which compliance may be shown with the requirements of Part 34.

Pursuant to the Clean Air Act, Sections 231 and 232, Part 34 must conform to 40 CFR part 87 as issued by the United States Environmental Protection Agency. Potential users of this proposed AC, as well as Part 34, should be alert to any changes to 40 CFR part 87 that have not yet been included in either Part 34 or this AC. In such instances the requirements of 40 CFR Part 87 are considered controlling.

In addition to the section-by-section explanations, the AC includes three chapters that explain specific appendices from the International Civil Aviation Organization (ICAO), Annex 16, Volume II, Aircraft Engine Emissions. Since Annex 16 is specifically referenced in Part 34, these chapters are included to make the AC a more complete reference source.

The ICAO appendices deal with detailed technical issues regarding instrumentation and measurement techniques and, as such, are relatively complex. Thus, they have been kept distinct from the rest of the AC as separate chapters. Typically, only those readers who are interested in specific equations and/or details regarding measurement techniques will need to read these sections.

Issued in Washington, DC on September 22, 1998.

James D. Erickson,

Director of Environment and Energy.

[FR Doc. 98–25864 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Amateur-Built Aircraft Registration

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:

Sharon Ashford, Civil Aviation Registry, Aircraft Registration Branch, AFS–750, Post Office Box 25504, Oklahoma City, Oklahoma 73125, Telephone: 405–954–3284.

SUPPLEMENTARY INFORMATION: In response to a recommendation by the National Transportation Safety Board and consistent with 14 CFR 47.33(c), With respect to aircraft built from kits, the Aircraft Registration Branch is

requiring that applicants for aircraft registration must also submit a bill of sale from the manufacturer of the kit.

Mark D. Lash,

Manager, Civil Aviation Registry.

[FR Doc. 98–25993 Filed 9–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33630]

The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company—Acquisition Exemption—Lines Between Dawes, TX, and Avondale, LA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting the joint petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 filed by The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) for the acquisition of joint ownership of a line of railroad between Dawes, TX, and Avondale, LA, a distance of approximately 338 miles, subject to employee protective conditions.

DATES: The exemption is effective on October 29, 1998. Petitions to stay must be filed by October 9, 1998. Petitions to reopen must be filed by October 19, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to the exemption granted in STB Finance Docket No. 33630 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on the parties' representatives: (1) for BNSF, Erika Z. Jones, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, NW, Washington, DC 20006; and (2) For UP, Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, NW, P.O. Box 7566, Washington, DC 20044–7566.

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

SUPPLEMENTARY INFORMATION: The ownership of the railroad line between Dawes and Avondale is presently divided between UP and BNSF. UP owns the 147.5-mile segment between Dawes, at milepost 352.8, and Iowa Junction, LA, at milepost 205.3 (the Beaumont Segment), and BNSF owns the 190.4-mile segment between Iowa Junction and Avondale, at milepost 14.9 (the Avondale Segment), having acquired it pursuant to the UP/SP [1]-BNSF Settlement Agreement in Finance Docket No. 32760.[2] As part of the Settlement Agreement, UP retained trackage rights over the Avondale Segment, including the right to serve all local industries on that line. In addition, BNSF received overhead trackage rights on the Beaumont Segment, with access to all new facilities customers, Lake Charles area customers, and all shippers that would have had their railroad service options reduced from 2 to 1 as a result of the merger.[3]

On February 12, 1998, BNSF and UP entered into a Term Sheet agreement relating to the two railroads' operations in and around Houston, TX, and along the Gulf Coast between Houston and New Orleans, LA. As one part of that agreement, BNSF and UP agreed to exchange 50% ownership interests in their respective main line segments, including operating sidings used for meeting and passing trains. Under the Term Sheet agreement, BNSF will acquire an undivided 50% interest in UP's Beaumont Segment, and UP will acquire an undivided 50% interest in BNSF's Avondale Segment. Other elements of the Term Sheet agreement include the establishment of a regional dispatching center in Spring, TX, for UP and BNSF lines in and around Houston and between Houston and New Orleans. In addition, BNSF will gain access to all present and future shipper facilities on the line and on former SP branches or spurs that connect to the line, as well as on new branches and spurs added to the line. The ownership exchange will be made subject to the existing trackage rights of the Texas Mexican Railway Company between Houston and Beaumont, as well as Amtrak's service over the entire line. Both BNSF and UP will be permitted to use the Louisiana & Delta Railroad as their agent to provide service over the line.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services at (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–26025 Filed 9–28–98; 8:45 am]

BILLING CODE 4915–00–P

[1] ''SP'' refers to Southern Pacific Transportation Company and its affiliates.

[2] *See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company,* Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996). BNSF's acquisition of the Avondale Segment was exempted in Finance Docket No. 32760 (Sub-No. 2), which was embraced in Decision No. 44.

[3] BNSF's trackage rights were exempted in Finance Docket 32760 (Sub-No. 1), which also was embraced in Decision No. 44.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33637]

Missouri & Northern Arkansas Railroad Company, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Missouri & Northern Arkansas Railroad Company, Inc. (MNA), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 9.6 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company. The lines being acquired by MNA are located between: (1) milepost 334.39 and milepost 330.2 in Joplin, MO; and (2) milepost 309.9 and milepost 315.3 in Carthage, MO.

The transaction was scheduled to be consummated on or shortly after September 9, 1998.

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. 33637, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, 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, NW, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 22, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–26026 Filed 9–28–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 21, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 1998, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0005.

Form Number: ATF F 3210.1.

Type of Review: Extension.

Title: Application for Restoration of Firearms and/or Explosives.

Description: Certain categories of persons are prohibited from possessing explosives and firearms. This form is the basis for ATF investigating the merits of an applicant to have his/her rights restored.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512–0026.

Form Number: ATF F 3 (5320.3).

Type of Review: Extension.

Title: Application for Tax Exempt Transfer of Firearms and Registration of Special (Occupational) Taxpayer (26 U.S.C. 53, Firearms).

Description: This application allows a special taxpayer firearms licensee to transfer a National Firearms Act firearm without payment of tax to another eligible special taxpayer upon approval of ATF. The approval form is proof that the firearms is legally held and legally transferred to the current holder of the firearm. Conversely, lack of the form could indicate illegal possession.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 22,579.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: Other (ATF Form 3 is required to be submitted and approved by ATF prior to the transfer of a National Firearms Act weapon from one Special Occupational Tax-paying Federal firearms licensee to another Special taxpaying licensee. The form is required whenever such a transfer is to be made.)

Estimated Total Reporting/ Recordkeeping Burden: 112,895 hours.

OMB Number: 1512–0029.

Form Number: ATF F 10 (5320.10).

Type of Review: Extension.

Title: Application for Registration of Firearms Acquired by Certain Governmental Entities.

Description: This form is used by State and local government agencies to obtain permission to register otherwise unregisterable firearms for agency use. These agencies obtain a benefit from this registration.

Respondents: Federal Government, Individuals or households, Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Reporting/ Recordkeepers: 600.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: Other (ATF Form 10 is required to be submitted by State and local government entities wishing to register an abandoned or seized and previously unregistered National Firearms Act weapon. The form is required whenever application for such a registration is made.)

Estimated Total Reporting/ Recordkeeping Burden: 300 hours.

OMB Number: 1512–0095.

Form Number: ATF F 5154.1.

Type of Review: Extension.

Title: Formula and Process for Nonbeverage Product.

Description: Businesses that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance), if they can substantiate by using ATF Form 5154.1 that the spirits were used in the manufacture of products unfit for beverage use. This determination is based on the formula for the product.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 611.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 2,500 hours.

OMB Number: 1512–0095.

Form Number: ATF F 5520.2.

Recordkeeping Requirement Number: ATF REC 5520/1.

Type of Review: Revision.

Title: Annual Report of Concentrate Manufacturers and Usual (F 5520.2); and, Customary Business Records—Volatile Fruit-Flavor Concentrate (REC 5520/1).

Description: Manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to insure the protection of the revenue. The report accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. The information is required to verify that alcohol is not being diverted thereby jeopardizing tax revenues.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 91.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 30 hours.

OMB Number: 1512–0222.

Form Number: ATF F 5640.2.

Type of Review: Extension.

Title: Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration Act, as Amended.

Description: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. ATF F 5640.2 identifies the violation(s) to be compromised by the person committing them, amount of offer plus justification for acceptance.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 24 hours.

OMB Number: 1512–0353.

Recordkeeping Requirement Number: ATF REC 5170/2.

Type of Review: Extension.

Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report.

Description: An accounting tool, this record is used to show the person from

whom a wholesale dealer purchased alcoholic beverages, and the person to whom the dealer sold alcoholic beverages. When required, the monthly report will provide a report of sales activities and on-hand inventory quantities.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion, Monthly.

Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1512–0379.

Recordkeeping Requirement Number: ATF REC 5530/2.

Type of Review: Extension.

Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback.

Description: Records required to be maintained by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability; allows tracing of spirits by audit.

Respondents: Business or other for-profit

Estimated Number of Recordkeepers: 611.

Estimated Burden Hours Per Recordkeeper: 21 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 12,831 hours.

OMB Number: 1512–0385.

Recordkeeping Requirement Number: ATF REC 5900/1.

Type of Review: Extension.

Title: Proprietors or Claimants Exporting Liquors.

Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of excise taxes, or, they may be exported if their taxes have been paid and the exporters may claim drawback of the taxes paid. The record is needed to allow the amounts exported to be verified and to maintain accountability over products. The records protect the revenue.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 120.

Estimated Burden Hours Per Recordkeeper: 60 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 7,200 hours.

OMB Number: 1512–0528.

Form Number: None.

Type of Review: Extension.

Title: Administrative Remedies—Closing Agreements.

Description: This is a written agreement between ATF and regulated taxpayers used to finalized and resolve certain tax related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts are proven.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0529.

Form Number: ATF F 1676 (5510.2).

Type of Review: Extension.

Title: Bond Covering Removal to and Use at Vinegar Plant.

Description: ATF F 1676 (5510.2) is a bond form which serves as a contact between the proprietor of a vinegar plant and a surety. The bond coverage stated on the form is in an amount sufficient to cover the federal excise tax on wine in transit to and stored on the vinegar plant premises until the wine becomes vinegar.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1512–0531.

Recordkeeping Requirement Number: ATF REC 5210/1.

Type of Review: Extension.

Title: Consignment of Tobacco Products and Cigarette Papers and Tubes Export Shipments.

Description: Tobacco products have historically been a major source of excise tax revenues for the Federal government. In order to safeguard these taxes, members of the regulated tobacco industry are required to maintain a system of records designed to establish accountability over the tobacco products manufactured.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 314.

Estimated Burden Hours Per Recordkeeper: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 21,195 hours.

OMB Number: 1512–0532.

Recordkeeping Requirement Number: ATF REC 5210/13.

Type of Review: Extension.

Title: Marks and Notices on Packages of Tobacco Products.

Description: ATF requires that tobacco products be identified by statements of information on packages, cases and containers of tobacco products. ATF uses this information to validate the receipt of excise tax revenue, the determination of tax liability and the verification of claims.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 120.

Estimated Burden Hours Per Recordkeeper: 0 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0533.

Recordkeeping Requirement Number: ATF REC 5210/2.

Type of Review: Extension.

Title: Drawback of Tax on Tobacco Products and Cigarette Papers and Tubes-Export Shipment.

Description: Exporters may file claim for drawback of tax on tobacco products and cigarette papers and tubes which have been taxpaid and are to be exported. Needed to ensure drawback of tax is properly documented and justified.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 5 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 5 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–25924 Filed 9–28–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 21, 1998.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 1998, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1317.

Regulation Project Number: INTL–79–91 Final.

Type of Review: Extension.

Title: Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.

Description: These regulations clarify certain requirements of section 1.6035–1, 1.6038–2 and 1.6046–1 of the Income Tax Regulations relating to Form 5471 and affect controlled foreign corporations and their United States shareholders.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1341.

Regulation Project Number: EE–43–92 Final.

Type of Review: Extension.

Title: Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans.

Description: These regulations provide rules implementing provisions of the enacted Unemployment Compensation Amendments (Public Law 102–318) requiring 20 percent income tax withholding upon certain distributions from qualified pension plans or tax-sheltered annuities.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,323,926.

Estimated Burden Hours Per Respondent: 13 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,129,669 hours.

OMB Number: 1545–1343.

Regulation Project Number: PS–100–88 Final.

Type of Review: Extension.

Title: Valuation Tables.

Description: The regulations require individuals or fiduciaries to report information on Forms 706 and 709 in connection with valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1545–1345.

Regulation Project Number: CO–99–91 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss.

Description: This regulations modifies the application of the segregation rules under section 382 in the case of certain issuances of stock by a loss corporation. This regulation provides that the segregation rules doe not apply to small issuances of stock, as defined, and apply only in part to certain other issuances of stock for cash.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–25925 Filed 9–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 17, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1357.

Revenue Project Number: PS–50–92 Final.

Type of Review: Extension.

Title: Rules to Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions.

Description: These regulations concern the Secretary's authority to provide guidance under section 42, and provide for the correction of administrative errors and omissions related to the allocation of low-income housing credit dollar amounts and recordkeeping.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 85.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 128 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 98–26014 Filed 9–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 18, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 1998 to be assured of consideration. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–0085.

Form Number: IRS Form 1040A, Schedules 1, 2, 3, and EIC.

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data are used to verify that the income reported on the form is correct and are also for statistic use.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 24,579,173.

Estimated Burden Hours Per Respondent/Recordkeeper: Varies.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 224,866,412 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 98–26015 Filed 9–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

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, Pub. L. 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the information collection entitled Electronic Loan Data Request Survey.

DATES: Submit written comments on or before November 30, 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 1550–0093. Hand deliver comments to 1700 G Street, NW. from 9 a.m. to 5 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). E-mail 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 a.m. until 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Alvin Smuzynski, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5669.

SUPPLEMENTARY INFORMATION:

Title: Electronic Loan Data Request Survey.

OMB Number: 1550–0093.

Form Number: OTS Form 1630.

Abstract: As part of the safety and soundness examination process, institutions are asked to provide loan information electronically to the examiners. This survey provides feedback on the difficulty and time required for preparation of the loan information, costs involved and comparison with the previous paper-based system, and whether the burden of an on-site examination was reduced.

Current Actions: OTS proposes to renew this information collection with (without) revision.

Type of Review: Extension of an already approved information collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: .25 hours average.

Estimated Total Annual Burden Hours: 250 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment 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; and (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.

Dated: September 23, 1998.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–25958 Filed 9–28–98; 8:45 am]

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federal register

Tuesday
September 29, 1998

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE93

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1998–99 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1998. The effect of this final rule is to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

DATES: This rule takes effect on September 29, 1998

ADDRESSES: States should send their season selections to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1838.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1998

On March 20, 1998, the Service published in the **Federal Register** (63 FR 13748) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On May 29, 1998, the Service published in the **Federal Register** (63 FR 29518) a second document providing supplemental proposals for early-and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1998–99 duck hunting season. The May 29 supplement also provided detailed information on the 1998–99 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 25, 1998, the Service held a public hearing in Washington, DC, as announced in the March 20 and May 29 **Federal Register**s to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 17, 1998, the Service published in the **Federal Register** (63 FR 38700) a third document specifically dealing with proposed early-season frameworks for the 1998–99 season. The July 17 supplement also established the final regulatory alternatives for the 1998–99 duck hunting season for all States except Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. On August 5, 1998, the Service published in the **Federal Register** (63 FR 41926) a fourth document dealing specifically with the final regulatory alternatives for the 1998–99 duck hunting season for the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. On August 6, 1998, the Service held a public hearing in Washington, DC, as announced in the March 20, May 29, and July 17 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 25, 1998, the Service published a fifth document (63 FR 45350) which dealt specifically with proposed frameworks for the 1998–99 late-season migratory bird hunting regulations. On August 28, 1998, the Service published a sixth document (63 FR 46124) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for the 1998–99 season. On August 31, 1998, the Service published in the **Federal Register** (63 FR 46336) a seventh document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1998–99 season, is the eighth in the series.

Review of Flyway Council Recommendations, Public Comments, and the Service's Response The preliminary proposed rulemaking, which appeared in the March 20 **Federal Register**, opened the public-comment period for late-season migratory game bird hunting regulations. The Service received recommendations from all four Flyway Councils. Public-hearing and written comments received through September 8, 1998, relating to the proposed late-season frameworks are summarized and discussed in the order used in the March 20 **Federal Register**. Only the numbered items pertaining to late seasons for which written comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1997–98 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1997–98.

General

Written Comments: The Humane Society of the United States (HSUS) expressed concern that the general public was not well represented in the regulations-development process and requested establishment of a system directly involving the non-hunting public. In addition, they recommended that the Service undertake efforts to obtain population estimates for all hunted species and that all seasons open at noon, mid-week, to reduce the large kills associated with the traditional Saturday openings. They also recommend that pre-sunrise shooting be disallowed.

Service Response: As we have stated previously, when the preliminary proposed rulemaking document was published in the **Federal Register** on March 20, 1998, the Service announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations ''must, by its nature, operate under time constraints.'' Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input. The Service is obligated to, and does, give serious consideration to all information received as public comment. The Service has long recognized the problems associated with the length of time necessary to establish the final frameworks, and in conjunction with States, Flyway Councils, and the public, continues to seek new ways to streamline and improve the process.

Regarding the Service's efforts to obtain population estimates, the long-term objectives of the Service continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit

harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the Service evaluates the status of populations and considers the potential impacts of hunting. The Service believes that the hunting seasons provided herein are consistent with the current status of waterfowl populations and long-term population goals.

Regarding the Humane Society's recommendation for mid-week season openings, the Service has previously stated in the **Federal Register** (58 FR 50190) that a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

In regard to shooting hours, the Service has compiled information which demonstrates that shooting hours beginning one-half hour before sunrise do not contribute significantly to the harvest of non-target species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended adopting the ''liberal'' alternative for the 1998–99 duck hunting season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the ''liberal'' alternative with a modification of the framework closing date. Specific details are discussed in B. Framework Dates.

The Mississippi Flyway Council recommended that the Service and/or the Adaptive Harvest Management (AHM) Working Group consider: (1) the definition of the blank cells in the AHM matrix, (2) the utility of eliminating the ''very restrictive'' regulations package, and (3) the utility of a constraint that the packages may change by no more than one level between consecutive hunting seasons.

Written Comments: The Massachusetts Division of Fisheries and Wildlife concurred with the continuation of the ''liberal'' package for 1998–99. However, they noted that mallard numbers, as measured by the Northeastern States plot survey, had declined for the third straight year as season lengths have increased. They believed the situation should be closely monitored.

The Minnesota Waterfowl Association recommended a more conservative approach in establishing the 1998–99 regulations in light of anticipated waterfowl population declines. The Wildlife Management Institute (WMI) strongly supported the Service's determination to continue using the AHM approach to setting seasons and bag limits. WMI agreed that an extended period of set regulatory alternatives is essential to maximizing the successful implementation of AHM.

An individual from Maryland recommended decreasing the bag limits over the next two years and the discontinuance of all waterfowl hunting by the year 2000.

Service Response: In 1995, the Service endorsed the concept of adaptive resource management for regulating duck harvests in the United States. The adaptive approach explicitly recognizes that the consequences of hunting regulations cannot be predicted with certainty, and provides a framework for making objective decisions in the face of that uncertainty. Moreover, AHM relies on the iterative cycle of monitoring, assessment, and decision-making to clarify relationships among hunting regulations, harvests, and waterfowl abundance.

A critical need for the successful implementation of AHM is a set of regulatory alternatives that remain fixed for an extended period. When AHM was first implemented in 1995, three regulatory alternatives characterized as liberal, moderate, and restrictive were defined based on recent regulatory experience. The 1995 regulatory alternatives also were used for the 1996 hunting season. In 1997, the regulatory alternatives were modified in response to requests from the Flyway Councils. Changes included provisions for additional hunting opportunity under the moderate and liberal alternatives, as well as the addition of a very restrictive alternative. For the 1998–99 season, no further changes in the set of regulatory alternatives have been made.

To date, AHM has focused primarily on midcontinent mallards, but progress is being made on extending the process to account for mallards breeding eastward and westward of the midcontinent region. The ultimate goal is to develop Flyway-specific harvest strategies, which represent an average of optimal strategies for each mallard breeding population, weighted by the relative contribution of each population to the respective Flyways. Geographic boundaries used to define midcontinent and eastern mallards have been established, and mathematical models of population dynamics are available for predicting regulatory impacts. Investigations regarding the geographic bounds and population dynamics of western mallards are ongoing.

AHM strategies for 1998 were derived for midcontinent and eastern mallards, but they do not yet allow for Flyway-specific regulatory choices. The strategy for midcontinent mallards was based on: (1) an objective to maximize long-term harvest and achieve a population goal of 8.7 million; (2) the regulatory alternatives for 1998; and (3) current understanding of regulatory impacts. Based on a breeding population size of 10.6 million mallards (traditional surveyed area plus the Lake States) and 2.5 million ponds in Prairie Canada, the optimal regulatory choice for midcontinent mallards in 1998 is the liberal alternative. The strategy for eastern mallards was based on: (1) an objective to maximize long-term harvest; (2) the regulatory alternatives for 1998; and (3) a ''working model'' of population dynamics. Based on a breeding population size of 1.0 million mallards and spring precipitation of 11.6 inches, the optimal regulatory choice for eastern mallards in 1998 also is the liberal alternative. Therefore, the Service agrees with the Flyway Councils and will utilize the liberal alternative for the 1998 duck hunting season.

The framework closing date recommended by the Lower-Region Regulations Committee of the Mississippi Flyway Council differed from those in the ''liberal'' alternative established in the August 5 **Federal Register**. The Service's frameworks are consistent with the ''liberal'' alternative outlined in the July 17 and August 5 **Federal Registers** and was supported by the other three Flyway Councils as well as the Mississippi Flyway Council's Upper-Region Regulations Committee.

The Service understands the desire of the Mississippi Flyway Council to clarify some aspects of the current AHM strategies. The ''blank cells in the AHM matrix'' represent combinations of mallard population size and environmental conditions that are insufficient for an open season on

mallards, given current regulatory alternatives. In the case of midcontinent mallards, the prescriptions for closed seasons largely are a result of the harvest management objective, which emphasizes population growth at the expense of hunting opportunity when mallard numbers are below the NAWMP goal. The Service will request that the AHM working group investigate the implications of eliminating the very restrictive option, and of constraining annual changes among alternatives.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council recommended that the Service not allow framework date extensions in any States during the 1998–99 season, and that the Service work with the National Flyway Council to develop a process and timetable for addressing the issue.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended framework dates from October 3 to January 31. Any State opting for a framework closure later than the Sunday nearest January 20 would be assessed a 10% penalty in days.

Public Hearing Comments: Mr. Brad Bales, Oregon Department of Fish and Wildlife, spoke on behalf of the Pacific Flyway Council. He indicated that the Council supported and appreciated the Service's decision on the framework issue and was also in strong support of the proposed National Flyway Council review of this issue.

Written Comments: The HSUS recommended that season openings be delayed by 2 weeks in all breeding areas in order to allow ducks time to leave natal marshes before being subjected to hunting.

Service Response: In the August 5 **Federal Register**, the Service outlined the reasons why it did not support an expansion of the framework dates at this time.

Regarding HSUS's comment on the framework opening date, the Service reiterates previous responses that the frameworks provided herein are appropriate and that there is no evidence to indicate that they have adversely impacted local populations.

F. Zones and Split Seasons

Written Comments: The Ohio Division of Wildlife requested elimination of the Pymatuning Waterfowl Hunting Area in Ohio and incorporation of the affected area into the North Zone beginning in the 1998–99 season.

The HSUS urged the Service to discontinue all split and special seasons and recommended that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Service Response: In the past, hunting seasons in that portion of Ohio had to be the same as those selected for that portion of Pennsylvania. Beginning this year, the Pymatuning Area will no longer be included in the Federal waterfowl hunting frameworks as a separate area, and will be considered part of Ohio's North Zone.

In regard to the recommendation that split and special seasons be discontinued, the Service notes that States always have the option of selecting a continuous season with no splits. Furthermore, the Service is not aware of any information suggesting that split and special seasons are causing detrimental impacts to populations.

G. Special Seasons/Species Management

1. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended that the individual Atlantic Flyway States achieve a 42 percent reduction in their black duck harvest during the 1998–99 season compared with the 1977–81 base-line harvest.

Service Response: The Service agrees with the Atlantic Flyway Council's recommendation and acknowledges the Council's concern for the population status of black ducks. Black duck populations remain below the North American Wildlife Management Plan goal and while the decline seems to have halted, little increase is evident. The Service believes the harvest restrictions identified in the 1983 Environmental Assessment should be maintained until a revised harvest strategy is developed.

ii. Canvasbacks. The Service continues to support the canvasback harvest strategy adopted in 1994. Current population and habitat status suggest that a daily bag limit of 1 canvasback during the 1998–99 season will result in a harvest within levels allowed by the strategy.

iii. Pintails. Council Recommendations: All four Flyway Councils recommended a daily bag limit of 1 pintail in the 1998–99 hunting season as prescribed by the Interim Pintail Harvest Strategy.

Written Comments: Delta Waterfowl Foundation recommended suspension of the Interim Pintail Strategy pending further review and revision and a daily bag limit of 1 pintail for all Flyways in 1998.

An individual from Washington was concerned with the liberalization of pintail harvest last year and urged the Service to review the status of pintails.

Service Response: The Service concurs with the Councils' recommendations.

iv. Scaup. Council recommendations: The Atlantic Flyway Council recommended a 4-bird daily bag limit for scaup in the Atlantic Flyway, and that the Atlantic Flyway cooperate with the other Flyway Councils and the Service to develop a conservation plan for scaup, to include a harvest management strategy.

The Mississippi Flyway Council recommended that the Mississippi Flyway cooperate with other Flyway Councils and the Service to develop a harvest management strategy for scaup prior to the 1999–2000 hunting season. The Council believes that the strategy should address the criteria recommended by the Service in the July 22, 1996 **Federal Register** (61 FR 37994) prior to changing species harvest management: (1) An assessment of how the population responds to harvest and environmental conditions; (2) Criteria that prescribe when regulations should be changed; (3) The levels of changes in regulations that will be considered (e.g., ranges of bag limits and season lengths); and (4) Considerations for determining the efficacy of the harvest strategy. The Council further recommended that the Service take the lead to coordinate strategy development. The Council believes that this is the highest priority of the new species-specific management issues for consideration in developing 1999–2000 duck hunting regulations packages.

The Central Flyway Council recommended no change in scaup regulations for the 1998–99 hunting season and suggested that the Service establish a study group of MBMO biologists and a representative from each of the four Flyways to develop a draft Scaup Harvest Management Strategy prior to the spring 1999 Flyway Technical Committee meetings.

The Pacific Flyway Council recommended no internal bag limit restrictions on scaup in the Pacific Flyway for the 1998–99 hunting season. Further, the Council offered their assistance to a cooperative effort to investigate causes of the decline in scaup populations while noting the harvest in the Pacific Flyway was small relative to other Flyways.

Written Comments: The Minnesota Waterfowl Association recommended consideration of a reduction in the daily bag limit for scaup in view of the further decreases in scaup populations. They recommended a 3-bird daily bag limit as a starting point for consideration.

Service Response: The Service supports the Flyway Councils' recommendations for scaup hunting regulations. However, the Service remains concerned about the declining trend in the size of the scaup breeding population and believes that substantial reductions in hunting opportunity may soon be necessary. The Service intends to cooperate with the Flyway Councils in an effort to develop a strategy for guiding scaup harvest management regulations beginning in 1999. This strategy will build upon information in a status report on scaup that the Service currently is preparing.

v. Wood Ducks. Written Comments: The Massachusetts Division of Fisheries and Wildlife stated concerns about the effects of longer seasons on total wood duck harvest and the increasing disparity in the harvest between northern and southern States. They noted that wood duck harvest in the Atlantic Flyway had increased 86 percent from 30-day seasons to 60-day seasons and that most of this increased harvest had occurred in the southeastern States of North Carolina, South Carolina, and Georgia.

They looked forward to developing a fair and equitable harvest strategy for wood ducks.

4. Canada Geese

Council Recommendations: The Atlantic Flyway Council recommended the Service not open the regular hunting season on Atlantic Population (AP) Canada geese during the 1998–99 season. However, the Council recommended that the Service adopt a regular season on the newly defined North Atlantic Population of Canada geese. This season would be offered in Maine, New Hampshire, Rhode Island, and portions of Massachusetts (Coastal and Central Zones), Connecticut (except for Hartford and Litchfield Counties west of the Connecticut River), and New York (Long Island Zone) and would consist of a 40-day season with a 2-bird daily bag limit between October 1 and December 15 (December 31 in New York's Long Island Zone). The Council also recommended that New York be permitted to change the boundary of their regular Canada goose season in western New York (portions of Genesee, Niagara, and Wyoming Counties).

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1998 regular goose season opening date be as early as September 19 throughout Michigan. The Committee also recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs.

The Central Flyway Council made several recommendations on goose frameworks. In the East Tier, the Council recommended a Canada goose (or any other goose species except light geese and white-fronted geese) season of 93 days with a daily bag limit of 3. Outside framework dates would be the Saturday nearest October 1 (Oct. 3, 1998) and the Sunday nearest February 15 (Feb. 14, 1999). The Council further recommended that the boundary between Nebraska's East and West Units be modified and that Southwest and Northwest Dark Goose Hunt Units be established in Nebraska. In the West Tier, the Council recommended dark goose outside framework dates of the Saturday nearest October 1 (October 3, 1998) and the Sunday nearest February 15 (February 14, 1999), with a daily bag and possession limits of 4 and 12, respectively. In the western goose zone of Texas, the Council recommended a daily bag limit of 4 Canada geese and 1 white-fronted goose and a possession limit of 14, including no more than 12 Canada geese and 2 white-fronted geese. The Council further recommended an expansion of New Mexico's Middle Rio Grande Valley dark goose zone to include Valencia and the remainder of Socorro Counties.

The Pacific Flyway Council recommended that the bag limit for dark geese be increased from 3 to 4 in the Oregon and Washington Special Goose Management Area for both the regular and Special late seasons. The Council also recommended that this limit include no internal restrictions on cackling Canada geese. In addition, the Council recommended that a portion of Grays Harbor County, Washington, be added to the Washington Special Goose Management Area.

Public Hearing Comments: Mr. Brad Bales, Oregon Department of Fish and Wildlife, spoke on behalf of the Pacific Flyway Council. He expressed the support of the States of Washington and Oregon as well as the Council for the Service's endorsement of the proposed changes in dark goose regulations in the dusky Canada goose control zones.

Written Comments: The Michigan Department of Natural Resources disagreed with the Service's reduction in the daily bag limit of Canada geese from 2 birds to 1 in the South Zone during the last 2 days of their proposed early-opening regular Canada goose season if these days coincide with the first two days of the duck season; stating that this change is unnecessarily restrictive to hunters.

The California Department of Fish and Game recommended increasing the possession limit for dark geese in the Southern Zone of California to twice the daily bag limit.

The Maryland Wildlife Advisory Commission expressed concerns for the problem of crop losses on the State's Eastern Shore, caused by too many Canada geese and the lack of a hunting season. Also, they cite the lack of winter foods for geese since there is no longer an economic incentive to make food available. The Commission recommended consideration of a hunting season on AP Canada geese as soon as the geese can withstand it biologically. Other individuals from Maryland and Virginia recommended consideration of reopening the regular season on AP Canada geese.

An individual from Illinois questioned how the distribution of the Canada goose quota was determined for Illinois' goose zones.

An individual from Minnesota questioned the proposed restrictions for Eastern Prairie Population (EPP) Canada geese in Minnesota. He believes Minnesota shoulders an unfair burden for reducing the EPP harvest compared to South Dakota and North Dakota and recommended a voluntary restraint program. Another individual from Minnesota urged reconsideration of the EPP restrictions.

Service Response: The Service supports the Atlantic Flyway Council's request to adopt a regular season on the North Atlantic Population of Canada geese in the areas described. Monitoring and assessment programs specified in the newly developed interim management plan, 1998–2000, appear to be adequate to determine the status of this population and evaluate the impacts of hunting. Breeding ground surveys in Labrador indicate that this population currently exceeds the population goal stipulated in the plan. The harvest strategy in the plan has targeted a range of harvest rates to be achieved under each regulatory alternative. The ''moderate'' alternative recommended seems to be appropriate at this time. The Service encourages further development of the management plan during the interim period to include the addition of portions of Newfoundland and Quebec in the breeding survey database and to expand the banding program beyond Prince Edward Island to late-summer staging areas in Newfoundland and Labrador. This information will facilitate updating the population goal and improving harvest-rate estimates. The Service appreciates the efforts of the Council and its Technical Section to delineate

and improve the management of this population.

The Service recognizes the problems related to a closed hunting season on the Atlantic Population but maintains that the recovery to acceptable numbers must be sustained into the future. The good production recorded on the breeding grounds in 1997 and 1998 will help speed the recovery and is encouraging news. A regular season harvest of AP Canada geese will be considered when the breeding population index indicates a sustained recovery and exceeds 60,000 pairs. Until then, no additional harvest is prescribed in any portion of the populations' range that might slow or jeopardize its recovery to objective levels.

The Service concurs with the boundary modification to New York's regular Canada goose season in the western hunt area.

Regarding the Michigan proposal, the Service believes that this change will assist in accomplishing the Mississippi Flyway Council's harvest-management objectives for this hunting season to reduce the harvest of Mississippi Valley Population Canada geese and not increase the harvest of the Southern James Bay Population. The season will still provide additional opportunity, with the earlier opening and retention of the 2-bird daily bag limit for most of the season, to harvest Canada geese from the State's burgeoning resident population.

The Service concurs with the Central Flyway's request for expansion of Canada goose seasons in the east tier. However, this expansion would include a liberalization for Eastern Prairie Population (EPP) of Canada geese in a small portion of Grant County, South Dakota. The Service believes that restrictions for EPP that have been put into effect this year in the Mississippi Flyway should also apply to this area. Historically, this area accounted for about 5% of the EPP recoveries, but has declined to 1.5% in recent years. Neck-collar observations also indicate that the majority of EPP geese do not use this area until after December 1. To address the status of these EPP geese, the Service proposes a bag limit of 3 birds until November 30, and 1 bird thereafter for this area (Power Plant Area) in Grant County, South Dakota. This would be a reduction from the 2-bird daily bag limit last year.

The Service concurs with the Central Flyway Council's recommendation for a boundary modification in Nebraska.

Regarding the Central Flyway Council's recommendations in the West Tier, the Service concurs with the recommendation for a change in the framework closing date for dark geese from January 31 to the Sunday nearest February 15; however, the Service does not support the change in the possession limit from twice to three times the daily bag limit. The Service maintains a general practice of setting possession limits for all migratory game birds as twice the daily bag limit throughout the conterminous U.S., with the only exceptions for light geese and under certain circumstances for Canada geese, where harvest quotas are in place. Attempts to encourage hunter participation by increasing possession limits have not been shown to be effective, and changes in the general approach of altering possession limits would result in law enforcement concerns. The Service does support the expansion of New Mexico's Middle Rio Grande Valley dark goose zone.

The Service concurs with the Pacific Flyway Council and California's recommendations.

C. Special Late Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service work closely with the Council's Technical Section in evaluating the cumulative effects that special seasons may have on non-target populations.

Written Comments: The Humane Society opposed special late seasons targeting resident geese. They believe that such hunts fail to target the populations ostensibly responsible for conflicts with humans and as such are ineffective.

Service Response: The Service concurs with the Council recommendation and will work with the Council's Technical Section as requested.

Regarding the HSUS's comment that such hunts fail to target specific populations, we recognize the problems caused by increasing populations of resident geese and the continuing concern for the status of certain migratory flocks. However, as we have stated previously, we remain committed to focusing these special seasons on locally-breeding and/or injurious Canada goose populations. The Service and the Flyway Councils have cooperatively reviewed and structured these special seasons to accomplish that objective while protecting migratory flocks. We do not wish to increase the composition of migrants in the harvest beyond that which is currently identified in the criteria for these seasons.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommendations regarding dark geese in the West Tier involve white-fronted geese (see item 4. Canada Geese). For the East Tier, the Council recommended a season of 72 days with a daily bag limit of 2 white-fronted geese, or a season of 86 days with a daily bag limit of 1 white-fronted goose.

Service Response: The Service concurs with the recommendation.

7. Snow and Ross' Geese

Council Recommendations: The Atlantic Flyway Council recommended an increase in the daily bag limit to 15, a possession limit of 45, shooting hours ending one-half hour after sunset, and the use of electronic calling devices when other seasons are closed. The Council requested that these changes in basic regulations be implemented as soon as legally possible.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended liberalization of daily bag limits, possession limits, tagging requirements, shooting hours, and hunting methods (electronic calls and unplugged guns) for light geese, following the close of the other waterfowl seasons in an area, to help reduce the population size of snow geese.

The Central Flyway Council recommended a light goose hunting season of 107 days, with a daily bag limit of 20 and a possession limit of 80. The Council also recommended no limit on the number of splits or zones within a season. For the Rainwater Basin area of Nebraska, the Council recommended that the Service eliminate the use of refuges and alternate-day hunting for snow geese during the spring migration period. The Council further recommended that the Service develop a proposed rule to amend the portions of 50 CFR part 20 pertaining to the methods of taking light geese including the use of electronic calls, live decoys and other techniques in the Central Flyway States during regular hunting seasons when other seasons are closed and prior to March 10, with the goal of having those changes in place prior to the beginning of the 1999–2000 light goose season.

Written Comments: The Nebraska Game and Parks Commission provided an alternative to the proposed frameworks for the hunting of light geese during the late-winter period in the Rainwater Basin Area. This alternative includes a four-year study proposal and hunt strategy that would

have an alternating open/closed approach for the western half of the area, i.e. in 1999 the western portion would be closed, in 2000 the entire area would be open, in 2001 the western portion would be closed, and finally in 2002 the entire area would again be open.

The Wildlife Management Institute (WMI) supported the increase of the light goose daily bag limit to 20 with elimination of the possession limit. WMI believes that a daily bag limit of 20 is preferable to larger bag limits or elimination of bag limits.

The HSUS believes that the proposed bag limits for snow geese are too high, devaluing the birds.

An individual from North Dakota recommended all-day hunting for light geese in North Dakota, no bag limits, and discontinuation of the 3-shotgun shell restriction.

Service Response: The Service concurs with the recommendation for a change in the daily bag limit for light geese from 10 to 20; but does not support the recommended change in the possession limit from 40 to 80. Upon review, the Service believes that possession limits for light geese are no longer a useful management tool and proposes to eliminate the possession limit.

The Service does not support the recommendation for use of unlimited splits during light goose seasons. In 1997, the Service allowed an increase from 2 to 3 season segments for geese in all four Flyways. This increase resulted in a more consistent use of split-season options among all Flyways. In addition, within any established season, a State may also designate certain days as non-hunt days, if that hunt strategy is desired. The use of zoning for light geese remains a management tool that is currently not contained by specific guidelines for use by a State. The Service believes that the current ability to divide a 107-day season into 3 segments with the unlimited use of zones provides adequate flexibility for States to set seasons for light geese.

The Service does not support the Central Flyway Council's proposal to eliminate the use of refuges and alternate day hunting for light geese during the late winter-early spring migration period in Nebraska's Rainwater Basin area. The Service continues to have concerns about potential negative impacts on other migratory birds caused by light goose hunting during this period. The Council's current proposal would result in a termination of the experimental late-winter hunting strategy and evaluation proposed by the Council in 1997 and supported by the Service. Finally, the Council's current proposal contains no evaluation component and has the potential to concentrate birds even more than with the experimental approach, contrary to the Council's and Service's objective of reducing light goose concentrations in the area.

Although the Service supports continuation of the experimental approach initiated in February, 1998, to evaluate the impacts of light goose hunting on northern pintails, white-fronted geese, and light geese and to investigate the influence of hunting on the incidence of avian cholera. The Service is prepared to cooperate with the Nebraska Game and Parks Commission to develop a mutually acceptable, multi-year experimental approach to hunting light geese in this internationally significant migration area. The Service believes that information gained from experimentation is critical to the development of a strategy that will contribute to reducing the abundance of the mid-continent light goose species while minimizing the negative impacts to other migratory birds.

The study proposal submitted by the Nebraska Game and Parks Commission has not been fully evaluated at this time, but Service staff will work with representatives from the Nebraska Game and Parks Commission and research biologists from the U.S. Geological Survey's Biological Resources Division in design of an acceptable research proposal for Nebraska's Rainwater Basin Area. The Service believes that a multi-year strategy must contain an evaluation component that facilitates the most powerful statistical analyses for testing effects of hunting and a valid test for hunting-by-region interaction. Specific effects of hunting on body condition, nutrient-reserve dynamics, time-activity budgets, and daily energy expenditure of lesser snow geese, greater white-fronted geese, and northern pintails should be investigated in this evaluation. Where possible the hunt strategy should also allow for evaluation of the influence of hunting on the incidence of avian cholera. If a mutually acceptable and funded study can be designed by December 1, 1998, the Service would allow this strategy to be implemented during late winter-early spring of 1999.

Further, the Service does not support the recommendation to hunt snow geese after sunset because of the problems involving incidental take of non-target species, retrieving crippled or downed birds, disturbance to roosting sites for other waterfowl, and potential safety problems created by the increasing darkness.

The Service acknowledges the Councils' requests that would require a change in the basic regulation contained in the 50 Code of Federal Regulations part 20. Such changes are beyond the scope of annual regulation changes addressed in this document. In the coming year, the Service will consider this request and will explore opportunities to initiate a process to evaluate changes in the basic regulations for the hunting of light geese when other season are closed, if staff time becomes available.

8. Swans

Written Comments: The HSUS requested that the Service close swan hunting seasons in Utah, Nevada, and the Pacific Flyway portion of Montana, citing that these seasons threatened trumpeter swans.

Service Response: The Service would refer the HSUS to our detailed response in the September 27, 1995, **Federal Register** (60 FR 50042) concerning the establishment of a general swan season. Enhancing Rocky Mountain Population trumpeter swan range expansion while retaining most aspects of tundra swan hunting were covered in detail in our 1995 Environmental Assessment ''Proposal to Establish General Swan Seasons in Parts of the Pacific Flyway for the 1995–99 Seasons'' (August 1995) which compares various alternative strategies for reconciling conflicting swan management strategies. Copies are available from the Service at the address indicated under the caption **ADDRESSES.**

10. Coots

Written Comments: The HSUS believes that the bag limits for coots are too high, devaluing the birds.

Service Response: Available information indicates that harvest pressure on coots is relatively light and there is no evidence to suggest the frameworks provided are not appropriate.

10. Moorhens and Gallinules

Written Comments: The HSUS believes that the bag limits for moorhens and gallinules are too high, devaluing the birds.

Service Response: Available information indicates that harvest pressure on these birds is relatively light and there is no evidence to suggest the frameworks provided are not appropriate.

23. Other

A. Compensatory Days

Written Comments: The HSUS opposes granting compensatory days in those Atlantic Flyway states where Sunday hunting is prohibited. The HSUS believes that hunters in those States should work for the passage of legislation to change State law regarding Sunday closures rather than requesting that the Service compensate them.

Service Response: In 1995, the Service committed to working with the Atlantic Flyway Council to review and better clarify the issue of compensatory days for those States prohibiting Sunday hunting in an attempt to resolve this long-standing issue. In the past, the Service had maintained the policy that this problem was an individual State issue, to be resolved by each State removing their self-imposed restrictions. However, recognizing the difficulties involved with changing State law, the Service was sympathetic to the loss of hunting opportunity that results from the existing prohibitions on Sunday hunting. A 1997 Service assessment suggested that compensatory days for Sunday closures would result in a slight increase in the harvest rates of mallards breeding in eastern Canada and the northeastern U.S., which would be accompanied by a small decrease in average breeding population size. A similar effect was expected on other species. Thus, after examining the various technical and policy concerns, the Service believed that any additional harvest impacts could be adjusted by changing regulatory frameworks where needed and that various administrative and procedural concerns could be managed. Thus, during the 1997–98 hunting season, the Service offered compensatory days to States in accordance to the following guidelines: (1) Only States in the Atlantic Flyway that prohibit Sunday hunting Statewide by State law prior to 1997 were eligible (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia); (2) All Sundays would be closed to all take (including extended falconry) of migratory waterfowl (including mergansers and coots) by Federal rulemaking. Other migratory game species would not be eligible for compensatory days; (3) Season days must run consecutively within prescribed framework dates and season length, excluding the Sunday closure, and conform to existing split-season criteria. Total season days (including extended falconry) must not exceed 107 days. The Service sees no compelling reason to change this policy and, therefore, will continue to offer compensatory days to those States in the Atlantic Flyway that meet the above outlined conditions/guidelines.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Considerations

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulatory proposals will 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 cause 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

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand? Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov.

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, this rule 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 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 09/30/2001). 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 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 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 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 employs 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

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.

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 States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1998–99 season.

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 alternatives will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

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

The rules that eventually will be promulgated for the 1998–99 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: September 18, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1998–99 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1998, and March 10, 1999.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway which lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese—Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese—snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 60 days and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 4 scaup, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. The Canada goose season is suspended throughout a major portion of the Flyway except as noted. Unless specified otherwise, seasons may be split into two segments.

Connecticut: Statewide, except for Hartford and Litchfield Counties west of the Connecticut River, a 40-day season may be held between October 1 and December 15 with a daily bag of 2. A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Florida: A 70-day season may be held between November 15 to February 15, with 5 geese per day.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a limit of 5 Canada geese per day.

Maine: A 40-day season may be held Statewide between October 1 and December 15 with a daily bag of 2.

Maryland: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season in designated areas of western Maryland may be held from January 15 to February 15, with 5 geese per day.

Massachusetts: In the Central Zone and a portion of the Coastal Zone a 40-day season may be held between October 1 to December 15 with a daily bag of 2, and a special season may be held from January 15 to February 15, with 5 geese per day.

New Hampshire: A 40-day season may be held statewide between October 1 and December 15 with a daily bag of 2.

New Jersey: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with 5 geese per day.

New York: In designated areas, a 70-day season may be held between November 15 and January 30, with 2 geese per day. In the Long Island Zone, a 40-day season may be held between October 1 and December 31 with a daily bag of 2. An experimental season may be held between January 15 and February 15, with 5 geese daily in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

North Carolina: A 46-day season may be held between October 1 and November 15, with 2 geese per day Statewide, except for the Northeast Hunt Unit and Northampton County.

Pennsylvania: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. In Erie, Mercer, and Butler Counties, a 70-day season may be held between October 1 and January 31, with 2 geese per day. In Crawford County, a 35-day season may be held between October 1 and January 20, with 1 goose per day. An experimental season may be held in the designated areas of western Pennsylvania from January 15 to February 15 with 5 geese per day.

Rhode Island: A 40-day season may be held between October 1 and December 15 with a daily bag of 2. An experimental season may be held in a designated area from January 15 to February 15, with 5 geese per day,

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a daily bag limit of 5 birds.

Virginia: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season may be held between January 15 to February 15, with 5 geese per day, in all areas west of Interstate 95.

West Virginia: a 70-day season may be held between October 1 and January 31, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with 15 geese per day and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with 2 brant per day. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (October 3) and the Sunday nearest January 20 (January 17).

Hunting Seasons and Duck Limits: 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females),

3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 3) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 3) and March 10. The daily bag limit is 20 light geese, 2 white-fronted geese, and 2 brant. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 16 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed. For white-fronted geese, the season may extend to February 15.

Illinois: The total harvest of Canada geese in the State will be limited to 40,800 birds. Limits are 1 Canada goose daily and 10 in possession, except for the last 14 days in each zone, when the limit is 2 Canada geese daily.

(a) North Zone—The season for Canada geese will close after 67 days or when 5,600 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first. The season may be split into 3 segments.

(b) Central Zone—The season for Canada geese will close after 67 days or when 7,100 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first. The season may be split into 3 segments.

(c) South Zone—The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 13,100 and 2,300 birds, respectively. The season for Canada geese in each zone will close after 67 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 67 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 10,500 birds. The daily bag limit is 2 Canada geese.

(a) Posey County—The season for Canada geese will close after 66 days or when the Canada goose harvest at the Hovey Lake Fish and Wildlife Area exceeds 760 birds, whichever occurs first.

(b) North Zone—The season for Canada geese may extend for 51 days, except in the SJBP Zone, where the season may not exceed 35 days.

(c) Remainder of the State—The season for Canada geese may extend for 56 days.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese through October 31 and 1 Canada goose thereafter, except in the South Zone where the daily bag limit is 2 Canada geese beginning December 1.

Kentucky

(a) Western Zone—The season for Canada geese may extend for 50 days (65 days in Fulton County), and the harvest will be limited to 9,000 birds. Of the 9,000-bird quota, 5,800 birds will be allocated to the Ballard Reporting Area and 1,800 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 50-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective reporting area (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days (65 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State. The season for white-fronted geese may extend to February 15.

Michigan: The total harvest of Canada geese in the State will be limited to 22,900 birds. The framework opening date for all geese is September 19.

(a) North Zone—If the season for Canada geese opens September 19, it may extend for 16 days. If the season opens October 3 or later, it may extend for 7 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—If the season for Canada geese opens September 19, it may extend for 16 days. If the season opens October 3 or later, it may extend for 7 days. The daily bag limit is 2 Canada geese.

(c) South Zone.

(1) Allegan County GMU—The season for Canada geese will close after 21 days or when 880 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The season for Canada geese will close after 22 days or when 280 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU—The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU—The season for Canada geese will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone—If the season for Canada geese opens September 19, it may extend for 16

days. The daily bag limit is 2 Canada geese, except during that portion of the season that overlaps the duck season, when the daily bag limit is one Canada goose. If the season opens October 3 or later, it may extend for 9 days with a daily bag limit of 1 Canada goose.

(d) Southern Michigan GMU—A special Canada goose season may be held between January 9 and February 7. The daily bag limit is 5 Canada geese.

(e) Central Michigan GMU—An experimental special Canada goose season may be held between January 9 and February 7. The daily bag limit is 5 Canada geese.

Minnesota

(a) West Zone.

(1) West Central Zone—The season for Canada geese may extend for 20 days. In the Lac Qui Parle Zone, the season will close after 20 days or when 10,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 25 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 20 days. The daily bag limit is 1 Canada goose.

(c) Northeast Zone—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 1 Canada goose for the first 30 days of the season, and 2 Canada geese thereafter.

(e) Fergus Falls/Alexandria Zone—A special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese through November 30, and 1 Canada goose thereafter.

(b) Schell-Osage Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese through November 30, and 1 Canada goose thereafter.

(c) Remainder of the State:

(1) North Zone—The season for Canada geese may extend for 60 days, with no more than 30 days after November 30. The season may be split into 3 segments, provided that one segment of at least 9 days occurs prior to October 15. The daily bag limit is 2 Canada geese.

(2) Middle Zone—The season for Canada geese may extend for 60 days with no more than 30 days after November 30. The season may be split into 3 segments, provided that at least one segment occurs prior to December 1. The daily bag limit is 2 Canada geese.

(3) South Zone—The season for Canada geese may extend for 60 days. The season may be split into 3 segments, provided that at least one segment occurs prior to December 1. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose.

Tennessee

(a) Northwest Zone—The season for Canada geese will close after 65 days or when 3,400 birds have been harvested, whichever occurs first. The season may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 50 days, and the harvest will be limited to 400 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese. In lieu of the quota and tagging requirement above, the State may select either a 50-day season with a 1-bird daily bag limit or a 35-day season with a 2-bird daily bag limit for this Zone.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 32,500 birds.

(a) Horicon Zone—The framework opening date for all geese is September 19. The harvest of Canada geese is limited to 15,500 birds. The season may not exceed 86 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 19. The harvest of Canada geese is limited to 500 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is October 3. The harvest of Canada geese is limited to 12,000 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 49 days, except in the Mississippi River Subzone, where the season may not exceed 70 days. The daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 12,000 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes (if applicable) Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (October 3) and the Sunday nearest January 20 (January 17).

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens) 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 12).

(2) Remainder of the Central Flyway: 74 days and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, and 2 wood ducks.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest October 1 (October 3) and the Sunday nearest February 15 (February 14), except for white-fronted geese in east tier States, where the closing date is January 31. For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 3) and March 10, except in the Rainwater Basin Light Goose Area of Nebraska where the closing date is February 1 in the West and March 10 in the East with temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1997, or with an alternative multi-year experimental strategy that includes evaluation of the impacts of hunting light geese on other species of migratory birds if such an alternative can be mutually developed by the Service and the Nebraska Game and Parks Commission by December 1, 1998.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 93 days with a daily bag limit of 3. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or an 86-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Power Plant Area of Dark Goose Unit 1, the daily bag limit is 3 until November 30 and 1 thereafter.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 4 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 107 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 4. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (October 3) and the Sunday nearest January 20 (January 17).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 3), and the Sunday nearest January 20 (January 17), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season—A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2.

California

Northeastern Zone—White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone—The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone—The daily bag limit for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone—A 79-day season may be selected. Limits may not include more than 3 geese per day and 6 in possession, of which not more than 2 daily and 4 in possession may be white-fronted geese and not more than 1 daily or 2 in possession may be cackling Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho

Northern Unit—The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit—The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone—The daily bag limit of dark geese is 4.

Nevada

Lincoln and Clark County Zone—The daily bag limit of dark geese is 2.

New Mexico: The daily bag limit of dark geese is 3.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone—The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone—In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese.

Wyoming: The daily bag limit is 4 dark geese.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese.

In the designated areas of the Washington Quota Zone, a special late dark goose season may be held between January 23 and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended the Sunday closest to March 1 (Feb. 28).

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (October 3). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1998, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 6) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 3) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota (east of the Missouri River), and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,000 permits may be issued.
—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Mississippi

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I–55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya

Paha County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63, north and west to U.S. 77, north to NE 92, west to U.S. 81, south to NE 66, west to NE 14, south to U.S. 34, west to NE 2, south to I–80, west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34, west to U.S. 136, east on U.S. 136 to NE 10, south to the State line, west to U.S. 283, north to NE 23, west to NE 47, north to U.S. 30, east to NE 14, north to NE 52, northeasterly to NE 91, west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183, north to northerly boundary of Loup County, east along the north boundaries of Loup, Garfield, and Wheeler County, south along the east Wheeler County line to NE 70, east on NE 70 from Wheeler County to NE 14, south to NE 39, southeast to NE 22, east to U.S. 81, southeast to U.S. 30, east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway Portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks, but in addition:

Atlantic Population Canada Goose Closed Area: Litchfield County and that portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

Maryland

Special Regular and Late Seasons for Canada Geese: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

Massachusetts

Special Area for Canada Geese: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese:

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River (at Pleasant Mills); then north (upstream) along the Mullica River to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then south along Route 49 to Route 50; then east along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Special Late Season Area for Canada Geese: that area of Chemung County lying east of a continuous line extending south along State Route 13 from the Schuyler County line to State Route 17 and then south along Route 17 to the New York-Pennsylvania boundary; all of Tioga and Broome Counties; that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near

Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Regular Season Area in Southwest for Canada Geese: all of Allegany, Cattaraugus, and Chautaugua Counties; that area of Erie, Wyoming and Niagara Counties lying south and west of a continuous line extending from the Rainbow Bridge below Niagara Falls, north along the Robert Moses Parkway to US Route 62A, then east along Route 62A to US Route 62, then southeast along US Route 62 to Interstate Route 290, then south along Route 290 to Exit 50 of the NYS Thruway, then east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to the Cattaraugus County line; and that area of Steuben and Chemung Counties lying south of State Route 17.

North Carolina

Regular Season for Canada Geese: Statewide, except for Northampton County and the Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

Regular Season Area for Canada Geese: Area from New York State line west of U.S. Route 220 to intersection of I–180, west of I–180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I–81, west of I–81 to intersection of I–83, west of I–83 to I–283, west of I–283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I–83, west of I–83 to Maryland State line, except for the Counties of Erie, Mercer, Butler, and Crawford.

Special Late Season Area for Canada Geese: Same as Regular Season Area and the area from New York State line east of U.S. Route 220 to intersection of I–180, east of I–180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I–81, north of I–81 to intersection of I–80, north of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Virginia

Regular and Special Late Season Area for Canada Geese: All areas west of I–95.

Back Bay Area: Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks, but in addition:

North Zone

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the South Zone north of the Southern Michigan GMU, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Northeast Zone—That portion of the state encompassed by the following boundary: Beginning on State Trunk Highway (STH) 72 at the northern boundary of the state, thence along STH 72 to the Tamarac River in Beltrami County, thence along the southerly shore of the Tamarac River to Upper Red Lake, thence along the easterly and southerly shores of Upper Red Lake to the easterly boundary of the Red Lake Indian Reservation, thence along the easterly boundary of said Reservation to STH 1, thence along STH 1 to STH 72, thence along STH 72 to U.S. Highway 71, thence along U.S. 71 to County State Aid Highway (CSAH) 39 in Beltrami County, thence along CSAH 39 to CSAH 20, thence along CSAH 20 to CSAH 53, thence along CSAH 53 to CSAH 12, thence along CSAH 12 to CSAH 51, thence along CSAH 51 to CSAH 8, thence along CSAH 8 to CSAH 25, thence along CSAH 25 to CSAH 4, thence along CSAH 4 to CSAH 46, thence along CSAH 46 to U.S. Highway 2, thence along U.S. 2 to CSAH 45, thence along CSAH 45 to CSAH 9, thence along CSAH 9 to CSAH 69, thence along CSAH 69 to CSAH 5, thence along CSAH 5 to CSAH 39, thence along CSAH 39 to County Road (CR) 94, thence along CR 94 to CSAH 31, thence along CSAH 31 to STH 200, thence along STH 200 to STH 371, thence along STH 371 to STH 84, thence along STH 84 to CSAH 2, thence along CSAH 2 to CSAH 1, thence along CSAH 1 to STH 6, thence along STH 6 to STH 18, thence along STH 18 to U.S. Highway 169, thence due east to the west shore of Mille Lacs Lake, thence along the westerly and southerly shores of said lake to a point due north of the junction of U.S. 169 and STH 27, thence due south to said junction, thence along U.S. 169 to STH 23, thence along STH 23 to STH 65, thence along STH 65 to STH 70, thence along STH 70 to the east boundary of the state, thence along the easterly and northerly boundaries of the state to the point of beginning.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I–280, south along I–280 to I–80, and east along I–80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Kansas

Light Geese

Unit 1: That portion of Kansas east of a line beginning at the intersection of

the Nebraska border and KS 99, extending south along KS 99 to I–70 to U.S. 75, south on U.S. 75 to U.S. 54, west on U.S. 54 to KS 99, and then south on KS 99 to the Oklahoma border.

Unit 2: The remainder of Kansas, laying west of Unit 1.

Dark Geese

Marais des Cygnes Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S. 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Flint Hills Unit: That part of Kansas bounded by a line from the junction of I–35 and K–57, then south and east on K–57 to its junction with US–75, then south on US–75 to its junction with K–39, then south and west on K–39 to its junction with K–96, then west on K–96 to its junction with US–77, then north on US–77 to its junction with I–70, then east on I–70 to its junction with US–75, then south on US–75 to its junction with I–35, then west on I–35 to its junction with K–57, except federal and state sanctuaries.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

Southcentral Unit: That area south and west of U.S. 281 at the Kansas/Nebraska border, north to Giltner Road (near Doniphan), east to NE 14, north to NE 91, west to U.S. 183, south to NE 92, west to NE 61, north to U.S. 2, west to the intersection of Garden, Grant, and Sheridan counties, then west along the northern border of Garden, Morrill, and Scotts Bluff counties to the Wyoming border.

Northcentral Unit: That area north of the Southwest Unit and west of U.S. 183.

East Unit: The remainder of Nebraska.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I–94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I–94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2 and 3.

Power Plant Area: That portion of Grant County east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Campbell, Dewey, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Corson County east of State Highway 65.

Unit 3: Charles Mix and Gregory Counties.

Texas

West Unit: That portion of the State laying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Converse and Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to

I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I–5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45–162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I–5; southerly on I–5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Bear Lake, Benewah, Bonner, Bonneville, Boundry, Butte, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, and Teton Counties, and those portions of Bingham County within the Blackfoot Reservoir drainage and Caribou County, except for the Fort Hall Indian Reservation.

Zone 2: Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties, and those portions of Power County west of ID 37 and ID 39.

Zone 3: All lands and waters within the Fort Hall Indian Reservation, including private holdings; Bannock County, Bingham County, except that portion within the Blackfoot Reservoir drainage, and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Scripps/Washoe Lake Zone: Scripps Wildlife Management Area and Washoe Lake State Park.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I–182, west o I–182 to the Franklin-Benton County line; those parts of Benton County south of I–182 and I–82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of

Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark County, except portions south of the Washougal River, Cowlitz, Pacific, and Wahkiakum Counties, and that portion of Grays Harbor County south of U.S. highway 12 and east of U.S. highway 101.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I–80/84, west of I–15, and north of I–80.

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federal register

Tuesday
September 29, 1998

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400, et al.

Medicaid Program; Medicaid Managed Care; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 430, 431, 434, 435, 438, 440, and 447

[HCFA–2001–P]

RIN 0938–AI70

Medicaid Program; Medicaid Managed Care

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to allow the States greater flexibility by giving them the option to require Medicaid recipients to enroll in managed care entities without obtaining waivers. These revisions, which are authorized by the Balanced Budget Act of 1997, would establish new beneficiary protections in areas such as quality assurance, grievance rights, and coverage of emergency services. They would eliminate certain requirements viewed by State agencies as impediments to the growth of managed care programs, such as the enrollment composition requirement, the right to disenroll without cause at any time, and the prohibition against enrollee cost-sharing. They would also permit State agencies to amend their State plans to require enrollment in managed care organizations subject to certain conditions, including limits on whose enrollment can be mandated, and a requirement for beneficiary choice. In addition, this rule would extend most of these new requirements to prepaid health plans.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 30, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2001–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 413–G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Subparts A and B—Michael Fiore (410) 786–0623; Subpart C—Kristin McGinn (410) 786–4581; Subpart E—Ann Page (410) 786–0083; Nicole Martin (410) 786–1068; Subpart F—Nicole Martin (410) 786–1068; Brenda Jackson (816) 426–3406; Subpart H—Tim Roe (410) 786–2006; Subpart I—Tim Roe (410) 786–2006; Subpart J—Michael Fiore (410) 786–0623.

SUPPLEMENTARY INFORMATION: Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code 2CFA–2001–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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I. Introduction

Title XIX of the Social Security Act (the Act) established the Medicaid program, under which matching Federal funds are provided to State agencies to pay for coverage of health care services to low-income pregnant women, families and aged, blind, and disabled individuals. The Medicaid program is administered by States according to Federal statutory and regulatory requirements, under the aegis of a ''State plan'' that must be approved by the Health Care Financing Administration (HCFA). At the program's inception, most health coverage under the Medicaid program was provided by reimbursing health care providers on a fee-for-service basis for services furnished to Medicaid beneficiaries.

Note: The term ''beneficiaries'' is used throughout the preamble to refer to individuals eligible for and receiving Medicaid benefits. The term ''recipients'' is used in the text of the regulation and is synonymous to ''beneficiary''.

Increasingly, however, State agencies have provided Medicaid coverage through managed care contracts, under which a health maintenance organization (HMO) or other similar entity is paid a fixed monthly capitation payment for each beneficiary enrolled with the entity for health coverage. Enrolled beneficiaries are required to receive the majority of health care services through the managed care entity. In most States, enrollment in such managed care arrangements is currently mandatory for at least certain categories of beneficiaries. Prior to the enactment of the Balanced Budget Act of 1997 (BBA), States agencies were required to obtain a waiver of a statutory ''freedom of choice requirement'' in order to operate such mandatory managed care programs, as discussed below. No such waiver was required for arrangements involving voluntary enrollment in managed care.

Chapter One of the Medicaid provisions (Subtitle H) of the BBA significantly strengthens Medicaid managed care programs by modifying prior law to: (1) reflect the more widespread use of managed care by State agencies to serve Medicaid beneficiaries; (2) build on the increased expertise acquired by HCFA and the State agencies in the administration of managed care programs; (3) incorporate the knowledge that has been learned from Medicaid, Medicare and private sector managed care programs and their oversight organizations; and (4) provide a framework that will allow HCFA and State agencies to continue to incorporate further advances in the oversight of managed care, particularly as it pertains to the protection of beneficiaries and the quality of care delivered to Medicaid enrollees. This proposed rule would implement most of the provisions of that chapter (that is, sections 4701 through 4710). It addresses BBA provisions that reduce the need for State agencies to obtain waivers to implement certain managed care programs; eliminate enrollment composition requirements for managed care contracts; increase beneficiary protections for enrollees in Medicaid

managed care entities; improve quality assurance; establish solvency standards; protect against fraud and abuse; permit a period of guaranteed eligibility for Medicaid beneficiaries; and improve certain administrative features of State managed care programs.

The development of this regulation has been guided by knowledge shared with us by a number of constituencies and experts over the past decade. We have addressed the issues identified by advocates regarding the rights of Medicaid beneficiaries, particularly vulnerable populations, and how they can be protected as State agencies increasingly replace fee-for-service Medicaid delivery systems with managed care programs. In doing so, we have been guided by the Consumers Bill of Rights and Responsibilities (CBRR) issued in November 1997, by the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry. A Presidential directive ordered the Medicaid program to comply, to the extent permitted by law, with the recommendations in the CBRR. As a result, when writing this regulation, we incorporated the CBRR recommendations whenever authorized by law.

The knowledge and experience that State agencies have shared with us has also influenced the content of this proposed rule. Numerous State agencies have used waivers of Title XIX requirements authorized under section 1115 of the Act referred to as ''1115 waivers'' to implement research and demonstration projects to test innovative managed care programs. As part of our approval of a State agency waiver program, an evaluation of the effectiveness of these interventions is required. Many of these demonstrations have addressed the effectiveness of different approaches to Medicaid managed care programs. We have also incorporated knowledge learned from ''freedom of choice'' waivers authorized under section 1915(b) of the Act that also allows State agencies to waive limited provisions of the Act in order to implement managed care programs, consistent with State-specific design features. These waiver applications are also evaluated based on their impact on access to services, quality of care, and cost effectiveness. Our experiences with State agencies in overseeing both these types of waiver programs have influenced the development of this regulation. It should be noted here that, even with the implementation of BBA, State agencies still retain the option of applying for Federal waiver authority under sections 1915(b) and 1115 of the Act.

In the last decade, private sector group purchasers, quality oversight organizations, the managed care industry, and quality improvement experts have greatly advanced our knowledge base of how managed care can be made more effective in serving consumers, through research, program evaluations, and tests of new administrative, payment, and healthcare delivery systems. We have attempted to incorporate the knowledge shared by these organizations, along with literature evaluating managed care, to develop the specifications for State Medicaid managed care purchasing programs and expect to continue work with these organizations and the State agencies.

Several principles also guided the development of this proposed rule. First, when there was not clear evidence that one single approach to operationalizing statutory language was more effective than other approaches, we attempted to provide State agencies with sufficient flexibility to continue to be innovative in the development and improvement of their State Medicaid managed care programs. We deviated from this principle when there was not a clear need for State flexibility or when there was a potential to develop Medicaid regulatory language that is the same as the language used in the Medicare+Choice (M+C) rule published on June 26, 1998 at 63 FR 34967. That rule implements Medicare managed care provisions in the BBA, many of which are similar to the Medicaid provisions implemented in this proposed rule. Consistency between the Medicare and the Medicaid programs was intended to reduce the demand on the managed care industry to comply with multiple, different sets of standards. Second, this proposed rule was developed with a clear emphasis on consumer protections and an increased focus on quality in managed care. Third, the regulations were written to support State agencies in their role as ''health care purchasers,'' in addition to their role as ''health care regulators.'' State agencies, like group purchasers in the private sector, are continuing to seek better value for their health care dollars, when ''value'' means the best possible combination of both quality and price. Relevant subparts of this proposed rule attempt to provide State agencies with the tools needed to become better purchasers.

Finally, with respect to quality-related provisions, we opted to take a more conservative approach and not impose greater regulatory burden, without a strong evidence base. If commenters believe that additional or stronger requirements are needed, we ask that comments include, if possible, the evidence base in support of any such proposed modifications.

This proposed rule would create a new part of the Code of Federal Regulations (Part 438). All new managed care regulations created under the authority of the BBA, other sections of existing Medicaid regulations pertaining to managed care, and appropriate cross references will appear in this new part. By creating this new part, we are attempting to help users of the regulations to better comprehend the overall regulatory framework for managed care. More detailed discussions of the content of each of the subparts of this proposed rule are found at the beginning of each subpart.

II. Background

A. Statutory Basis

Section 4701 of the BBA creates section 1932 of the Act, changes terminology in Title XIX of the Act (most significantly, the BBA uses the term ''managed care organization'' to refer to entities previously labeled ''health maintenance organizations''), and amends section 1903(m) of the Act to require that contracts and managed care organizations (MCOs) comply with applicable requirements in the new section. Among other things, section 1932 of the Act permits State agencies to require most groups of Medicaid beneficiaries to enroll in managed care arrangements without section 1915(b) or section 1115 waiver authority. Under the law prior to the BBA, a State agency was required to obtain Federal authority to waive beneficiary free choice of providers in order to restrict their coverage to managed care arrangements. Section 1932 of the Act also defines the term ''managed care entity'' (MCE) to include MCOs and primary care case managers; establishes new requirements for managed care enrollment and choice of coverage; and requires MCEs and State agencies to provide specified information to enrollees and potential enrollees.

Section 4702 of the BBA amends section 1905 of the Act to permit State agencies to provide primary care case management services without waiver authority. Instead, primary care case management services may be made available under a State's Medicaid plan as an optional service.

Section 4703 of the BBA eliminates a former statutory requirement that no more than 75 percent of the enrollees in an MCO be Medicaid or Medicare beneficiaries.

Section 4704 of the BBA creates section 1932(b) of the Act to add

increased protections for those enrolled in managed care arrangements. These include, among others, the application of a ''prudent layperson's'' standard to determine whether emergency room use by a beneficiary was appropriate; criteria for showing adequate capacity and services; grievance procedures; and protections for enrollees against liability for payment of an organization's or provider's debts in the case of insolvency.

Section 4705 of the BBA creates section 1932(c) of the Act which requires State agencies to develop and implement quality assessment and improvement strategies for their managed care arrangements and to provide for external, independent review of managed care activities.

Section 4706 of the BBA provides that, with limited exceptions, an MCO must meet the same solvency standards set by State agencies for private HMOs, or be licensed or certified by the State as a risk-bearing entity.

Section 4707 of the BBA creates section 1932(d) of the Act to add protections against fraud and abuse, such as restrictions on marketing and sanctions for noncompliance.

Section 4708 of the BBA adds a number of provisions to improve the administration of managed care arrangements. These include, among others, provisions raising the threshold value of managed care contracts that require the Secretary's prior approval, and permitting the same copayments in MCOs as apply to fee-for-service arrangements.

Section 4709 of the BBA allows State agencies the option to provide 6 months of guaranteed eligibility for all individuals enrolled in an MCE.

Section 4710 of the BBA specifies the effective dates for all the provisions identified in sections 4701 through 4709.

B. Overview of Medicaid Managed Care

Medicaid managed care programs have been in existence almost since the inception of the Medicaid program in 1965. In New York State, Medicaid beneficiaries were enrolled in the Health Insurance Plan of Greater New York beginning in 1967. The State of Washington began contracting with Group Health of Puget Sound in 1970, and, by 1972, various regional operations of Kaiser-Permanente served Medicaid beneficiaries in three different States. Initially, there were no statutory or regulatory provisions specifically addressing the use of managed care by State agencies.

As a result of the increasing use of managed care in Medicaid, Medicare, and the private sector, however, statutory provisions and regulations have since been adopted to specifically address Medicaid managed care. In 1976, the Health Maintenance Organization Act put forth the first specific Federal requirements for Medicaid contracts with HMOs or comparable organizations, by essentially requiring, with some exceptions, that ''comprehensive'' specified services, be entered into only with Federally qualified HMOs. By 1981, little more than 1 percent of Medicaid beneficiaries were enrolled in managed care. Further legislative and regulatory changes made in 1981 and 1982 made possible more widespread use of managed care by State agencies but were also accompanied by increased requirements in some areas (for example, The Omnibus Budget Reconciliation Act of 1981 (OBRA 1981) required that Medicaid enrollees be allowed to voluntarily disenroll without cause from HMOs, but was subsequently amended to permit a 6-month lock-in for individuals enrolled in Federally qualified HMOs. Until the BBA, modification of the laws and regulations governing Medicaid managed care subsequent to OBRA 1981 and the Tax Equity and Fiscal Responsibility Act of 1982 has occurred in a piecemeal manner. The BBA represents the first major revision of the statutes governing Medicaid managed care in over a decade.

The period from 1981 to the present has seen significant changes in Medicaid managed care programs. While only approximately 250,000 Medicaid beneficiaries were enrolled in managed care programs in 1981, by 1997 this number had increased to over 15 million. Over 50 percent of the entire Medicaid population now receive at least some services through a health plan or a primary care case management arrangement. In the last decade, a number of studies and reports have documented that State agencies need both flexibility and assistance to implement new approaches and tools to effectively administer their contracts with managed care organizations. A 1997 GAO Report entitled, ''Medicaid Managed Care—Challenge of Holding Plans Accountable Requires Greater State Effort,'' indicated the need for priority attention to beneficiary information and education, and access to care and quality monitoring.

As noted above, Medicaid managed care contracts were originally entered into by some State agencies without any specific statutory provision for such arrangements. When the Congress acted to regulate managed care arrangements, it limited the applicability of these statutory requirements to contracts that were comprehensive in the services they covered.

Specifically, the statutory requirements enacted by the Congress in section 1903(m) of the Act have always applied to contracts for inpatient services and any one of other services specified in section 1903(m)(2)(A) of the Act, or for any three of the non-inpatient services specified therein. Managed care contracts that were less than comprehensive remained exempt from all statutory managed care requirements. In recognition of this fact, we have in the past exercised our authority under section 1902(a)(4) of the Act to specify ''methods of administration'' that were ''necessary for proper and efficient administration'' to impose regulatory requirements on entities that were exempt from the statutory requirements in section 1903(m) of the Act, either because they provided less than comprehensive services or because they were specifically exempted by the Congress from complying with requirements under section 1903(m) of the Act. These entities were called ''prepaid health plans,'' or ''PHPs.''

The regulatory requirements we applied to PHPs were not as stringent as those under section 1903(m) of the Act in many areas. For example, while PHPs were subject to an enrollment composition requirement like comprehensive HMO contractors, the PHP enrollment composition requirement could be waived by the State for ''good cause.'' PHPs also were not subject to the requirement under section 1903(m) of the Act that beneficiaries have the right to disenroll without cause at any time, and beneficiaries enrolled in the PHPs could have their ability to disenroll restricted under section 1915(b) waiver authority, when the right to disenroll required under section 1903(m) of the Act could not be waived.

In part because of the less stringent requirements that applied to PHPs, there has been a substantial growth in PHP enrollment. Some of these PHPs are single service managed care plans (for example, behavioral health plans) and their enrollees are also enrolled in other managed care plans for their routine primary and acute care. Other PHPs, such as the Health Insurance Plan (HIP) of New York, provide a full range of services but were exempted by Congress from the requirements in section 1903(m) of the Act. As discussed more fully below, in this proposed rule, we are proposing to require that most current PHPs meet most of the requirements that will apply to MCOs.

Concurrent with the increasing need for stronger Medicaid managed care programs has been the development of improved tools, techniques, and strategies for delivering and monitoring managed care programs. In 1991, we began the Quality Assurance Reform Initiative (QARI) to provide technical assistance tools and assistance to State agencies. In 1993, we produced a QARI guide entitled, ''A Health Care Quality Improvement System for Medicaid Managed Care—A Guide for States,'' that contained four areas of guidance for States: (1) a framework for quality improvement systems for Medicaid managed care programs; (2) guidelines for internal quality assurance programs of Medicaid HMOs and PHPs; (3) guidelines for clinical and health services focus areas and use of quality indicators and clinical practice guidelines; and (4) guidelines for the conduct of external quality reviews conducted under section 1902(a)(30)(C) of the Act. In 1995, HCFA, working in collaboration with the National Committee for Quality Assurance (NCQA) and the American Public Human Services Association, produced a Medicaid version of Health Plan Employer Data and Information Set (HEDIS). HEDIS is a standardized quality performance measurement system used by private sector purchasers of managed care services modified for use by State Medicaid agencies. NCQA, under contract with HCFA, also developed ''Health Care Quality Improvement Studies in Managed Care Settings: Design and Assessment—A Guide for State Medicaid Agencies.'' In 1997, the Agency for Health Care Policy and Research (AHCPR) produced a set of consumer survey instruments and measurement tools under the auspices of the Consumer Assessment of Health Plan Study (CAHPS). The CAHPS instruments include measures and tools specifically designed for use by State agencies. Also in 1997, the George Washington University Center for Health Policy Research published a compendium of provisions of State contracts with Medicaid managed care organizations. This nationwide study of Medicaid managed care contracts has provided valuable information that can be used by all State agencies in the design and management of their managed care contracts.

These and multiple other tools can be applied to the efforts of State agencies to become even more effective in purchasing managed care services for Medicaid beneficiaries. This proposed rule provides an opportunity to clarify for MCOs, beneficiaries, and State agencies, how these advances in the management and oversight of health care can be applied to Medicaid managed care programs.

Through these regulations, we promote uniform national application of knowledge and best practices learned from these initiatives. While we promote uniform best practice, the Medicaid statute has always given State agencies latitude to design their Medicaid programs, as long as they meet certain minimum Federal standards. Current Federal requirements in the Medicaid managed care area are imposed either as conditions for Federal matching funds to support contracts with MCOs, as conditions for receiving a waiver of freedom of choice under section 1915(b) of the Act, or as conditions for falling within the section 1932 of the Act exception to the freedom of choice requirement in section 1902(a)(23) of the Act. In the first case, failure to comply with section 1932 of the Act requirements could result in a disallowance of Federal financial participation (FFP) in contract payments. In the latter two cases, if the State agency fails to meet conditions for the section 1932 of the Act exception to the freedom-of-choice requirement in section 1902(a)(23) of the Act, or has its section 1915(b) waiver non-renewed or terminated for a failure to meet waiver conditions, the State agency would be out of compliance with the freedom of choice requirement in section 1902(a)(23) of the Act, and the State agency would be subject to a compliance enforcement action under section 1904 of the Act.

Because the Medicaid program is a State administered program subject to Federal guidance and rules, Medicaid regulations do not generally adopt the same approach to regulating managed care organizations as Federal Medicare regulations. Instead, Medicaid rules generally regulate State agencies and place requirements in their contracts with managed care organizations or managed care programs.

This proposed rule adopts this direction in implementing the new requirements in the BBA, and, as discussed below, extending these requirements to PHPs.

Section 4710(c) of the BBA provides for a limited exemption from the BBA requirements in sections 4701 through 4710 for approved waiver programs under the authority of section 1115 or 1915(b) of the Act. Specifically, none of the provisions contained in sections 4701 through 4710 of the BBA will affect the terms and conditions of any approved waiver under section 1115 or 1915(b) of the Act, because the waiver was in effect on the date of the enactment of the BBA (that is, August 5, 1997.)

In general, any provision of a State's approved section 1115 or 1915(b) waiver program (which was approved or effective as of August 5, 1997) that is specifically addressed in the State's waiver proposal, statutory waivers, special terms and conditions, operational protocol, or other official State policy or procedures approved by HCFA, would not be affected by the BBA provisions, even if it differs from the BBA managed care requirements. As long as the BBA provisions are addressed in the State's approved waiver materials, no determination needs to be made as to whether the State's policy or procedures meet or exceed the BBA requirements. If the BBA provisions are not addressed, then the State agency must meet the BBA requirements, except as specified below for newly submitted or amended waivers.

The exemption from the BBA requirements will apply to all States' section 1915(b) waiver programs until the date that the waiver authority approved or in effect as of August 5, 1997 expires. As of the date of any section 1915(b) waiver renewal or any temporary extension of that authority granted after August 5, 1997, the State agency will be required to comply with all BBA requirements that are in effect.

Exemptions from the BBA managed care provisions will apply to those section 1115 demonstration waivers approved or in effect as of August 5, 1997, which may be extended for up to 3 years under the authority of section 4757 of the BBA. These waiver extensions are specifically limited to the Medicaid section 1115 comprehensive statewide health care reform demonstrations, which must be approved under the same terms and conditions that applied before the extension. Therefore, any exemptions from the BBA requirements to which these programs are entitled may continue during the period of the extended waiver authority.

For newly submitted or amended section 1115 waivers, the Secretary of DHHS retains the discretionary authority to waive the BBA managed care provisions. Generally, waivers are granted allowing State agencies some flexibility in operating their Medicaid programs while promoting the proper and efficient administration of a State's plan. In particular, for the BBA provisions related to increased beneficiary protections and quality assurance standards, we anticipate that

the BBA provisions will apply effective with the BBA enactment unless a State agency can demonstrate that a waiver program beneficiary protection or quality standard would equal or exceed what the BBA requires.

III. Provisions of the Proposed Rule

Under our proposal, virtually all managed care regulations would be set forth in 42 CFR part 438. This new part would integrate existing sections from part 434. We propose this restructuring to assist the reader in easily accessing all managed care regulations. The proposed new organizational format for part 438 is as follows:

Subpart A—General Provisions
Subpart B—State Responsibilities
Subpart C—Enrollee Protections
Subpart D—[Reserved]
Subpart E—Quality Assessment and Performance Improvement
Subpart F—Grievance Systems
Subpart G—(Reserved)
Subpart H—Certifications and Program Integrity Protections
Subpart I—Sanctions
Subpart J—Conditions for FFP

The basis and purpose of the provisions of this proposed rule are described below.

A. General Provisions (Subpart A)

1. Basis and Scope (§ 438.1)

Section 438.1 of the regulations sets forth the basis and scope of part 438, including the fact that regulations in this part implement authority in sections 1902(a)(4), 1903(m), 1905(t), and 1932 of the Act. Section 438.1 of the regulations also briefly describes these statutory provisions.

2. Definitions (§ 438.2)

Section 438.2 includes definitions of terms that apply for purpose of part 438. These definitions reflect revisions in terminology made in section 4701(b) of the BBA. The most significant of these changes is the use of the term Managed Care Organization (MCO) to refer to entities with comprehensive risk contracts that were formerly referred to by the term ''health maintenance organization'' (HMO). There is a new statutory definition of Medicaid MCO, which builds on the pre-BBA definition of HMO. As was the case with respect to the pre-BBA definition of HMO, absent a statutory exemption, an entity must be found to meet the definition of MCO in order to enter into a Medicaid ''comprehensive risk contract'' (defined in § 430.5, discussed below in section III. C.). The new statutory definition defines an MCO as one of several listed types of full risk arrangements (for example, HMOs, a provider sponsored organization, a ''M+C organization'' that contracts with Medicare) or any other ''public or private entity'' that complies with advanced directive requirements in section 1902(w) of the Act, and meets a modified version of the same two requirements included in the pre-BBA definition of HMO. The first of these two requirements, involving access to services covered under the contract, is unchanged by the BBA. See section 1903(m)(1)(A)(i) of the Act. The second requirement, involving meeting State-approved solvency standards, has been amended to require (with some exceptions discussed in section 3 below) that the MCO be licensed as an HMO or as a risk bearing entity. (See section 1903(m)(1)(A)(ii), (c) of the Act.) Finally, the new statutory definition provides that an entity that is a Federally-qualified HMO under title XIII of the Public Health Service Act is deemed to meet the above access and solvency requirements (but not the advance directive requirements).

In § 438.2, we essentially have adopted the statutory definition of MCO. Because the managed care entities specifically listed in the revised version of section 1903(m)(1)(A) of the Act all necessarily fall within the category ''public or private organization,'' our definition refers only to a ''public or private entity'' that meets the requirements in question. Because Federally qualified HMOs are deemed to meet the access and solvency requirements in sections 1903(m)(1)(A)(i), (A)(ii), and (C) of the Act, we do not apply these requirements to Federally qualified HMOs in our definition of MCO. Finally, we have retained a third requirement from the current regulation implementing the pre-BBA definition of HMO. See § 434.20(c)(1). This provision requires that the entity be organized primarily for the purpose of providing health care services.

Section 438.2 of the regulations also includes existing definitions of current managed care terms, and the statutory definitions of ''managed care entity'' (MCE), primary care case management, and primary care case manager. While most existing managed care definitions are unchanged, we are proposing to revise the definition of PHP to exclude from the current definition entities that have comprehensive risk contracts, but have been exempted by the Congress from the requirements in section 1903(m) of the Act. We are making this change in light of our decision in proposed § 438.8 (discussed below) to apply most of section 1903(m) MCO requirements to PHPs. In cases in which the Congress has explicitly directed that particular entities, which we currently treat as PHPs, be exempt from the requirements in section 1903(m) of the Act, we did not believe it would be appropriate to apply section 1903(m) requirements to such entities by regulation. The entities that the Congress has determined should be exempted from section 1903(m) requirements even if they have comprehensive risk contracts include the entities described in section 1903(m)(2)(B) of the Act. Also exempt from section 1903(m) requirements are certain ''health insuring organizations'' (''HIOs'') that the Congress has expressly exempted from the requirements in section 1903(m) of the Act, that is, HIOs that began operating before 1986 and certain county-operated HIOs in California. Our revised definition of PHP would have the effect of giving entities described in section 1903(m)(2)(B) of the Act the same status as HMOS that were exempted by the Congress from section 1903(m) of the Act. Currently, entities described in section 1903(m)(2)(B) of the Act are included in the definition of PHP, and subject to PHP regulations that are not as strict as the rules that have applied to HMOs.

The new requirements enacted by the Congress in the BBA apply to managed care arrangements in one or more of three ways. First, section 1903(m)(2)(A)(xi) of the Act requires that MCOs and MCO contracts comply with all applicable requirements in the new section 1932 of the Act enacted by the BBA. Thus, these requirements apply to an MCO whether the MCO is participating in a mandatory managed care enrollment program (either under section 1932(a) of the Act or a waiver) or is offered as a purely voluntary enrollment option.

Requirements in section 1932 of the Act also apply as conditions for meeting the definition of ''primary care case manager'' (which incorporates the definition of ''primary care case management contract'' requiring compliance with MCE requirements in section 1932 of the Act). Meeting this definition is required in order for a non-MCO to participate as an enrollment option under a mandatory managed care enrollment program under section 1932(a) of the Act. Meeting this definition also makes an entity eligible for automatic re-enrollment under section 1903(m)(2)(H) of the Act, whether enrollment was originally voluntary or mandated. Finally, meeting this definition permits an entity to offer ''primary care case management services as a State plan service under section

1905(a)(25) of the Act. Lastly, certain requirements in section 1932 of the Act apply only in the context of a mandatory managed care enrollment program under section 1932(a) of the Act. The latter includes specific requirements on comparative information, as found in § 438.10; methods for establishing certain enrollment practices, as found in § 438.56; and the default enrollment process, as found in § 438.56.

The terms managed care organization (MCO) and managed care entity (MCE) are used in the statute and in this rule to identify where different requirements apply. As defined in § 438.2, an MCO is either a Federally qualified HMO or any other public or private entity that is organized primarily for the purpose of providing health care services, makes the services it provides to its Medicaid enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid recipients within the area served by the entity, and meets the solvency standards of § 438.116. Thus, in general, HMOs that participate in Medicaid are labeled as MCOs. For purposes of this rule, as described in detail under § 438.8, most requirements that apply to MCOs also apply to prepaid health plans (PHPs).

The term MCE is defined in § 438.2 as either an MCO with a comprehensive risk contract under section 1903(m) of the Act or a primary care case manager. As specified in the statute, primary care case managers are only subject to the requirements in this proposed rule that specifically apply to MCEs except, as described in § 438.8 when certain primary care case managers meet the definition of a PHP. These requirements are specified in individual sections of this proposed rule, but include some or all of the requirements pertaining to information (§ 438.10), choice of MCEs (§ 438.52), enrollment and disenrollment (§ 438.56), marketing activities (§ 438.104), and emergency and post-stabilization services (§ 438.114).

3. Contract Requirements (§ 438.6)

Proposed § 438.6 contains most of the existing managed care provisions currently found in part 434, revised to reflect changes made by the BBA.

Proposed § 438.6(a), like the current § 434.20(a), provides that State agencies may enter into comprehensive risk contracts only with certain specified entities. In addition to entities meeting the definition of MCO, certain other entities are listed that either are exempt from the requirement in section 1903(m)(1)(A) of the Act that comprehensive risk contractors meet the definition of MCO, or are exempt altogether from the statutory requirements in section 1903(m)(2)(A) of the Act, and from the requirements in this proposed rule.

Section 438.6(b) includes the requirement currently in § 434.23, that contracts must specify the actuarial basis for capitation payments and must provide that capitation payments and any other payments provided for in the contract do not exceed the upper payment limits set forth in § 447.361.

Section 438.6(c) includes the enrollment requirements currently in § 434.25. We specify that an MCE contract must provide for an open enrollment period when the MCE accepts individuals eligible for enrollment in the order in which they apply without restriction, unless authorized by the Regional Administrator, up to the limits specified in the contract. In § 438.6(c)(2), we have added language expressly providing for three exceptions to the requirement that enrollment be voluntary.

Section 438.6(d) includes language currently in § 434.20(d) and provide that an MCO contract may cover services not provided under the State plan to non-enrolled beneficiaries. These additional services may be provided without regard to statewideness and comparability requirements. If enrollment is voluntary, the additional services may, under section 1915(a) of the Act, be provided without regard to statewideness and comparability. If enrollment is mandated under section 1932(a) of the Act, the statute provides that contracts can be carried out without regard to statewideness and comparability requirements. If enrollment is mandated under sections 1915(b) or 1115 of the Act, HCFA waives statewideness and comparability requirements if additional services are offered.

Section 438.6(e) would retain the requirement currently found in § 434.20(e)(1), that contracts comply with the general contract requirements in § 438.6. Among these requirements is the requirement that contracts conform to the procurement rules in 45 CFR part 74.

Section 438.6(f) contains the current requirement in § 434.38 that risk contracts must provide the Medicaid agency and the Department of Health and Human Services, including HCFA, the right to inspect or audit financial records of the MCO or its subcontractors.

Section 438.6(h) contains the ''advance directive'' requirements currently found in § 434.28, which also must be met in order for an entity to qualify as an MCO.

Section 438.6(i) implements the statutory requirement that ''HIOs'' which began operating on or after January 1, 1986 and are not otherwise exempted by statute, comply with all requirements in section 1903(m)(2)(A) of the Act if they have a comprehensive risk contract, including the requirement that they meet the definition of MCO. This provision would replace the current § 434.44.

Finally, proposed § 438.6(g) would implement the physician incentive plan requirements in section 1903(m)(2)(A)(x) of the Act, which currently are implemented in paragraphs (2) through (4) of § 434.70(a) of the regulations. Section 1903(m)(2)(A)(x) of the Act requires that MCOs comply with the physician incentive plan requirements in section 1876(i)(8) of the Act, which apply to entities with Medicare risk contracts under section 1876 of the Act. Section 1876(i)(8) of the Act prohibits certain physician incentive payments and requires that incentive plans that place physicians at ''substantial financial risk'' for services they do not provide must conduct enrollee surveys, and provide ''adequate and appropriate'' stop-loss protection. Section 1876(i)(8) of the Act is implemented in § 417.479, which defines ''substantial financial risk'' and ''adequate and appropriate'' stop-loss protection. The existing Medicaid physician incentive regulations in § 434.70(a)(2) through (4) incorporate the requirements in § 417.479.

Under section 1876(k)(1)(B) of the Act (enacted by the BBA), Medicare risk HMO contracts under section 1876 of the Act may not be renewed after January 1, 1999, and organizations with such contracts must enter into M+C contracts under the new Part C of Title XVIII if they wish to continue to contract with Medicare. The physician incentive rules in part 417 of the regulations that implement section 1876(i)(8) of the Act will no longer have any applicability, and will eventually be removed from the Code of Federal Regulations.

Section 1852(j)(4) of the Act, which applies to M+C organizations, contains the same substantive requirements governing physician incentive plans as section 1876(i)(8) of the Act. We have implemented section 1852(j)(4) of the Act as part of the new M+C regulations in part 422, published as an interim final rule on June 26, 1998 (63 FR 34967). While the substantive requirements and standards in section 1852(j)(4) of the Act are identical to

those in section 1876(i)(8) of the Act, the regulations in part 422 implementing section 1852(j)(4) of the Act differ from those in part 417 implementing section 1876(i)(8) of the Act in one significant respect. Because the data in question are now available from other sources, we deleted a reporting requirement involving capitation arrangements. (See 63 FR 35002.) Because the regulations in part 417 will no longer apply in 1999, we did not revise the regulations in part 417 to eliminate this reporting requirement.

Even though the Medicaid statute continues to cite to section 1876(i)(8) of the Act, proposed § 438.6(g) incorporates new regulations in part 422 that implement the same substantive requirements, but as set forth in section 1852(j)(4) of the Act.

Section 438.6(j) specifies additional rules that apply to contracts with primary care case managers. These rules relate to the provision of care and services within reasonable and adequate hours of operation; specification for arrangements or referral to other physicians or practitioners; prohibitions on discrimination in enrollment, disenrollment, or re-enrollment; and provisions on enrollee rights to disenroll.

4. Provisions That Apply to PHPs. (§ 438.8)

As discussed above in section II.B., PHPs are entities with Medicaid prepaid managed care contracts that are not subject to the statutory requirements in section 1903(m) of the Act, either because they do not have comprehensive risk contracts, or because they are exempted by statute from these requirements. PHPs are, however, subject to regulatory requirements which were promulgated by us under our authority at 1902(a)(4) of the Act to provide for methods of administration determined to be necessary for proper and efficient operation of State Medicaid programs. Under these previous regulations, in part 434, PHPs are subject to many of the same requirements that have been applied to HMOs.

The most significant HMO requirements that were not applied (or applied in some way) to PHPs under existing regulations were the statutory enrollment composition requirements in § 434.26, which require that no more than 75 percent of enrollees be eligible for Medicare or Medicaid and the right to disenroll without cause, which is in § 434.27(b). While PHPs were subject to an enrollment composition requirement, it could be waived by the State agency under § 434.26(b)(4) for ''good cause'' and this was done routinely. Also, since PHP enrollees were not subject to the right to disenroll without cause (see § 434.27(b) that implements section 1903(m)(2)(A)(vi) of the Act, which cannot be waived under section 1915(b) of the Act), State agencies were able to mandate enrollment in a single PHP, or provide for limits on the right to disenroll from a PHP, under a section 1915(b) freedom-of-choice waiver program.

In addition to the above requirements, PHPs were also exempted from the advance directive requirements in § 434.28, and the physician incentive plan requirements in § 434.70(a)(2) through (4), and were not subject to the sanctions provided for in § 434.67. Thus, while entities that the Congress chose to exempt from statutory requirements in section 1903(m) of the Act were subject to regulatory requirements, they were exempted from most requirements in section 1903(m) of the Act.

The BBA, and the legislative history of the Medicaid managed care provisions in the BBA, are silent on the question of how PHPs are to be treated. The BBA did not make any changes to the definition of a comprehensive risk contract that is subject to the requirements in section 1903(m) of the Act, or to statutory provisions exempting certain comprehensive risk contractors from section 1903(m) requirements. The BBA did not change the fact that managed care entities regulated as PHPs are subject only to whatever regulatory requirements we may wish to retain or establish.

We considered retaining a ''two tier'' regulatory scheme, under which PHPs would be subject to a lesser level of requirements than MCOs. Under this approach, which is similar to that taken in the current regulations, PHPs that had statutory exemptions from MCO requirements would receive the benefit of such exemptions to the extent they were not subject to the more vigorous MCO requirements under section 1903(m) of the Act. We determined, however, that the new BBA requirements contain important beneficiary protections that should be extended broadly, to most PHPs. Applying these BBA requirements to the few organizations exempted by statute, however, would virtually deprive them entirely of the benefit of the exemption the Congress intended. For this reason, as noted above, we have revised the definition of PHP to exclude these statutorily exempt entities, and include only entities that do not have comprehensive risk contracts. Based on this revised definition of PHPs, all entities with statutory exemptions from section 1903(m) of the Act would be treated the same as exempted HIOs are now treated under current law.

In the case of the overwhelming majority of PHPs, however, that are not addressed by the Congress, we propose to use our authority in section 1902(a)(4) of the Act to provide for ''proper and efficient'' methods of administration to give enrollees in these PHPs the benefits of most of the new BBA requirements applied to MCOs. Section 438.8 identifies those provisions of the MCO regulations that apply to PHPs and PHP contracts. Under § 438.8, PHPs would be subject to most of the requirements in § 438.6, with the exception of the advance directive requirements in § 438.6(h) and the physician incentive plan requirements in § 438.6(g).

PHPs would also be required to follow the information requirements in § 438.10 that apply to MCOs, the provider discrimination prohibition in § 438.12, the enrollment and disenrollment requirements under § 438.56(e) through (h), the conflict of interest safeguards in § 438.58, the beneficiary protections in subpart C of part 438, and the grievance and appeal requirements in subpart F of part 438, except for § 438.424(b) since PHPs are not subject to section 1903(m)(2)(A) of the Act, which pertains to disallowances for a failure to meet section 1903(m)(2)(A) requirements. (See discussion below.)

In the case of quality requirements in subpart E of part 438, PHPs would have to comply with all MCO requirements that apply to services provided by the PHP.

Under § 438.8(e), the State agency must require, at a minimum, through its contract, that the PHP meet all of the requirements that MCOs must meet relating to minimum performance levels and performance improvement levels that apply to services furnished by the PHP. The nature of some PHPs may not allow them to report on performance measures in all of the clinical and non-clinical areas as MCOs can. Also, some PHS may not be able to undertake performance projects in the same clinical areas as MCOs can address. The State agency must evaluate the applicability of the MCO performance measures and improvement project areas when establishing the PHP's contractual obligations for its quality assessment and performance improvement program.

We invite comments particularly as to which MCO requirements we propose to

apply to PHPs, and which ones we do not.

We note that while the Congress did not address PHPs in the BBA, it did provide a definition of ''primary care case manager'' that some PHPs could meet. Section 1905(t)(2) of the Act defined a primary care case manager as including ''a physician group practice or an entity employing or having other arrangements with physicians.'' This definition does not preclude payment on a capitation basis.

Based on historical experience, we would expect that in most cases, services furnished to a beneficiary enrolled with a primary care case manager would be reimbursed on a fee-for-service basis to the extent that a primary care case manager is paid on a capitation basis for less than a comprehensive array or set of services. The primary care case manager would also meet the definition of a PHP and be subject to the requirements in § 438.8. In such a case, the primary care case manager would be both a PHP and an MCE. To the extent that the MCO rules that apply to PHPs are stricter than the MCE rules, which ordinarily would apply to a primary care case manager, the primary care case manager would have to follow the MCO rules in such a case, by virtue of its status as a PHP.

While we are proposing to apply MCO requirements to PHPs, State agencies may apply for Federal waiver authority, either under sections 1915(b) or 1115 of the Act, to seek relief from some of the provisions. For example, a State agency may request 1915(b) waiver authority for a behavioral health managed care program in which enrollees are mandated to use a single behavioral health PHP. In this instance, the Secretary has the discretionary authority to grant waivers of freedom of choice, under section 1902(a)(23) of the Act, and the beneficiary the right to disenroll (which for PHPs is authorized under section 1902(a)(4) of the Act, and therefore, can be waived) to enable the State agency to establish or continue such a program.

5. Information Requirements (§ 438.10)

Previously, in Medicaid managed care waiver programs, we have required, as a condition for freedom of choice waivers, that beneficiaries be fully informed of the choices available when enrolling with an MCE. Section 1932(a)(5) of the Act, enacted in section 4701(a)(5) of the BBA, describes the kind of information that must be made available to Medicaid enrollees and potential enrollees. It also requires that this information, and all enrollment notices and instructional materials related to enrollment in MCEs, be in a format that can be easily understood by the individuals to whom it is directed. We propose to implement these provisions in § 438.10. Section 438.10(a) through (h) apply to any use of managed care (State option, waiver, or voluntary) and § 438.10(i) applies only to State option.

As a general rule, each State agency, MCE, and enrollment broker must meet the requirements of § 438.10 that pertain to language and format requirements (as specified in § 438.10(b) and (c)). However, a distinction is made within the regulation as to which information needs to be provided by the MCO, MCE, primary care case manager, and State agency. Further, a distinction is made between which information needs to be provided routinely and which information needs to be provided only upon request.

In § 438.10(b) we establish requirements for the languages in which information must be made available. We are proposing to require that State agencies establish a methodology for determining the prevalent languages spoken by populations in a geographic area and include provisions in their MCE contracts to ensure that materials are available in those specified languages. For example, State agencies could develop methodologies for estimating the composition of the Medicaid population by cultural groups that speak languages other than English, that is, cultural groups that represent at least 5 percent of the Medicaid population. Enrollees and potential enrollees must be informed about how to obtain this information. Specific methodologies, such as those based upon a consideration of geographic composition, population density, or enrolled population are not imposed by this regulation, as the most appropriate approach to fulfilling this requirement may vary from State to State. However, we are proposing that the State agency, enrollment broker, and MCE be required to have translation services available for each enrollee and potential enrollee who has limited English proficiency, and that potential enrollees be informed about how to obtain these services.

In § 438.10(c)(1), we propose to implement the requirement in section 1932(a)(5)(A) of the Act that all enrollment notices and informational and instructional materials relating to enrollment in MCEs be provided in a manner and form that are easily understood by Medicaid enrollees and potential enrollees. This requirement applies to all State agencies, enrollment brokers, and MCEs, and is taken directly from section 1932(a)(5)(A) of the Act. Generally, materials should be understandable to enrollees at a fourth-fifth grade reading level, or at another level established by the State agency that adequately reflects the potential population to be enrolled. Materials should use an easily readable typeface (such as 14 point), frequent headings, and should provide short, simple explanations of key concepts. Technical or legal language should be avoided whenever possible. Use of focus groups and cognitive testing may be beneficial in determining the appropriateness of the information. In addition, in § 438.10(c)(2) we propose that enrollment notices as well as informational and instructional materials relating to enrollment in MCEs take into account the specific needs of enrollees and potential enrollees. This would include furnishing information in alternative formats for the visually impaired (through other medias such as, large print, Braille, or audio tapes) and for individuals with limited reading proficiency (through video or audio tapes).

In § 438.10(d), we propose that the MCO, or the State agency, if the State agency prohibits the MCO from providing it, must furnish this information to each enrollee within a reasonable time after notice of enrollment. If the State agency prohibits the MCO from furnishing this information, we propose to require that the State agency furnish the information within a reasonable time after notice of enrollment. Further, we propose that the MCO furnish this information to potential enrollees upon request, when not prohibited by the State agency through restrictions on marketing or some other means. In this instance, the State agency, or the subcontractor of the State agency, must provide the information. Annually thereafter the MCO must notify enrollees of their right to request and obtain the information from the MCO. We have proposed this requirement because we do not believe that enrollees can effectively access their benefits if they are not furnished adequate information concerning such fundamental elements as enrollees' rights and responsibilities. Further, it is our belief that it is not sufficient for MCOs to merely make this information available at designated locations. Therefore, in keeping with the Congress' intent to provide adequate information to potential enrollees and actual enrollees, according to the Secretary under section 1902(a)(iv) of the Act to establish requirements necessary to ensure * * * proper and efficient operation * * *, we propose to require

MCOs to provide this information. In addition, as is the case in most mandatory managed care systems currently in operation, we propose to require that this information be provided by the MCOs at the time of enrollment, rather than making this information available upon request, as written in the statute.

In § 438.10(e) we set forth the type of information which, under section 1932(a)(5)(B) of the Act, MCOs must provide to enrollees and potential enrollees in their service area, upon request. As discussed below, we propose to require that this information be provided to all new MCO enrollees regardless of whether they request this information.

Consistent with section 1932(a)(5)(B) of the Act, proposed § 438.10(e) would provide that the information that must be furnished to enrollees and potential enrollees include at least the following:

- Benefits offered, and the amount, duration, and scope of benefits and services available under the contract. Sufficient detail should be furnished to ensure that beneficiaries receive the services to which they are entitled, such as pharmaceuticals, mental health, and substance abuse services.
- Procedures for obtaining services, including authorization requirements. These procedures should include the procedures for obtaining pharmaceuticals and mental health and substance abuse services, as well as the procedure for obtaining out-of-area coverage.
- Names and locations of current network providers, including identification of those not accepting new patients. At a minimum, information on the provider networks should include information on primary care physicians, specialists, and hospitals. We also suggest that information be provided regarding ancillary care providers on which enrollees with special health care needs may be dependent for care. If this information is not included, information must be provided to potential enrollees explaining how they can obtain this supplemental information. Enrollees making a decision about whether to enroll in a particular MCO may rely on the provider listing in making their selection, and may assume that they will be able to obtain covered services from any of the providers listed. Therefore, if a provider is not accepting new Medicaid enrollees, this must be clearly indicated, as this provider may not be a choice for new enrollees.
- Any restriction on the enrollee's freedom of choice among network providers. It is essential that the MCO's informational materials emphasize any limitations on enrollees' provider selections. If the MCO contracts with formal subnetworks, or the MCO's arrangement with primary care providers allow for the establishment of informal subnetworks, the MCO's informational materials must clearly indicate which providers are available under each subnetwork. The materials must also explain the procedures under which an enrollee may request referral to an affiliated provider not included in the subnetwork.
- The extent to which an enrollee may obtain services from out-of-network providers. For example, enrollees should be notified of their right to obtain family planning services from any Medicaid-participating provider (unless otherwise restricted).
- Provisions for after-hours and emergency coverage.
- Policies on referrals for specialty care and other services not furnished by the enrollee's primary care provider.
- Cost sharing, if any.
- Enrollee rights as described in §§ 438.56 and 438.320 and enrollee responsibilities. Information on responsibilities should include, but is not limited to responsibilities such as providing information needed for treatment, compliance with the MCO's procedures for obtaining services, and becoming involved in specific health care decisions.
- Information on complaint, grievance, and fair hearing rights described in § 438.414(b) and if the State agency chooses to furnish appeal rights to providers, information on these appeal rights. We note that while section 1932(a)(5)(A)(ii) of the Act provides for furnishing information on ''procedures available to * * * a health care provider to challenge or appeal'' an MCO decision, there is no Federal Medicaid requirement that such procedures be provided for by MCOs. To the contrary, as discussed below, the requirement in section 1932(b)(4) of the Act that MCOs have grievance procedures refers to rights extended to an enrollee ''or a provider on behalf of an enrollee.''

While State agencies must develop grievance and appeal processes for enrollees in accordance with subpart F of part 438, this requirement is not meant to imply that State agencies must establish grievance and appeal processes for individual health care providers beyond the fair hearing process. However, if such processes exist, information on the processes must be made available to enrollees and potential enrollees in accordance with the requirements of this section.

As noted above, section 1932(a)(5) of the Act requires that MCOs provide the above information to enrollees and potential enrollees ''upon request.'' We believe that in the case of beneficiaries who have actually enrolled in the MCO, the above information is essential to an enrollee's ability to access necessary care and exercise his or her rights under the law. Therefore, under our authority in section 1902(a)(4) of the Act to provide for necessary and proper methods of administration, we propose in § 438.10(d) that an MCO be required to provide the above information to each enrollee within a reasonable time after it receives from the State agency or the enrollment broker, notice of the individual's enrollment. This proposed regulatory requirement is consistent with the standard practice of managed care organizations, State law requirements in many States, and requirements that apply under the Medicare program. We invite comment on this requirement.

As required under section 1932(a)(5) of the Act, proposed § 438.10(d) would also require an MCO to provide information to potential enrollees upon request, when not prohibited by the State agency through restrictions on marketing or some other means (in which case the State agency or subcontractor of the State agency must provide the information). Annually thereafter, the MCO must notify enrollees of their right to request and obtain this information from the MCO.

Proposed § 438.10(f), would provide that an MCO is required to provide enrollees and potential enrollees, when not prohibited by the State agency through restrictions on marketing or some other means; in which case the State agency, or subcontractor of the State agency must provide the following information:

- Health plans' and health care facilities' licensure, certification, and accreditation status; and
- Information on health professionals, including but not limited to, education and board certification and recertification.

Unlike the information elements in § 438.10(e) under which the MCO must provide the information to enrollees, in § 438.10(f) we propose that the information be furnished to enrollees and potential enrollees only upon request. We are making this distinction because it is our belief that while some beneficiaries may be interested in receiving these elements of information, and must be able to obtain them, they are not elements of information that every beneficiary typically uses in selecting a provider. By making the

information available by request, interested beneficiaries can obtain the information, and MCOs are not required to furnish information that will not be used.

In § 438.10(g), in accordance with section 1932(a)(5)(D) of the Act, we are proposing to require that a State agency, before or during enrollment, inform enrollees of any benefits to which they may be entitled under the Medicaid program, but which are not made available to them through the MCE. For example, enrollees should be informed about how to access mental health coverage if it is not a service covered by the MCE or the MCE provides only limited coverage. This information must be provided directly by the State agency or through the MCE. The notice must provide information on where and how enrollees may access benefits such as mental health coverage not available through the MCE. In addition, this notice must include any cost-sharing requirements imposed as well as information on how transportation services not covered by the MCE will be furnished.

At § 438.10(h), consistent with section 1932(a)(5)(b) of the Act, we propose to require that primary case managers furnish, upon request, information regarding grievance and appeal processes available to enrollees, including the procedures for obtaining services during the appeals process. While not a requirement for primary care case managers, we suggest that State agencies provide potential enrollees and enrollees of primary care case managers with any additional information, such as on their rights and responsibilities, that would better enable them to receive quality health care and participate in the decision-making process.

In § 438.10(i) we propose to implement section 1932(a)(5)(C) of the Act to require that comparative information be provided by State agencies that implement mandatory managed care programs under the authority in section 1932(a)(1)(A) of the Act. This information must be provided directly by the State agency or through the MCE at least annually, as well as upon request. The information must be presented in a comparative chart-like form that facilitates comparison among MCEs and must be available in the prevalent languages spoken by populations in the geographic area. It should include the following information for each MCE: (1) the service area of the MCE; (2) the benefits covered; (3) any cost-sharing imposed by the MCE; and (4) to the extent available, quality and performance indicators, including, but not limited to, disenrollment rates, as defined by the State agency and consumer satisfaction. State agencies should specify the meaning of ''disenrollment rates'' and the voluntary disenrollment from one plan to another plan.

6. Provider Discrimination (§ 438.12)

At § 438.12, we are proposing requirements consistent with section 1932(b)(7) of the Act. Those requirements state that an MCO must not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. The requirements further state that the regulation does not prohibit an organization from including providers only to the extent necessary to meet the needs of the MCO's enrollees, from establishing different payment rates for different specialties, or from establishing measures designed to maintain quality and control costs consistent with the responsibilities of the MCO.

Section 438.12 should not be construed as an ''any willing provider'' provision. We believe that the Congress intended in section 1932(b)(7) of the Act only to ensure that MCOs do not adopt arbitrary policies concerning non-physician providers who, in the past, may have been discriminated against because they do not hold the same licenses and certifications as practicing physicians. Any such discriminatory actions may have provided beneficiaries with fewer choices and may have reduced beneficiaries' overall access to quality health care. Accordingly, MCOs should implement policies with respect to provider participation, reimbursement, and indemnification that are not arbitrary, but rather relate to quality factors such as outcome measures and satisfaction surveys, and other legitimate business concerns.

We also provide in § 438.12 that MCOs must contract with all health care professionals in the manner provided in § 438.314 (discussed in section 4 below).

B. State Responsibilities (Subpart B)

1. State Plan and Contract Requirements: General Rule (§ 438.50)

In this section, we are proposing language to implement section 1932(a) of the Act, which permits State agencies to enroll their Medicaid beneficiaries in managed care entities on a mandatory basis without a waiver under sections 1915(b) or 1115 of the Act. Under section 1932(a)(1)(A) of the Act and § 438.50 of the proposed regulations, a State agency no longer needs to request, obtain, and seek periodic renewal of HCFA waivers to restrict freedom of choice for most Medicaid beneficiaries. Rather, a State agency may amend its Medicaid plan to require these Medicaid beneficiaries to enroll in managed care entities, without being out of compliance with the freedom of choice provisions.

We are requiring State agencies to submit a Medicaid State plan amendment (SPA) to implement the managed care provisions under section 1932(a) of the Act and the implementing regulations at § 438.50. As specified in the current regulations at § 430.16, we must make a decision to approve or disapprove a State agency's request within 90 days of receipt of the SPA, or we may request additional information from the State agency. If we ask for additional information, we must make a decision to approve or disapprove a State's SPA within 90 days of receipt of the State agency's response to the additional information request. As with other SPAs, the effective date provisions specified in the current regulations at §§ 430.20 and 447.256 apply to SPAs submitted to implement a section 1932(a) of the Act request. Thus, section 1932(a) SPAs thus may be effective as early as the first day of the quarter in which a State's SPA is submitted to HCFA.

Under proposed § 438.56(b), the following populations are excluded from mandatory managed care enrollment under this State plan option:

- Dual Medicare-Medicaid eligibles;
- Native Americans who are members of Federally-recognized tribes except when the MCE is either the Indian Health Service or an Indian Health program operated by a tribe or tribal organization under a contract, grant, cooperative agreement, or compact with The Indian Health Service.
- Children (under 19 years of age) who are:

—Eligible for Supplemental Security Income benefits under Title XVI of the Act;
—Described in section 1902(e)(3) of the Act;
—In foster care or other out-of-home placement;
—Receiving foster care or adoption assistance; or
—Receiving services through a family-centered, community-based, coordinated care system receiving grant funds under section 501(a)(1)(D) of the Act.

While State agencies are prohibited from enrolling the above groups under the State plan option, a State agency may use a section 1915(b) waiver or section 1115 demonstration authority to mandate enrollment for these individuals in a managed care system. A State agency would be required to demonstrate how the individuals' special needs and circumstances would be met under the managed care arrangements. There is a growing body of State experience and best practices regarding enrollment of these groups. We will use this knowledge when evaluating whether a particular State's waiver request does demonstrate that their program will adequately address the needs and complexities of these groups that set them apart from the groups that can be mandatorily enrolled without a waiver.

Under § 438.50(b), State agencies wishing to utilize the authority in § 438.50 would be required to provide assurances of State compliance with all applicable requirements, and under paragraph (c), assurances that contracts will comply with all applicable requirements.

2. Choice of Managed Care Entities (§ 438.52)

Subject to the exceptions specified below, under section 1932(a)(3) of the Act, a State agency that requires Medicaid beneficiaries to enroll in an MCO must offer to its beneficiaries a choice of at least two managed care entities (MCEs). This is consistent with the longstanding requirement under section 1915(b) waivers that beneficiaries have at least two options. This requirement derived from the fact that the right to disenroll provided in section 1903(m)(2)(A)(vi) of the Act could not be waived under section 1915(b) of the Act. Thus, in the case of a comprehensive risk contract subject to section 1903(m) of the Act (formerly HMO contracts, now MCO contracts), a beneficiary has always had the right to disenroll to another option. Section 1932(a)(3) of the Act reflects this existing mandatory managed care policy. MCEs are MCOs under section 1903(m)(1)(A) of the Act or primary care case managers under section 1905(t) of the Act. Therefore, a State agency could comply with this provision by offering a choice of two practitioners for a primary care case management system as long as each practitioner is a separate primary care provider.

Section 1932(a)(3) of the Act provides two exceptions to the general choice of coverage requirement in section 1932(a)(3)(A) of the Act. First, under section 1932(a)(3)(B) of the Act, in rural areas, a State agency may restrict choice of coverage to a single managed care entity if certain conditions are met. In those situations, the State agency must allow the beneficiary to choose from at least two physicians or case managers (to the extent that at least two physicians or case managers are available to furnish care and services in the area), and the State agency must allow the beneficiary to obtain assistance from any other provider outside the network in appropriate circumstances, as established by the State agency under HCFA regulations. Second, in the case of certain HIOs (specifically, pre-1986 HIOs or the county-operated HIOs in California that are exempt from section 1903(m) of the Act), the choice requirement in section 1932(a)(3)(A) of the Act is deemed to be met if a choice of at least two providers within the entity is provided.

In defining the term ''rural,'' for purposes of the rural area exception in section 1932(a)(3)(B) of the Act, we are permitting State agencies the flexibility to either choose between two existing Medicare definitions of rural areas found in parts 412 and 491 of this chapter, or to obtain our approval of a definition developed by the State agency. We are proposing to prohibit a State agency from designating the entire State as a rural area.

While we are proposing to allow State agencies a choice of three options for defining rural areas, we are specifically requesting public comments on whether it would be more appropriate to apply a single definition for rural areas, and which definition would be the most appropriate one. In addition, we are soliciting comments on whether an alternative definition to the two existing Medicare definitions of rural areas found in Parts 412 and 491 of this chapter would be more appropriate, and if so, what the definition should be. A single definition could result in a more consistent approach of a rural area definition for purposes of this exception.

If a State agency elects to implement this rural exception, the BBA requires us to promulgate regulations under which State agencies can establish the ''appropriate circumstances'' under which an individual will be permitted to obtain care from any provider. In § 438.52(c)(2), we propose the following as appropriate circumstances under which a State agency must permit beneficiaries to seek out-of-plan treatment: (1) when a service or type of provider is not available within the MCE network; (2) when a provider is not part of the MCE network, but has an existing relationship with the beneficiary; or (3) when the only plan or provider available to the beneficiary does not, because of moral or religious objections, furnish the service the enrollee seeks. We also propose that State agencies have the discretion to determine additional circumstances that warrant out-of-network treatment. The State agency must ensure that enrollees are informed of the appropriate circumstances for out-of-plan treatment. We invite comments and additional suggestions in this area.

3. Enrollment and Disenrollment: Requirements and Limitations. (§ 438.56)

Section 1932(a)(4) of the Act contains new requirements that apply to the enrollment of beneficiaries in MCEs under a mandatory enrollment program under section 1932(a)(1)(A) of the Act and new disenrollment rights that apply to all MCEs, whether enrollment is voluntary or mandated under section 1932(a)(1)(A) of the Act or a 1915(b) waiver.

The State agency must provide assurances that in implementing a mandatory enrollment program under section 1932(a)(1)(A) of the Act the following Medicaid beneficiaries are not required to enroll:

(1) Beneficiaries who are eligible for Medicare;

(2) Indians who are members of Federally recognized tribes, except when the MCE is The Indian Health Service or an Indian health program operated by a tribe or a tribal organization under a contract, grant, cooperative agreement, or compact with the Indian health service.

(3) Children under 19 years of age who are eligible for SSI under Title XVI of the Act; under section 1902(e)(3) of the Act; in foster care or other out-of-home placement, receiving foster care or adoption assistance; or receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of title J, and is defined by the State agency in terms of either program participation or special health care needs.

Under section 1932(a)(4)(A) of the Act, enrolled beneficiaries may terminate or change their enrollment for cause at any time, unless the beneficiary is enrolled in a single MCO or a primary care case management system in a rural area as described above in § 438.52. In this situation, the beneficiary may not disenroll from the single plan but may change providers within the plan or obtain assistance from any other provider outside the network in appropriate circumstances as defined in

§ 438.52(c)(2). Beneficiaries must also be permitted to disenroll without cause with a particular MCE within the first 90 days of the initial enrollment period of up to 12 months, and annually thereafter. In addition to applying to all enrollees under a mandatory enrollment program under section 1932(a)(1)(A) of the Act, this disenrollment provision is incorporated in the definition of primary care case management contract in section 1905(t)(3) of the Act, and in a revised version of section 1903(m)(2)(A)(vi) of the Act, and thus applies to all primary care case management contracts and comprehensive risk contracts subject to section 1903(m) of the Act. This right to disenroll without cause during the first 90 days of enrollment, with a particular MCE and at least annually thereafter, replaces the pre-BBA version of section 1903(m)(2)(A)(vi)of the Act, which provided enrollees with the right to disenroll without cause at any time, or in the case of Federally qualified HMOs and certain other entities, at least every 6 months.

Under the pre-BBA version of section 1903(m)(2)(A)(vi) of the Act, a 12-month lock-in was possible only under a section 1115 demonstration, since section 1115(a)(2) authority was required in order to exempt an HMO from the requirement in that version of section 1903(m)(2)(A)(vi) of the Act permitting that an enrollee disenroll without cause at any time, or every six months.

In addition to extending the maximum enrollment period from 6 months to 12 months and allowing for a 90-day, without-cause disenrollment period, section 1932(a)(4) of the Act:

- Applies this lengthened enrollment to all managed care entities (MCEs), rather than a specific type of HMO;
- Requires that recipients be notified of their ability to disenroll or change plans during an enrollment period that occurs at least every 12 months, and at least 60 days before the start of each enrollment period; and
- Eliminates all previous statutory provisions on enrollment and termination of enrollment.

These provisions apply to enrollment and disenrollment in all types of MCEs in all Medicaid managed care programs, with the exception of a temporary exemption for the duration of section 1115 or 1915(b) waiver periods already approved before the BBA was enacted. Once these current waiver periods expire, these provisions will apply unless HCFA grants an exemption from them under section 1115 demonstration authority. Also, section 4757 of the BBA permits an extension for up to 3 years for section 1115 waivers approved or in effect as of August 5, 1997. These waiver extensions must be approved under the same terms and conditions that applied before the extension. Therefore, any exemptions from the BBA requirements to which these programs are entitled may continue during the period of the extended waiver authority.

Section 1932(a)(4)(D)(I) of the Act, also contains the following requirements for the enrollment process when State agencies use the State plan amendment authority in section 1932(a)(1) of the Act to implement managed care on a mandatory basis:

—Individuals already enrolled with an MCE must be given priority to continue that enrollment if the MCE does not have the capacity to enroll all individuals seeking enrollment under the program. Thus, State agencies are required to establish a method for establishing enrollment priorities for managed care entities if they do not have sufficient capacity to enroll new individuals, and to give priority to the continued enrollment of individuals already enrolled with the entity.

State agencies must establish a default enrollment process under which individuals who do not elect an MCE during their enrollment period are assigned to one that meets the requirements of section 1903(m) or 1905(t) of the Act. Under this default assignment process, individuals who do not select a plan must be enrolled by the State agency into an entity that takes into consideration the maintenance of existing provider-individual relationships or relationships with providers that have traditionally served Medicaid beneficiaries. If this cannot be accomplished, the State agency must equitably distribute the individuals among available qualified MCEs.

As mentioned above, these requirements are limited to programs established under the State plan amendment authority for mandatory managed care enrollment.

We note that the language in section 1932(a)(4)(A)(ii) of the Act indicates that the 90-day period to disenroll without cause is to begin on the date the individual ''receives notice of such enrollment* * *'' However, we recognize that a literal application of this starting date could make this provision extremely difficult for State agencies to administer, and therefore provide in § 438.56(e)(1)(ii)(A) that the general rule is that the 90 days will begin when enrollment is effective. We provide, however, that if notice to the recipient is delayed, the 90-day period may be extended to compensate for that delay.

We provide that the 90-day period for disenrollment without cause applies only when an individual first enrolls with a particular MCE. The language in section 1932(a)(4) of the Act regarding the 90-day period for disenrollment without cause expressly provides for a 90-day period that begins with enrollment with ''the'' MCE in which the beneficiary is enrolled. Thus, beneficiaries are entitled to a 90-day ''without cause'' period for disenrollment any time they enroll in a new MCE. Section 1932(a)(4) of the Act provides for a notice of termination rights under which an enrollee must be informed of his or her ability to terminate or change enrollment at least 60 days before the start of each enrollment period. This 60-day period gives individuals the opportunity to change MCEs effective with the start of their initial enrollment period with a particular MCE. If they choose to remain in the same plan, they have had their opportunity for disenrollment without cause and declined it. However, enrollees who change plans, would have an opportunity to try out the new MCE and determine whether they wish to remain enrolled through the enrollment period. This interpretation is consistent with the statutory language, which refers to a 90-day period beginning with the date of enrollment with ''the entity,'' and is also consistent with what we believe to be the intent of this provision. We believe that this provision was designed to provide a beneficiary with a period of time to ''try out'' an MCE and see whether it is right for him or her. A beneficiary who has already had such a 90-day period with a particular MCE does not need another one in order to try out that MCE. However, further restricting the application of the 90-day without cause period would mark a departure from statutory language.

Section of the Act 1932(a)(4) of the Act permits individuals to disenroll at any time without cause during the initial 90 days of enrollment with an MCE, and during enrollment periods of at last every 12 months, thereafter. This is problematic when only one MCE option exists, such as under the rural area and HIO exceptions provided under sections 1932(a)(3)(B) and (C) of the Act. We believe that in authorizing mandatory enrollment in a single entity under these exceptions, while imposing as a condition the right to choose among individual providers within the entity, Congress was providing for an implicit exception to the general rule under section 1932(a)(4) of the Act that an

enrollee must be able to disenroll from an MCE. Under these exceptions we are proposing in § 438.56(e)(2) that the requirements in section 1932(a)(4)(A) of the Act be deemed satisfied by providing that beneficiaries can disenroll to a different primary care physician or case manager. Thus, individuals may disenroll from their current primary care provider, but must continue as an enrollee in the managed care entity. This would make it unnecessary for a State agency to operate a parallel FFS system for those individuals who disenroll. We note that this ''exception'' to the ordinary operation of the requirement in section 1932(a)(4) of the Act would also be incorporated in section 1903(m)(2)(A)(vi) of the Act, which cannot be waived under a section 1915(b) waiver program. Thus, under our proposed rule, a State agency could offer a single MCE in a rural area under a section 1915(b) waiver, as long as the requirements in § 438.52(c) are satisfied. (The issue of section 1903(m)(2)(A)(vi) of the Act does not arise for the HIOs addressed in § 438.52(d), since they are exempt from section 1903(m) requirements.)

In accordance with section 1932(a)(4)(B) of the Act, we provide in proposed § 438.56(g) for the enrollee's opportunity to disenroll or change enrollment at least 60 days before the enrollment opportunity. Section 1932(a)(4), of the Act requires State agencies to permit disenrollment without cause at least every 12 months after the individuals's enrollment with an MCO. State agencies may fulfill this requirement by having an annual open season for all MCO enrollees or establishing an open enrollment opportunity for each individual based on the individual's date of enrollment.

This provision also proposes that for recipients enrolled under the State plan option as established through section 1932(a)(1) of the Act, the State agency must establish a method whereby individuals already enrolled with an MCE must be given priority to continue that enrollment where the MCE does not have the capacity to enroll all individuals seeking enrollment under the program. In accordance with section 1932 (a)(4)(D) of the Act, we propose § 438.56(d)(2). This provision stipulates that in applying the default assignment provision under section 1932(a)(1) programs, State agencies are required to establish an enrollment process that takes into consideration existing provider and individual relationships and traditional Medicaid providers, and if these are not possible, utilize an assignment process that equitably distributes enrollees among qualified, available MCEs.

Except when State agencies have a fee-for-service experience or prior MCO enrollment data regarding an individual, it may be difficult to establish a provider and individual relationship for default assignment purposes. We recommend that State agencies ask potential enrollees in this situation for the names of providers from whom they receive services and whether they would wish to continue this relationship. When the beneficiary identifies a provider who is participating and has additional capacity, this information should be used in determining the individual's assignment. In this instance, the State agency makes the assignment to any MCO in which that provider participates.

When the State agency cannot get a response, the beneficiary has no preference, or the named provider does not participate, consideration must be given to ''traditional providers''. The definition in section 1932(a)(4) of the Act specifically describes providers who have ''traditionally served beneficiaries under this Title.'' As such, we believe the definition of a traditional provider should be defined as a provider who has been the main source of care for any recipient during the last year and has experience and expertise in dealing with the Medicaid population.

Thus, we propose under § 438.56(d)(3) that existing provider-individual relationships be defined as the provider who was the main source of care for the recipient in the last year. This can be established through State records of previous MCE enrollment or FFS experience, or through contact with the beneficiary. Under § 438.56(d)(4) we would define ''traditional providers'' to be any provider who has been the main source of care for a beneficiary within the last year, and has expertise and experience in dealing with the Medicaid population. If the State agency has no recent claims history, cannot get a response from the beneficiary, or the named provider does not participate, the State agency must give consideration to traditional providers as defined above. If no traditional providers are available, remaining individuals are to be equitably distributed among qualified MCEs with adequate capacity.

Under § 438.56(d), we propose that with respect to the lock-in and termination of enrollment provisions, default assignment be considered to be the ''election'' of a plan. The lock-in provision previously contained in section 1903(m)(2)(A)(vi) of the Act contains the same language: ''individuals who have elected to enroll with the plan. . . .'' This language also is in the new BBA requirement on disenrollment. The provision has always been applied to individuals who were default-assigned as well as to those who actually elected to enroll in their plans. As such, we believe that this practice may be continued.

Sections 438.56(f) and 438.56(g) of the Act set forth agency procedures including the notice requirements of grievance and appeal rights, and the requirement that a request for disenrollment for cause be submitted in writing to the State agency (or to the MCE if the State agency permits MCEs to process disenrollments). When a State agency permits an MCE to process disenrollment requests, we would require the beneficiary to submit the disenrollment request to the MCE, and require the MCE to make a copy for the State agency.

In § 438.56(f)(2)(i), we propose that the MCE may approve the request for disenrollment if the State agency permits MCEs to process disenrollments for cause. In addition, the MCE must notify the enrollee and State agency in writing that the disenrollment request was approved and indicate the effective date of the disenrollment consistent with paragraph (f)(4) of this section, which requires that disenrollment is effective no later than the first day of the second month following the month in which the enrollee made the request for disenrollment. In § 438.56(f)(2)(iii), we propose that if the MCE, for whatever reason, does not take action to approve the enrollee's request for disenrollment, for which it must notify the State agency within a reasonable timeframe as determined by the State, the State agency will make a good cause determination based on reasons cited in the enrollee's request and information provided by the MCE at the State agency's request.

Section 438.56(h) incorporates Public Law 101–508 section 4732(c), effective November 5, 1990, as well as the provision set forth in section 4702(b)(1) of the BBA, to allow State agencies to provide in their State plans and contracts with MCEs for the automatic reenrollment of recipients who become disenrolled from the MCE solely by virtue of becoming temporarily (four months or less) ineligible for Medicaid. We note that the provisions in § 438.56(e) through (h) apply to PHPs.

4. Conflict of Interest Safeguards (§ 438.58)

State agencies can not enter into contracts with any MCO, unless the

State agency has in effect conflict-of-interest safeguards with respect to its officers and employees, and local officers and employees who have responsibilities relating to contracts with such MCOs or the new default enrollment process. These safeguards must be at least as effective as the Federal safeguards provided under section 27 of the Office of Federal Procurement Policy Act (41 USC 423). This provision applies to contracts entered into or renewed by October 1, 1997 and signed by both parties.

This proposed rule is necessary to conform our regulations to section 1932(d)(3) of the Act, which requires that State agencies have conflict-of-interest safeguards ''at least as effective'' as Federal procurement safeguards. The Federal Procurement Policy Act specifies prohibitions for former and current employees from entering into any type of communications with individuals or third parties to unduly influence their decisions. These provisions include the following:

- Prohibited conduct by competing contractors.
- Prohibited conduct by procurement officials.
- Refusal to engage in discussion with competing contractor.
- Disclosure to unauthorized persons.
- Certification and enforcement matters.

This proposed rule will ensure that there is no undue influence or preference given to an MCO because a State employee has an interest in that MCO. It will force State agencies to have stringent safeguards over individuals for the proper and efficient administration of a State Plan.

Before section 1932(d)(3) of the Act was added by section 4207 of the BBA, section 1902(a)(4)(C) of the Act provided that Medicaid State and local officers or employees, former officers or employees, and partners of former officers or employees were prohibited from committing any act that is prohibited by Section 207 or 208 of title 18 of the United States Code. Section 207 or 208 of title 18, prohibits former and current employees from entering into communications to influence on behalf of any other persons.

5. Limit on Payment to Other Providers (§ 438.60)

We propose to redesignate § 434.57 as § 438.60, with appropriate changes in terminology.

6. Continued Service to Recipients (§ 438.62)

We propose to redesignate § 434.59 as § 438.62 with appropriate changes in terminology.

7. Computation of Capitation Payments (§ 438.64)

We propose to redesignate § 434.61 as § 438.64 with appropriate changes in terminology.

8. Monitoring Procedures (§ 438.66)

We propose to redesignate § 434.63 as § 438.66 with non-substantive revisions and appropriate changes in terminology.

C. Subpart C—Enrollee Protections

1. Benefits (§ 438.100)

This section requires that contracts with MCOs must specify the services that the organization is required to furnish to Medicaid enrollees. If services covered under the State plan are not covered under the contract, the State agency must make arrangements to furnish these services to the Medicaid enrollee and provide written instructions on how to obtain the services.

2. Enrollee-Provider Communications (§ 438.102)

Under current law, Medicaid beneficiaries are entitled to receive from their health care providers, the full range of medical advice and counseling that is appropriate for their condition. The BBA expands upon this basic right by precluding an MCO from establishing restrictions that interfere with enrollee-practitioner communications. Under the provision, a covered health care professional (we use the term ''practitioner'' interchangeably with the statutory definition of ''health care professional'') who is acting within his or her scope of practice, must be permitted to freely advise a patient about his or her health status and discuss appropriate medical care or treatment for that condition or disease regardless of whether the care or treatment is covered under the contract with the MCO.

While the new law precludes MCOs from interfering with enrollee-practitioner communications, it does not require MCOs to provide, reimburse for, or provide coverage of counseling or referral services for specific services, if the MCO objects to the service on moral or religious grounds. Please note, however, that the State agency remains responsible for assuring access to all covered services. In these cases, the MCO must inform beneficiaries in writing of its policies before and during enrollment. If the MCO changes its policies with regard to a specific counseling or referral service, the organization must provide written notification to enrollees within 90 days of the change.

This provision is consistent with a similar provision on anti-gag rule provisions contained in the M+C regulation. In addition, this provision is consistent with the CBRR provision regarding participation in treatment decisions whereby all treatment options should be discussed between a provider and his or her patient.

3. Marketing Activities (§ 438.104)

We currently require under § 434.36 that each MCO have in its contract the methodology for assuring that marketing plans, procedures, and materials are accurate and do not mislead, confuse, or defraud either recipients or the Medicaid agency. Section 1932(d)(2) of the Act established by Section 4707(a) of the BBA further strengthens consumer protections and prohibits fraud and abuse by restricting marketing activities by managed care entities. Section 1932(d)(2) of the Act requires that marketing materials be distributed to the entire service area covered under contract and that marketing materials not be distributed without the prior approval of the State agency. Marketing materials may not contain false or materially misleading information. We propose to implement these BBA provisions and prohibit certain other marketing practices under § 438.104.

For the purposes of this regulation, we propose in § 438.104(a) to define marketing materials as materials produced in any medium, by or on behalf of an MCE, used to communicate with individuals who are not its enrollees and which can reasonably be interpreted as intended to influence the individuals to enroll or reenroll in that particular MCE.

a. Required Marketing Activities. In § 438.104(b)(2)(ii) we propose to reflect the requirement in section 1932(d)(2)(B) of the Act that MCEs must distribute marketing materials to the entire service area in which they have contracts under sections 1903(m) or 1903(t)(3) of the Act.

b. Prohibited Marketing Activities. In § 438.104(b)(2) we propose to reflect the provision in section 1932(d)(2)(A)(i) of the Act that provides that prior approval from the State agency must be obtained before an MCE or any agent or independent contractor of the MCE distributes any marketing materials within any State. According to the last sentence in section 1932(d)(2)(A)(i) of the Act this prior approval requirement

was to take effect on a date specified by the Secretary in consultation with the State agency. Following such consultation, this requirement became effective on July 1, 1998. For purposes of this requirement, we define marketing materials in § 438.104(a) as discussed above.

In addition, we propose in § 438.104(b) to implement the provision in section 1932(d)(2)(A)(i)(II) of the Act on the distribution by MCEs, or any agents, of marketing materials that contain false or materially misleading information by requiring that MCE contracts specify the methods by which compliance with this requirement is assured. Examples of misleading marketing information would be an assertion that the beneficiary must enroll with the MCE to get Medicaid benefits, or that the MCE is recommended or endorsed by HCFA.

In § 438.104(b)(2)(iv), we propose to reflect the prohibition in section 1932(d)(2) of the Act on the MCE or any agent attempting to influence enrollment with the MCE in conjunction with the sale of any other insurance.

For example, the entity or independent contractor of such entity may not assert that a recipient will lose Medicaid benefits if he or she does not enroll in the entity's plan. Further, the entity or independent contractor may not claim that it is recommended or endorsed by us.

In § 438.104(b)(2)(iv), we propose to reflect the prohibition in section 1932(d)(2) of the Act on the MCE or any agent attempting to influence enrollment with the MCE in conjunction with the sale of any other insurance. We interpret this to mean that managed care entities may not entice a potential enrollee to join the MCE by offering the sale of any other type of insurance as a bonus for enrollment. However we invite comment on this provision since no legislative history is available to help determine if this interpretation is accurate. The conditions that we have prescribed to ensure accurate information for an informed beneficiary are set forth in § 438.10 (discussed in section 1 above), which is referenced in § 438.10.

In § 438.104(b)(2)(iii) we propose to reflect the requirement in section 1932(d)(2)(D) of the Act that MCEs comply with the information requirements set forth in § 438.10 to ensure that each potential enrollee receives accurate oral and information in order that the potential enrollee can make an informed decision whether or not to enroll.

In § 438.104(b)(2)(v) we propose to reflect the prohibition in section 1932(d)(2)(E) of the Act barring an MCE, directly or indirectly, from conducting door-to-door, telephonic, or other ''cold call'' marketing of enrollment. MCEs and their employees are prohibited from conducting these marketing practices either by themselves (directly) or by using an agent, affiliated provider, or contractor (indirectly). This provision does not prohibit MCEs from engaging in other State approved activities, such as marketing at health fairs, procuring billboards, bus signs, or other broadcast advertising materials, and contacting in person, potential enrollees who request further information about the entity. However, it is the prerogative of the State agency to further limit marketing practices beyond those prohibited or required by federal law. Cold call marketing is defined in proposed § 438.104(a) as any unsolicited personal contact with a potential enrollee by an employee, affiliated provider or contractor of the entity for the purpose of influencing enrollment with such entity. This would include such activities as a physician or other member of the medical staff or salesperson or other managed care entity, employee, or independent contractor approaching a beneficiary in order to influence the potential enrollees decision to enroll with a particular plan.

c. Consultation in State agency approval of marketing materials. In § 438.104(c) we propose to reflect the requirement in section 1932(d)(2)(A)(ii) of the Act that State agencies provide for consultation with a Medical Care Advisory Committee (MCAC) in the process of reviewing and approving marketing materials. Currently, MCAC is listed in the regulations at § 431.12. The current MCAC must include Board-certified physicians and other representatives of the health professions who are familiar with the medical needs of low-income population groups and with the resources available and required for their care; members of consumers' groups that include Medicaid recipients and consumer organizations such as labor unions, cooperatives, consumer sponsored prepaid group practice plans, and others; and the Director of the Public Welfare Department or the Public Health Department, whichever does not head the Medicaid agency. State agencies do not have to use the current MCAC but can establish a new MCAC for consultation in reviewing and approving marketing material. If a new MCAC is established, it must be composed of the identical membership described above and in § 431.12.

4. Liability for Payment (§ 438.106)

In § 438.106 we propose to reflect the requirement in section 1932(b)(6) of the Act (enacted in section 4704(a) of the BBA), to require that MCOs must protect Medicaid beneficiaries from being held responsible for payment liabilities incurred by the MCO or by a health care provider with a contractual, referral, or other arrangement with the MCO. For example, if the MCO were to become bankrupt, the Medicaid enrollee would not have to assume responsibility for costs that the MCO was responsible for covering, nor any of the debts of the providers affiliated with the MCO. In addition, if the MCO fails to receive payment from the State agency, or if a provider fails to receive payment from the State agency or the MCO, the Medicaid enrollee cannot be held responsible for these payments. The Medicaid enrollee cannot be held responsible for payments to a provider in excess of the amount that he or she would have owed if the MCO had directly provided the service.

We are requesting public guidance on the part of this provision that refers to beneficiary liability for payments to a provider ''in excess of the amount he or she would have owed.'' Other than nominal cost sharing, Medicaid law at section 1916 of the Act specifically prohibits States or plans from imposing additional cost sharing on Medicaid beneficiaries. We do not believe Medicaid beneficiaries would ''owe'' an MCO any payment amounts beyond nominal costsharing.

5. Cost Sharing (§ 438.108)

This section would reflect amendments made by section 4708(b) of the BBA, which amended sections 1916(a)(2)(D) and 1916(b)(2)(D) of the Act. As a result of these changes, the prohibition on cost-sharing for services furnished by MCOs has been eliminated. Copayments for services provided by MCOs, thus, may now be imposed in the same manner as copayments are applied under fee-for-service.

Accordingly, State agencies should use their fee-for-service payment rates to serve as the basis for determining copayments that can be assigned for managed care services. State agencies would be allowed to impose copayment requirements to the same extent that they are allowed to impose copayment requirements on Medicaid beneficiaries not enrolled in MCOs. For example, State agencies would have the option of establishing a standard copayment amount for managed care services that is determined by applying the

maximum copayment amounts specified at § 447.54 as applied to the State agency's fee-for-service payment for that service.

In addition, any beneficiary groups excluded by law from having to pay copayments under fee-for-service would continue to be excluded from any copayment responsibility with respect to managed care services. These beneficiary groups include children, pregnant women, and institutionalized beneficiaries. Also prohibited are copayments for emergency services and family planning services.

6. Assurances of Adequate Capacity and Services (§ 438.110)

Section 1932(b)(5) of the Act, added by section 4704(a) of the BBA, requires MCOs to provide to the State agency and the Secretary with adequate assurances, in a time and manner to be determined by the Secretary, that each organization, with respect to its service area, has the capacity to serve the expected enrollment in such service area. Section 1932(b)(5) of the Act also specifies that these assurances must demonstrate that each MCO offers an appropriate range of services and a sufficient number, mix, and geographic distribution of providers of services.

Current regulations at § 434.6(a)(2) and (5) require that all contracts, whether with health maintenance organizations, (now called MCOs), or PHPs, identify the population covered by the contract and allow for the State agency and HHS to evaluate through inspection or other means, the quality, appropriateness and timeliness of services performed under such contract. Under § 434.50(b), a State agency is required to obtain proof, from each contractor, of the contractor's ability to provide the services under the contract efficiently, effectively, and economically. In addition, under § 434.52, a State agency is required to obtain proof that each contractor furnishes the health services required by enrolled recipients as promptly as is appropriate, and that the services meet the agency's quality standards.

In § 438.110, we propose to add additional requirements that implement the provisions in section 1932(b)(5) of the Act, requiring MCOs to provide adequate assurances of their capacity and services. We propose to interpret ''adequate assurances'' referenced in section 1932(b)(5) of the Act to require documentation of the adequacy of capacity and services in the service area, rather than simply a ''certification'' to this effect.

In § 438.110(a), we propose a general requirement that each MCO submit documentation to the State agency and to us, demonstrating that it has the capacity to serve the expected enrollment in its service area. The nature and purpose of the documentation is further described in § 438.110(b). In that paragraph, we provide that the documentation must address three requirements. These are: (1) that the MCO offers an appropriate range of services, including access to preventive services, primary care services, and specialty services for the anticipated number of enrollees in the service area; (2) that the MCO maintains a network of providers that is sufficient in number, mix, and geographic distribution; and (3) that the MCO meets the availability of services provisions in § 438.306 of subpart E. While section 1932(a)(5)(A) of the Act refers only to ''preventive and primary care services'', we believe that access to specialty services is also critical. We accordingly have added specialty services in proposed § 438.110(b)(1), in accordance with our authority under section 1902(a)(4) of the Act.

Information that may be provided by an MCO to comply with the above requirements includes, but is not limited to, documentation that describes the expected enrollment by geographic location; a list of all of the primary, preventive and specialty care services to be provided by the MCO; the names, types, and geographic location of providers and specialists who will furnish the contracted services; the hours of operation for each MCO facility and provider site; the timeliness standards being observed by the MCO; a description of the MCO's plan for identifying and furnishing care to pregnant women; a description of the MCO's plan for identifying and assessing beneficiaries with serious or complex medical conditions; and the MCO's plan for assuring culturally competent services. These examples are not intended to be an exhaustive list or mandatory requirements. Rather, the State agency should tailor its own documentation requirements to assure itself that the MCO has demonstrated adequate capacity and services, and thereby has met the availability of services provisions outlined under proposed § 438.306, discussed in section 4 below.

In § 438.110(c), we propose that the MCO submit the documentation described in § 438.110(b) to the State agency no less than every 2 years, but also upon entering or renewing a contract with the State agency, and at any time when the State agency has determined that there has been a significant change in the MCO's delivery network or enrollee population. We emphasize with this requirement that the MCO must minimally submit the information described in § 438.110(b) to the State agency at least every two years, even if the contract is in effect for a longer period. In addition, under this requirement, the State agency should have sufficient flexibility to determine whether or not the MCO has maintained adequate capacity in the event that there has been a significant change in the organization's delivery network or enrollee population.

In § 438.110(d), we propose that, following the State agency's review and any changes made to the documentation as a result of that review, the MCO submit to HCFA the same documentation it sent to the State agency. This provision is in accordance with BBA statutory language, which specifically requires that assurances be provided to the State agency and to HCFA. It is our expectation that the documentation submitted will be in an electronic format, when possible, and will include a summary of the contents of the documentation and an explanation of how each individual piece of the documentation relates to the availability of services provisions in § 438.306 of subpart E.

Our intent in proposing these provisions is not to supersede the State agency as the decision maker of whether or not the MCO has demonstrated adequate capacity and services. Rather, we propose in paragraph § 438.110(d) that MCOs seek certification from the State agency before the organization submits documentation to us. This certification can be in a format decided upon by the State agency. However, the content should specify whether the MCO has demonstrated that it has sufficient capacity and services in accordance with the requirements of this section and § 438.306 of subpart E.

7. Emergency and Post-Stabilization Services. (§ 438.114)

Section 4704(a) of the BBA added section 1932(b)(2) to the Act to assure that Medicaid managed care beneficiaries have the right to immediately obtain emergency care and services and the right to post-stabilization services following an emergency condition under certain circumstances. Each contract with an MCO and primary care case manager must require the organization to provide for coverage of emergency services and post-stabilization services as described below. In section 1932(b)(2)(A)(i) of the Act, while Congress required primary care case managers and MCOs to provide coverage of emergency services,

it did not define the word ''coverage'' even though these health care models generally do not cover emergency services in the same manner. In proposed § 438.114 we interpret the obligation in section 1932(b)(2)(A)(i) of the Act to provide for coverage of emergency services to mean that an MCO that pays for hospital services generally, must pay for the cost of emergency services obtained by Medicaid enrollees. We interpret coverage in the primary care case management context to mean that the primary care case managers must allow direct access to emergency services without prior authorization. We apply different meanings to the word ''coverage'' because while primary care case managers are individuals paid on a fee-for-service basis, they receive a State payment to manage an enrollee's care. While primary care case managers, unlike MCOs, would not likely be involved in a payment dispute involving emergency services, they could be involved in an authorization dispute over whether a self referral to an emergency room is authorized without prior approval of the primary care case manager. Accordingly, we propose to provide in § 438.114(d)(2) that enrollees of primary care case managers are entitled to the same emergency services coverage without prior authorization that is available to MCO enrollees under section 1932(b)(2) of the Act.

The BBA further stipulates that emergency services must be covered without regard to prior authorization or the emergency care provider's contractual relationship with the organization. These provisions collectively enable a Medicaid enrollee to immediately obtain emergency services at the nearest provider when and where the need arises.

Section 1932(b)(2)(B) of the Act defines emergency services as covered inpatient or outpatient services that are furnished by a provider qualified to furnish such services under Medicaid that are needed to evaluate or stabilize an emergency medical condition. Emergency medical condition is in turn defined in section 1932(b)(2)(C) of the Act as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body functions, or serious dysfunction of any bodily organ or part. While this standard encompasses clinical emergencies, it also clearly requires MCOs to base coverage decisions for emergency services on the severity of the symptoms at the time of presentation and to cover examinations when the presenting symptoms are of sufficient severity to constitute an emergency medical condition in the judgment of a prudent layperson. The above definitions are set forth in proposed § 438.114(a).

Section 1932(b)(2)(A)(ii) of the Act also provides MCE enrollees with the right to coverage of post-stabilization'' services after they have been ''stabilized'' (that is, they no longer have an emergency medical condition) following an admission for an emergency medical condition. Specifically, the services that must be covered are those that must be covered under Medicare rules implementing section 1852(d)(2) of the Act, ''in the same manner'' as such rules ''apply to M+C plans offered under Part C of title XVIII.'' Under the last sentence in section 1932(b)(2)(A) of the Act, this requirement was effective 30 days after the Medicare rules were established, which was August 26, 1998. The M+C post-stabilization requirements referenced by section 1932(b)(2)(A)(ii) of the Act are set forth in proposed §§ 438.114(a) and 438.114(c)(2), which define ''post-stabilization services'' and require that MCEs (including primary care case managers) with risk contracts that cover post-stabilization services must pay for such post-stabilization services. Specifically, § 438.114(c)(2) requires that such MCEs must pay for post-stabilization services that are pre-approved by the MCE, or that have not been pre-approved because the MCE did not respond to a request for approval within 1 hour of a request by a provider, or could not be contacted for approval. Under § 438.114(c)(3), the MCE must continue to pay for post-stabilization services until other arrangements for care are made and the provider of post-stabilization services is notified While such an MCE is required to pay for post-stabilization services, in proposed § 438.114(c)(4) and (c)(5) we provided that an enrollee of a primary care case manager is entitled to obtain post-stabilization services under the same terms as an MCO enrollee, when they are approved by the primary care case manager, or when the primary care case manager cannot be reached or fails to respond to a request for authorization within one hour. Where post-stabilization services are not covered by the MCE risk contract, the State agency must pay for post-stabilization services that were requested and either approved by the MCE or not approved, due to untimely or absent response.

''Post-stabilization care'' means medically necessary, non-emergency services needed to ensure that the enrollee remains stabilized from the time that the treating hospital requests authorization from the MCE until (1) the enrollee is discharged; (2) an MCE physician arrives and assumes responsibility for the enrollee's care; or (3) the treating physician and MCE agree to another arrangement. Because an untimely response to a request for approval would unduly delay the delivery of the post-stabilization care services, thereby potentially compromising their effectiveness, we have established a 1-hour timeframe in the regulation as an enrollee protection. Because a completely accurate assessment of an enrollee's need for post-stabilization care services cannot be made until the enrollee is stabilized, we expect that the provider of the post-stabilization care services will not request the MCO's approval of the services until after the enrollee is stabilized, at which time enough details about the enrollee's condition should be known to allow the organization to make an informed decision on whether to approve the care within one hour.

Sections 438.114(c)(2) and 438.114(d)(1) require that MCEs (or the State agency, under § 438.114(c)(4)) pay for emergency and post-stabilization services without prior authorization (other than the pre-approval of post-stabilization services no later than within one hour of a request for approval).

Proposed § 438.114(d)(1) provides that an MCO must pay for emergency services regardless of whether the entity that furnishes the services has a contract with the MCO. Proposed § 438.114(d)(2) provides that if a primary care case management contract is a risk contract that covers such services, a primary care case management system must allow enrollees to obtain emergency services outside of the primary care case management system.

Proposed § 438.114(e) further clarifies financial responsibility. In § 438.114, MCOs may not deny payments if, on the basis of symptoms identified by the enrollee, he or she appeared to have an emergency medical condition, but turned out not to be a condition, in which the absence of immediate medical care would result in serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of her unborn child, serious impairment of bodily function, or serious dysfunction of any bodily organ

or part. Likewise, the MCO or primary care case manager cannot deny payment if the enrollee obtained services based on instructions of a practitioner or other representative of the MCO. Proposed § 438.114(e)(2) also provides that the MCO is not responsible for services obtained outside the MCO unless the services are emergency services or post-stabilization services covered under § 438.114(c)(2).

Proposed § 438.114(f) provides that the attending physician or practitioner actually treating the enrollee determines when the enrollee is sufficiently stabilized for transfer or discharge, and that this determination is binding on the MCO for coverage purposes.

The above emergency provisions are consistent with most of the emergency services provisions in the M+C regulations. These regulations deviate from Medicare in two ways. First, the Medicare statute has specific provisions for non-emergency, but urgently needed services, while the Medicaid statute does not contain any similar references. Second, the primary care case management model is a delivery system unique to Medicaid; and there is no Medicare counterpart to the special rules described above that apply to primary care case manager enrollees. Also, it should be noted that the emergency provisions in § 438.114 relate directly to, and are consistent with, the CBRR provision regarding access to emergency services. See discussion in section I above. The CBRR requires health plans to educate their members about the availability, location, and appropriate use of emergency services. It also requires plans to cover emergency screening and stabilization services both in and out of network without prior authorization consistent with the prudent layperson standard. The Medicaid regulations in § 438.306 (network adequacy), § 438.310 (benefits information) as well as § 438.114 address the CBRR issues.

8. Solvency Standards (§ 438.116)

Section 4706 of the BBA amended section 1903(m)(1) of the Act by providing additional requirements for the solvency standards that an MCO must meet. Previously, MCOs had to make adequate provision against the risk of insolvency to the satisfaction of the State agency and provide that enrolled Medicaid beneficiaries were not held liable for the debts of the MCO in the case of insolvency. Now, under the BBA, unless they meet one of the exceptions noted below, MCOs must either meet the same solvency standards that the State agency establishes for its private HMOs or be licensed or certified by the State agency as a risk bearing entity. By meeting these standards, these MCOs are considered to have met the general solvency standards. However, this provision does not apply to MCOs that do not provide inpatient and physician services, are public entities, have solvency guaranteed by the State agency, or are federally qualified health centers (FQHCs) or are controlled by an FQHC that meets the solvency standards already established for such centers by the State agency. For further clarification, the term ''control'' (with respect to an MCO being controlled by an FQHC) means the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of the MCO through membership, board representation, or an ownership interest equal to or greater than 50.1 percent. These MCOs must still meet the general requirement that MCOs have to make adequate provision against the risk of insolvency to the satisfaction of the State agency and provide that Medicaid beneficiaries enrolled were not held liable for the debts of the MCO in the case of its insolvency.

Under section 4710(b)(4) of the BBA, the new solvency requirements are applicable for MCO contracts entered into or renewed (that is, signed by both parties) October 1, 1998 or later. In addition, the requirements do not apply to fully capitated MCOs under contract as of the date of enactment of the BBA until 3 years after the date of enactment of the BBA, which is August 5, 2000. Proposed § 438.116(c)(6) would reflect these effective dates.

D. Quality Assessment and Performance Improvement (Subpart E)

1. Background

Prior to 1997, Medicaid law and regulations specified certain quality assurance requirements for HMOs subject to section 1903(m) of the Act. Section 434.34 required HMOs to have an internal quality assurance plan that met limited requirements. Section 434.53 required State agencies to conduct periodic medical audits of HMOs to ensure that each organization furnished quality and accessible health care to all Medicaid enrollees. Section 1902(a)(30)(C) of the Act further required State agencies to conduct, on an annual basis, an independent, external review of the quality of services furnished under each State agency contract with an HMO. Other requirements that were related to the quality of services included grievance procedures for beneficiaries enrolled in HMOs (§ 434.32), emergency medical services (§ 434.30), enrollee choice of health professional (§ 434.29), other State monitoring procedures (§ 434.63), and use of sanctions for HMO failure to provide medically necessary services resulting in an adverse effect on the enrollee (§ 434.67).

Before enactment of the BBA, Medicaid law also included several proxy measures or indirect assurances relating to quality. The law required State agencies to contract with HMOs that met specific enrollment composition requirements (that is, at least 25 percent of a health plan's enrollment was to consist of persons not covered by Medicare or Medicaid) and required State agencies to establish solvency standards for HMOs serving Medicaid beneficiaries.

Additional general provisions governing State Medicaid programs required State agencies to ensure that access and quality of services provided under managed care were comparable to those provided under the fee-for-service program. However, prior to the enactment of the BBA, neither the statute nor the regulations specified the specific methods or standards to support these assurances.

HCFA and State agencies developed tools and interpretive guidance to provide more specific and standardized methods for quality assurance and improvement. As described above in the Overview of Medicaid Managed Care section, we developed ''A Health Care Quality Improvement System for Medicaid Managed Care—A Guide for States,'' as the product of the Quality Assurance Reform Initiative (QARI). Other technical assistance tools and guidance were developed subsequently.

In 1996, HCFA undertook the Quality Improvement System for Managed Care (QISMC) initiative to accomplish several goals: (1) to update the 1993 QARI guidelines; (2) to develop coordinated Medicare and Medicaid quality standards that would reduce duplicative or conflicting efforts; (3) to make the most efficient and effective use of recent developments in the art and science of quality measurement, while allowing sufficient flexibility to incorporate developments in this rapidly evolving discipline; and (4) to assist the Federal government and State agencies in becoming more effective ''value-based'' purchasers of health care for vulnerable populations. In developing QISMC, we worked with representatives from, and with tools developed by, health plans, State agencies, advocacy organizations, and experts in quality measurement and improvement such as the National Committee for Quality Assurance, the

Foundation for Accountability (FACCT) and the Joint Commission on the Accreditation of Healthcare Organizations. With the assistance of the experts and their products, we identified the approaches, tools and techniques that we believe would most effectively measure and improve health care quality in managed care both today and in the years to come. From the perspective of the Medicaid program, in developing QISMC, we have endeavored to balance the need to establish a high minimum threshold for entities interested in contracting with States agencies, with the desire to ensure that MCOs continually improve the quality of the care they provide.

QISMC standards articulate a vision for how managed care will be provided that is consistent with the standards sought by other forward looking purchasers in the private and public sectors. An initial draft of QISMC was released for public input in January 1998, with further input sought through May 1998. An Interim QISMC document will be released this fall.

The quality assurance provisions of the BBA espouse the same philosophy and goals for performance improvement as are reflected in QISMC. Accordingly, in implementing the BBA provision, we have drawn extensively upon the knowledge and expert guidance that informed the design of QISMC. These proposed regulations set forth actions that we view as necessary on the part of State agencies to fulfill the provisions of the BBA. The forthcoming QISMC ''interim'' document is comprised of standards, which will be consistent with the regulatory requirements on the State agencies in this proposed rule and on the health plans in the interim final rule for the M+C program, and additional implementation and monitoring guidelines. Should the standards in either of these regulations change as they are finalized, QISMC will similarly change as it moves from ''interim'' to ''final'' State agencies have the authority to develop their own approaches, which we will review and evaluate. While HCFA will not require State agencies to use the QISMC guidelines, we will consider MCO strategies that are based on QISMC to be in compliance with these proposed regulations that relate to the internal MCO quality activities. We believe that State agencies that use QISMC will be more effective business partners by using standards consistent with those of the Medicare program, and will be able to assure Medicaid beneficiaries and their advocates, and others, that the State agency is moving effectively to promote high quality care.

It is in this context that we interpret and propose to implement the BBA provisions governing quality and beneficiary protections in Medicaid managed care. This preamble provides a general introduction to the following proposed regulations to implement section 1932(c)(1), which describes requirements for States' quality assessment and improvement strategies as applied to contracts with Medicaid managed care organizations (MCOs).

2. Overview of State Strategies

Under section 1932(c)(1) of the Act, as added by section 4705(a) of the BBA, each State agency that elects to furnish services to Medicaid beneficiaries through an MCO must develop and implement a quality assessment and performance improvement strategy to ensure that beneficiaries have access to and receive quality health care and other services related to quality. This requirement applies whether the arrangement is mandatory or voluntary. Prior to the BBA, the Medicaid statute included a number of disjointed, incremental provisions addressing quality. Additionally, some of these provisions were duplicative (for example, the regulatory requirement at § 434.53 for periodic audits of managed care plans by State agencies and the requirement that HMOs receive an external review of quality from an agent of the State found in section 1902(a)(30)(C) of the Act). In addition, regulatory provisions had failed to allow for improvements in the technology of measuring and improving quality (for example, use of performance measures and consumer surveys). As a consequence, it was unclear how the various statutory and regulatory requirements were to fit together to effectively and efficiently ensure (and where appropriate improve) quality. This uncertainty potentially placed Medicaid beneficiaries at risk for not having the strongest possible oversight of their health care.

Limits to available resources in both the public and private sectors for quality of care measurement and improvement also increase the importance of the efficient and effective use of quality oversight tools through well-considered, coordinated strategies. Since it is not possible for any quality oversight system to measure every episode of care furnished to any particular patient or all patients (consumers), it is very important for the quality oversight tools employed by any health care delivery system to be utilized in a way that maximizes their efficiency and effectiveness. For the first time, Medicaid law, in section 1932(c)(1)(A) of the Act, requires that each State Medicaid program design and implement an overarching quality assessment and performance improvement strategy designed to address the effectiveness of its managed care program. Under section 1932(c)(1)(B) of the Act, this strategy must be ''consistent with standards'' that we establish in regulations. Subpart E of part 438 contains the HCFA standards established pursuant to section 1932(c)(1)(B) of the Act. We believe that the quality assessment and performance improvement strategy developed by each State agency should be used as a tool to ensure that contracts with MCOs are effective in delivering quality health care services. Through the use of its quality strategy, each State agency has a mechanism to use in planning for the effective and efficient use of the multiple tools for quality assessment and improvement that are being produced in the public and private sectors. Each State agency must also ensure that the State strategy it develops is comprehensive in nature and provides for the coordinated, efficient delivery of quality health care. Therefore, it is each State agency's responsibility to continually review its quality strategy, and to work collaboratively with its MCOs and other stakeholders in order to ensure that it is functioning effectively and is meeting the goal of the State agency.

Under our proposed regulations, discussed in greater detail below, each State strategy would at a minimum be required to include various program standards, including access, structure and operations, and quality measurement and improvement standards for managed care organizations. Each State strategy would be required to ensure, through its access standards, that MCOs have a health care delivery system in place that can provide enrollees with available and appropriate services, including additional or supplemental services not provided directly by the MCO. We are also proposing that standards must be developed to ensure that the MCO's delivery network ensures access to covered services, as in § 438.306. Such standards would be required to assess whether the MCO has a sufficient volume of providers to ensure adequate access to services, whether the MCO provides adequate access to medically appropriate speciality care, and that services are provided in a timely and culturally competent manner. In addition, as discussed above, each State agency is required by statute to ensure that beneficiaries are given a choice of

managed care entities, with limited exceptions as discussed in § 438.52.

As part of the access standards we are proposing, each State agency would be required to ensure that all covered services are available and accessible to enrollees. Through its contracts with MCOs, State agencies must ensure that MCOs meet standards relating to continuity of care and coordination of services as specified in proposed § 438.308, discussed below. The contracts would also be required to include descriptions of the benefits that an MCO would provide, as well as the processes for prior authorization, grievances, and appeals (proposed § 438.310).

Each State strategy would also be required to include standards related to aspects of how a managed care organization is structured and operated that directly relate to quality of care; for example, each MCO would be required to implement a documented process for selection and retention of affiliated providers, as specified in proposed § 438.314. These standards would also address aspects of a State agency's contract with an MCO that must be in place to ensure that beneficiaries receive quality health care, and that beneficiaries are afforded certain protections with respect to the care and services they receive. Therefore, the State strategy would have to include standards for the information that will be provided to enrollees and others regarding all available MCOs (as specified in proposed § 438.318), written policies with respect to an enrollee's rights within the MCO (as specified in proposed § 438.320), standards relating to the enrollment and disenrollment processes for enrollees in MCOs (in accordance with proposed § 438.326), confidentiality of enrollee health information within MCOs (as specified in proposed § 438.324), and adherence to established grievance systems, established as specified in the proposed subpart F of this part. Finally, each State agency would be required to ensure that each MCO, as specified in proposed § 438.330 oversees and is accountable for any functions or responsibilities that the MCO delegates to any subcontractor.

In addition to access, structure, and operational standards, each State strategy would be required to include measurement and improvement standards to ensure that each MCO undertakes and reviews a quality assessment and performance improvement program and maintains a health information system capable of achieving the objectives of this subpart.

Section 1932(c)(1)(A)(iii) of the Act requires that the State agency's quality assessment and improvement strategy include procedures for monitoring and evaluating the quality and appropriateness of care and services to enrollees that reflect the full spectrum of populations enrolled under an MCO's contract. This subpart of the proposed rule proposes minimum procedures that the State agency would be required to use when monitoring and evaluating each MCO.

The annual, external independent review of each MCO required by section 1932(c)(2) of the Act, as created by section 4705 of the BBA, will also serve as an essential component of the State agency's plan for monitoring and evaluating each MCO. The provisions in section 1932(c)(2), however, will be implemented in separate rulemaking in the near future. In the interim, before this separate rulemaking is finalized, State agencies must continue to provide for an annual, external independent review of the quality of care provided by each MCO, as required by section 1902(a)(30)(C) of the Act.

Essential to the successful implementation of the State strategy is a system capable of collecting and analyzing all necessary data. Therefore, the State agency would be required under this proposed rule to establish a data system sufficient to support its strategy.

3. Review of State Agency Strategies

After each State agency has developed its quality strategy, it would be required under this proposed rule to review the entire strategy to ensure the effectiveness of the overall State level program at achieving its desired results. It is important for the State agency to review each component of the strategy as well as the entire strategy to ensure that quality care is being delivered to beneficiaries and that performance improvement is occurring. Under this proposed rule, it would be the State agency's responsibility to specify the goals and desired results for its quality strategy and to ensure that these goals and desired results are being met. The reviews of the State strategy would be conducted on a regular and periodic basis as determined by each State agency to be appropriate, but no less frequently than every 3 years. The frequency should be determined by the State agency with input from enrollees and their advocates, managed care organizations, and other stakeholders with respect to the State's progress towards meeting its desired outcomes.

Enforcement of the requirements of the State strategy will be at least as important as the development and review of the strategy. As State agencies develop their enforcement strategies, HCFA encourages them to recognize that technical assistance to plans may be necessary to help them meet performance goals. HCFA encourages State agencies to provide such technical assistance and to be flexible as they work with plans of different types to meet the standards. Therefore, the regulation does allow for the imposition of sanctions. As specified in proposed subpart I of this part, State agencies are required under the BBA to establish a process for imposing intermediate sanctions against MCOs. There are different types of intermediate sanctions outlined in subpart I. We encourage State agencies to use these intermediate sanctions or to develop their own. In addition, State agencies have the authority under section 1932(e)(4) of the Act (implemented in proposed § 438.718) to terminate an MCO's contract, if the MCO no longer meets the applicable requirements of sections 1903(m), 1905(t)(3) or 1932 of the Act. Therefore, termination of an MCO's contract could occur if the MCO no longer meets the specifications of the State strategy, as specified in this subpart. Finally, section 1903(m)(2)(A)(xi) of the Act required that MCOs comply with applicable requirements in section 1932 of the Act, as a condition for Federal matching in the MCO's contract, as discussed below. See discussion of § 438.306, below. A failure by an MCO to comply with State requirements established pursuant to the proposed regulations in subpart E could also result in a disallowance of Federal matching in the MCO's contract.

Proposed Provisions of Subpart E

4. Scope (§ 438.300)

This section sets forth the scope of subpart E.

5. State Responsibilities (§ 438.302)

This section sets forth the State responsibilities in implementing its quality strategy. Specifically, proposed § 438.302 would require that each State agencies that contracts with an MCO have a strategy for assessing and improving the quality of managed care services provided by the MCO, ensure compliance with standards established by the State agency, consistent with subpart E, and conduct regular, periodic reviews to evaluate the effectiveness of its strategy, as the State agency determines appropriate, but at least every 3 years. We selected 3 years as the maximum interval for review and evaluation of State strategies, because

the field of quality is evolving at a fast pace, and State agencies, working with input from advocates, managed care organizations, quality experts and others, need to reevaluate their strategies in light of new developments and changing priorities.

6. Elements of State Quality Strategy (§ 438.304)

This proposed section sets forth the minimum elements of a State quality strategy, including (1) contract provisions that incorporate the standards specified in subpart E; (2) Procedures for assessing the quality and appropriateness of care and services furnished to all Medicaid enrollees under the contract, including, but not limited to, continuous monitoring and evaluation of MCO compliance with the standards; (3) arranging for annual, external independent reviews of quality outcomes, and timeliness of, and access to, services covered under each MCO contract; (4) appropriate use of intermediate sanctions; (5) an information system sufficient to support initial and ongoing operation and review of the State's quality strategy; and (6) standards, at least as stringent as those required under proposed §§ 438.306 through 438.342. With regard to external independent review, we will shortly promulgate proposed regulations addressing the External Quality Review Organizations, as required by the BBA.

In developing a strategy, we would expect that State agencies will work with beneficiaries and their advocates, quality experts, managed care organizations, and other stakeholders to develop performance goals that are clear, fair, and achievable.

Access Standards

7. Availability of Services (§ 438.306)

a. Scope. Section 1932(c)(1)(A)(i) of the Act, as added by section 4704 of the BBA, requires State agencies that contract with MCOs under section 1903(m) of the Act to develop a quality assessment and improvement strategy that includes standards for access to care so that all covered services are available within reasonable timeframes and in a manner that ensures continuity of care, adequate primary care, and specialized services capacity.

b. Choice. As part of the State quality assessment and improvement strategy, if a State agency limits freedom of choice, the State agency must comply with the requirements of § 438.52, discussed in section II.D.2. above, which specifies the choices that the State agency must make available.

c. Access to Services not Covered Under Contract. Under proposed § 438.306(c), if an MCO contract does not cover all services under the State plan, the State agency must arrange for those services to be made available from other sources and instruct all enrollees on where and how to obtain them, including how transportation is provided.

d. Delivery Network. Current regulations at § 434.6(a) require that contracts include provisions that define a sound and complete procurement, identify the population covered under the contract, and specify the amount, duration, and scope of medical services to be provided. They also provide that the State agency and HHS may evaluate through inspection or other means, the quality, appropriateness, and timeliness of services performed under the contract. In § 434.50(b) of those same regulations, a Medicaid agency must obtain proof from each contractor of its ability to provide services under the contract efficiently, effectively, and economically. Section 434.52 further requires the State agency to obtain proof that each contractor furnishes the health services required by enrolled recipients as promptly as is appropriate, and that the services meet the State agency's quality standards.

In § 438.306(d), we propose new requirements, pursuant to section 1932(c)(1)(B) of the Act and in accordance with the requirements in section 1932(c)(1)(A)(i) of the Act, to ensure that all covered services under a contract are available and accessible to enrollees. These requirements are imposed on State agencies, which in turn must enforce these requirements on MCOs.

In § 438.306(d)(1), we propose that the State agency require all MCOs to maintain and monitor a network of appropriate providers that is supported by written arrangements and is sufficient to provide adequate access to covered services. This requirement is more detailed than the M+C regulation. This specificity was included to ensure that State agencies and MCOs fully consider all components when determining adequate access. In this context, adequate access generally means that all contracted services, other than out-of-area emergency care services, are available within the MCO's network (which generally consist of employees and facilities of the MCO, and providers who have entered into written agreements to serve the MCO enrollees).

In proposing this requirement, we recognize that there are some circumstances that would justify contracts with providers outside of the approved service area. As an example, a comprehensive MCO operating solely in a non-metropolitan area may make a particular service, which is not a primary care or an emergency care service, available outside the area if it is unable to contract with a sufficient number of speciality providers within the area. As another example, an MCO may contract with a provider outside of its service area if, for reasons of geography, it would be easier for some of its enrollees to reach that provider than it would be for them to reach a comparable provider located within the service area.

Because the enrollees' specific needs, the types of providers used by an MCO to meet those needs, and other factors, such as availability of public transportation, will vary for each MCO, we are not proposing a single set of fixed guidelines for all populations and circumstances, such as prescribed primary physician/enrollee ratios. Rather, we propose that the State agency set its own standards for MCOs serving specific areas and populations within its State, and that the State agency ensure that those Statewide standards are met by all MCOs with which it contracts. However, standards or ranges of standards that are currently used are referenced in subsequent paragraphs as examples that State agencies may consider. The proposed rule anticipates that State agencies will take responsibility for ensuring that MCOs assess the needs of the populations they enroll and provide or arrange a network that will meet those needs. The State agency's review should focus on the MCO's service planning and on the organization's basic assumptions for determining that its network is ready to serve Medicaid enrollees in a given area.

We propose in § 438.306(d)(1)(i) and (d)(1)(ii) that the State agency's assessment ensure that the MCO's network reflects the anticipated enrollment in the MCO, with particular attention to children and pregnant women, and the expected utilization of services. This includes the aggregate number of providers needed, and their distribution among different specialities; keeping in mind that numbers and types will vary according to the MCO's projected population in terms of age, disability, and prevalence of certain conditions. Expected utilization may also be affected by practice patterns within an MCO, such as the rate of referrals for specific services.

Under § 438.306(d)(1)(iii), and (d)(1)(iv), the State agency's assessment must ensure that each MCO take into

consideration the numbers and types of providers needed to furnish contracted services and the number of providers who are not accepting new patients. The numbers of providers needed to meet an expected level of demand for service may be based on national norms (such as typical patient/physician ratios) or on the MCO's past experience. For example, population-to-primary provider ratios in the range of 1500:1 to 2500:1 have been used to represent adequate staffing levels both in federal health programs such as the Department of Health and Human Services' Health Resources and Services Administration, and individual States.

If more than one type of provider is qualified to furnish a particular item or service, the State agency should ensure that the MCO's standards define the types of providers to be used, and ensure that those standards are consistent with State laws requiring such organizations, when applicable, to make specific types of providers available. Simple counts of providers, or even providers reportedly accepting new patients, are insufficient to establish capacity. Rather, the assessment of capacity necessarily should consider the volume of services being furnished to patients other than the MCO's enrollees.

In terms of assessing geographic access, we propose in § 438.306(d)(1)(v) that the State agency ensure the MCO's network is structured in a way that considers the geographic location of providers and enrollees, including such factors as distance, travel time, and the means of transportation normally used by enrollees. In addition, we propose with this requirement that State agencies and MCOs take into consideration the physical access of facilities for enrollees with disabilities. A provider network should be structured in a manner so that an enrollee residing in the service area should not have to travel an unreasonable distance, beyond what is customary under a Medicaid fee-for-service arrangement, to obtain a covered service. This standard is required under section 1903(m)(1)(A) of the Act and the definition of MCO in proposed § 438.2. In areas where Medicaid enrollees rely heavily on public transportation, the State agency should ensure that the MCO's network is structured so that providers are accessible through these means within the same timeframes as enrollees who have their own means of transportation (unless the MCO ensures access through alternative means, such as home visits). Additionally, State agencies and MCOs should consider whether or not facilities are physically accessible when reviewing the MCO's delivery network. Enrollees with disabilities should have an appropriate choice of accessible providers.

In proposing § 438.306(d)(1)(v), we recognize that standards vary across States with respect to geographic access. Some State agencies contracting with MCOs have established maximum travel and distance times that include a 30 minute travel time standard. (This standard is used currently by the Health Resources and Services Administration in defining rational primary care service areas.) Other State agencies have established alternative standards such as a 10 to 30 mile travel distance, depending on the local terrain. Both are examples of geographic access standards that would comply with this provision. For instance, a State agencies could require that all primary care services and commonly-used speciality and referral services be available within 30 minutes driving time or bus time from any point in the service area, with possible exceptions for certain rural areas or other low-population/low-density areas where residents customarily travel greater distances to obtain specialty and referral services.

In § 438.306(d)(2), we are proposing that the State agency be required to ensure that MCOs allow women direct access to a women's health specialist within the MCO's network for women's routine and preventive services. We have determined that this is necessary in order to provide ''access * * * in a manner that ensures * * * adequate * * * specialized services'' as required under section 1932(c)(1)(A)(i) of the Act. This requirement is proposed in addition to requirements under § 438.308 that the MCO maintain a primary care provider for each enrollee. It allows a woman to directly access a women's health specialist within the MCO's network without the need for prior authorization from her primary care provider. In this context, a women's health care specialist may include a gynecologist, a certified nurse midwife, or another qualified health care professional. Our primary intent in proposing this requirement under the authority of section 1932(c)(1)(B) of the Act, and in accordance with the above requirements in 1932(c)(1)(A)(i)of the Act, is to provide women with what we believe to be necessary access to an appropriate provider for women's routine and preventive services. This is also consistent with beneficiary rights recommended in the CBRR, as discussed in section I. above.

In § 438.306(d)(3), we are proposing that the State agency ensure the MCO, if seeking an expansion of its service area, demonstrate that it has sufficient numbers and types of providers to meet the anticipated additional volume and type of services the added enrollee population may require. Similar to § 438.306(d)(1)(i) through (d)(1)(v), the State agency should ensure that each MCO, in demonstrating the sufficiency of the numbers and types of providers available, take into consideration the anticipated enrollment, the expected utilization of services, the numbers and types of network providers who are not accepting new patients, and the geographic location of providers and enrollees.

In § 438.306(d)(4), we are proposing that the State agency ensure each MCO demonstrates that its providers are credentialed as described in § 438.314. We propose this paragraph to apply to all providers, including subcontracted providers. Thus, as an example, if an MCO's provider subcontracts allow such providers to enter into sub-subcontracts with other providers for services to Medicaid enrollees, either the MCO or its subcontractor should determine that each sub-subcontractor is appropriately qualified and is not excluded in any way from participation in the Medicaid or Medicare programs.

In § 438.306(d)(5), we are proposing that, when medically appropriate, the State agency ensure that each MCO make services available and accessible 24 hours a day, 7 days a week. This applies, at a minimum, (1) to emergency services and post-stabilization services, and (2) to non-emergency services that are required immediately because of an unforeseen illness.

In § 438.306(d)(6), we are proposing that the State agency require MCOs to ensure that provider hours of operation are convenient to enrollees and do not discriminate against Medicaid enrollees. Because of varying enrollee needs, the types of providers used by an MCO to meet those needs, and other factors specific to each MCO, we are not proposing a single set of fixed guidelines for hours of operation. Rather, the State agency should ensure that the MCO assess the needs of the population it proposes to enroll and require that the MCO's network have hours of operation that meet those needs. In addition, the State agency should ensure that the MCO's provider network does not have different hours of operation for the organization's Medicaid enrollees than those offered for other non-Medicaid patients. A Medicaid enrollee should have the same opportunity to be seen by the provider as non-Medicaid patients.

Provision of Services

In § 438.306(e), we are proposing requirements, consistent with section 1932(c)(1)(A)(I) of the Act, to require State agencies to ensure that all MCOs comply with the requirements of this section, governing the provision of services.

In § 438.306(e)(1)(i), we are proposing that the State agency require each MCO to meet, and require its providers to meet, State-established standards, required under proposed § 438.304(f) as part of the State's quality strategy, for timely access to care and member services, taking into account the urgency of need for services. Under this requirement, the State agency should ensure that the MCO establish timeliness standards for appointments. Such standards should include criteria for the classification of requests for services by level of urgency and should take into consideration in-office waiting times for each type of service, the immediacy of member needs, and common waiting times for comparable services in the community. An example of timeliness standards for primary care services (and which is reflective of many existing managed care contracts) includes: urgent but non-emergent care provided within 24 hours; non-urgent but symptomatic care in need of attention provided within 1 week; and routine and preventive care provided within 20 days.

In § 438.306(e)(1)(ii) and (e)(1)(iii), we are proposing that the State agency require the MCO to establish mechanisms to ensure compliance, and monitor continuously for compliance. Examples of tools for monitoring might include a member survey; analysis of member complaints and grievances; provider self-reports of appointment and in-office waiting times that are supplemented with random calls or audits; and for the MCO's own services, test calls and ongoing monitoring of telephone abandonment rates (the percentage of callers who terminate a call before reaching an MCO representative.) The MCO's work in this area should evaluate access and availability for all services the organization is responsible for providing under its contract. Thus, as an example, the State agency should ensure that an MCO does not base its monitoring solely on general surveys of its enrolled population that do not yield information on availability of specialty or other services, or that do not provide a sufficient sample of enrollees requiring such services.

We also propose in § 438.306(e)(1)(iv) that the State agency ensure that each MCO take corrective action if there is a failure to comply. With this requirement, the State agency should ensure that the MCO not only initiates a corrective action plan, but also includes a process for assessing the effectiveness of the corrective action. For example, if a problem of minimum compliance arises that applies to an entire service type or specialty, a potential corrective action might be that the MCO proposes to expand its facilities or provider network. If the problem involves a specific provider, the MCO might instead propose, as part of its corrective action, that it close off the provider to new enrollees or, in the alternative, monitor the provider. We emphasize here that the MCO should not aim toward merely complying with the State agency's minimum standards but rather promote its own continuous quality improvement above and beyond those minimum standards.

Incorporated in all four provisions of § 438.306(e)(1) is the affirmative requirement that MCOs make affiliated providers aware of the timeliness standards and have in place mechanisms for complying. As an example, for primary care providers, an MCO could obtain documentation of backup arrangements for vacations and other absences, and ensure that backup providers are familiarized with MCO's procedures, such as approval requirements for referral services. As another example, an MCO could have in place standards for responsiveness of member services' telephone lines that include, but are not limited to, standards specifying minimum average waiting times to reach a non-recorded voice and standards that take into account the likelihood that such members may not have access to touch-tone systems and may be using telephones outside their residences.

In § 438.306(e)(2), we are proposing that the MCO must provide an initial assessment of each enrollee's health: (1) within 90 days of the effective date of enrollment for each enrollee, and (2) within some shorter period of time, specified by the State agency, for pregnant women and enrollees with complex and serious medical conditions. The intent of § 438.306(e)(2)(i) is to ensure that all enrollees, and not just pregnant women or individuals with complex and serious medical conditions, receive a baseline health risk assessment. A variety of assessment tools may be used to meet this requirement; however, a baseline health risk assessment must be completed for each enrollee within 90 days from his or her effective date of enrollment. In addition, for pregnant women and individuals with complex or serious medical conditions, the MCO must complete a baseline assessment in a shorter period of time than 90 days, as specified by the State agency, to ensure that these vulnerable population groups receive timely and appropriate care.

In § 438.306(e)(3), we propose that the State agency ensure that MCOs have procedures in place that have been approved by the State agency, so that the MCO: (1) timely identifies and furnishes care to pregnant women; (2) timely identifies individuals with complex and serious medical conditions, assesses the conditions identified and identifies appropriate medical procedures to address and monitor them; and (3) implements treatment plans that: are appropriate for the conditions identified and assessed in § 438.306(e)(3)(ii), are for a specified time period, specify an adequate number of direct access visits to specialists as required by the plan, and are updated periodically by the physician responsible for overall coordination of the enrollee's health.

''Enrollees with complex and serious medical conditions'' generally refers to enrollees with serious or multiple medical conditions, whether they be physical-health, mental-health, or substance-abuse-related in nature. Health risk assessment tools should be utilized by the MCO at the time of enrollment to identify pregnant women and individuals with complex or serious medical conditions and to ensure that all enrollees are provided with continuous and seamless health care. We emphasize that treatment plans for individuals with complex and serious medical conditions must be time-specific and be updated periodically by the physician responsible for the enrollee's overall health care.

Our intent, in proposing § 438.306(e)(3)(ii), and (e)(3)(iii) is to ensure that, under BBA authority, Medicaid enrollees with complex and serious medical conditions have the ability to directly access specialists within the network for an adequate number of visits under a plan of treatment. This is explicitly intended to encompass the right to access specialists as set forth in the CBRR. Examples include, but are not limited to, a female patient under an approved treatment plan with metastatic breast cancer who is referred to a specialist within the network for a course of chemotherapy; a multiple sclerosis patient under an approved treatment plan with a sacral decubitus who is referred to a specialist within the network for surgical debridement and wound care; or a

situationally depressed patient under an approved treatment plan who is referred to a specialist within the network for a course of psychotherapy.

In § 438.306(e)(4), we are proposing that the State agency ensure that each MCO provide services in a culturally competent manner, including at least satisfying the language requirements in § 438.10(b). This requirement is proposed here because of our recognition that more than half of Medicaid program beneficiaries are members of a racial or ethnic minority group. We know that managed care organizations and advocates have made great strides in developing culturally competent approaches and would expect a State agency to work with them and others in setting its standards. Accordingly, State agencies should ensure that MCOs identify significant sub-populations within their enrolled population that may experience special barriers in accessing health services such as the homeless or enrollees who are part of a culture with norms and practices that may affect their interaction with the mainstream health care system. State agencies should ensure that MCOs make continued efforts to improve accessibility of both clinical and member services for these specific groups.

Cultural competency requires awareness of the culture of the population being served. Therefore, in order to ensure services are provided in a culturally competent manner, State agencies should require MCOs to give racial and ethnic minority concerns full attention beginning with their first contact with an enrollee, continuing throughout the care process, and extending afterwards when care is evaluated. Translation services must be made available when language barriers exist, including the use of sign interpreters for persons with hearing impairments and the use of braille for persons with impaired vision. Further, for each racial or ethnic minority group, the MCO's network should include an adequate number of providers, commensurate with the population enrolled, who are aware of the values, beliefs, traditions, customs, and parenting styles of the community. This awareness includes, but is not limited to, a provider being cognizant, among other things, of the importance of non-verbal communication, the recognition of specific dietary customs unique to certain populations, and the existence of folk medications or healing rituals that may be used by an enrollee. In addition, cultural competence requires network providers to have knowledge of medical risks enhanced in, or peculiar to, the racial, ethnic, and socioeconomic factors of the populations being served. Accordingly, MCOs should have accurate epidemiological data from which to form appropriate education, screening, and treatment programs.

8. Continuity of Care (§ 438.308)

Current regulations at part 434, Contracts, do not contain specific requirements governing continuity of care. Rather, § 434.52 requires that the State agency obtain assurances from each contractor that it furnishes the health services required by an enrolled recipient as promptly as is appropriate; and that the services meet the agency's quality standards.

In accordance with section 1932(c)(1)(A)(i) of the Act we are proposing requirements in § 438.308 to ensure that a State agency requires MCOs to maintain continuity of care for its enrollees. For MCOs, § 438.308(a) requires that MCOs have in place and adhere to written policies that provide each enrollee with an ongoing source of primary care appropriate to the enrollee's needs, and a health care practitioner who is formally designated as primarily responsible for coordinating the enrollee's overall health care. It also requires MCOs to specify in their policies whether coordination is provided by the enrollee's primary care provider or a different practitioner.

Traditionally, many health maintenance organizations and similar entities have used a gatekeeper model, under which the enrollee's usual source of primary care serves as the entry point for all other medical care services (often a distinct entry point was established for mental health and substance abuse services). While this model is still quite common, some MCOs have systems under which a health care professional other than the enrollee's usual source of primary care, such as a case manager, coordinates services. Whether or not the MCO uses a gatekeeper model, a single health care professional, or a team of health care professionals, a designated person or team of persons must have primary responsibility for evaluating the enrollee's needs, recommending and arranging the services required by the enrollee, and facilitating communication and information exchange among the different providers treating the enrollee. If this person or team is not the enrollee's primary care provider, the State agency should ensure that the MCO make every effort to promote a relationship between the enrollee and the primary care provider, since an ongoing relationship with the usual source of primary care plays an important role in promoting continuity and quality of care.

In meeting the requirements of § 438.308(a)(1), the MCO may establish different mechanisms for different types of enrollees. Care of most enrollees might be coordinated by the primary care provider, while a case manager may coordinate care of enrollees with complex needs, chronic illnesses, or functional disabilities. Additionally, an MCO may provide for separate coordination of physical health services and of mental health and substance abuse services. In these instances, the State agency should ensure that the MCO has procedures to ensure the exchange of necessary information between physical health providers and mental health and substance abuse providers (for example, with respect to prescribed medications).

In proposing § 438.308(a)(2), we acknowledge the fact that, although primary care is ordinarily furnished by general practitioners, family practitioners, pediatricians, and internists, an MCO may determine that it is appropriate for some enrollees to obtain routine care from a specialist. This may be particularly true with enrollees with complex or serious medical conditions.

In § 438.308(b), we are proposing that the State agency ensure that MCOs coordinate services both internally, and with services available from community organizations and other social programs. As an example, an MCO that provides services to enrollees with mental illness, substance abuse problems, developmental disabilities, functional disabilities, or complex problems involving multiple medical and social needs (for example, HIV/AIDS, homelessness) should have a program or policies for ensuring coordination among medical, mental health, and substance abuse services, and available social services or other community supports. These programs or policies should include procedures that specify when and under what conditions a primary medical care, mental health, or substance abuse provider would refer an enrollee for a multi-disciplinary assessment and development of a plan for coordination of medical and social services. Further, the policies should specify the types of enrollees who are candidates for this program, as well as the types of providers or disciplines to be included in the assessment team.

With respect to mental health and substance abuse services, the State agency should ensure that the MCO has general procedures to ensure the exchange of information among primary acute care and mental health and

substance abuse providers. As an example, the MCO could implement training programs for primary care providers to familiarize them with common mental health and substance abuse problems, and additionally, programs to ensure that primary care providers can identify enrollees in need of referral for these services. The expectation under § 438.308(b) is that the MCO will identify conditions that are prevalent in its population and for which continuity and effectiveness of care would be improved through targeted programs.

In § 438.308(c), we are proposing that the State agency ensure that MCOs and providers have information necessary for effective and continuous patient care and quality improvement, including procedures to ensure that (1) providers maintain, for Medicaid enrollees, health records that meet the requirements established by the MCO, taking into account professional standards; and (2) there is an appropriate and confidential exchange of information among providers. While confidentiality of records is discussed elsewhere (§ 438.324), it must be underscored that the confidentiality of patient records must be of paramount concern.

In § 438.308(d), to ensure optimum enrollee participation, we are proposing that State agencies require MCOs to implement procedures to ensure that providers (1) inform enrollees of specific health conditions that require follow-up and, if appropriate, provide training in self-care; and (2) deal with factors that hinder enrollee compliance with prescribed treatments or regimens. In meeting the requirements under § 438.308(d)(1), the State agency should, for example, ensure that the MCO provides enrollees with information they need to participate fully in their own care. This information includes, but is not limited to, subjects on self-care, medication management and the use of medical equipment, potential complications and when such complications should be reported to providers, and scheduling of follow-up services. To comply with § 438.308(d)(2), the MCO may, for example, ensure that counseling and facilitating services are available on referral from providers or staff for enrollees who are unable to, or are failing to, cooperate in their own treatment. Such counseling services might include identification of social, financial, or other barriers that are preventing enrollees from following guidance or instructions from providers, with referral to appropriate social services as necessary.

9. Coverage and Authorization of Services (§ 438.310)

As part of the access standards, we are proposing requirements to ensure that each contract with an MCO describe and identify all services offered under the contract and follow written policies and procedures for processing requests for services in a manner that ensures access to these services. Further, we are proposing requirements to ensure that utilization management activities are not structured in a manner that is detrimental to enrollees. These standards are consistent with section 1932(b)(1) of the Act. To the extent appropriate and applicable, these standards are consistent with the Medicare + Choice regulations at § 422.112.

In paragraph § 438.310(a), we are proposing that the State agency ensure through its contracts with MCOs that each MCO identifies, defines, and specifies all Medicaid benefits that the MCO must furnish. This provision is intended to protect enrollees by ensuring there is no ambiguity concerning the range of Medicaid-covered services that will be available to them under the contract. To achieve this result, the description must specify the amount, duration, and scope of services that the MCO must offer. Further the contract must specify what constitutes medically necessary services to the extent they are described in the State plan and provide that the MCO furnishes the services in accordance with that provision. While we are not proposing a definition of medical necessity because of variances among States agencies, the contract terminology should be drafted with sufficient precision so that at a minimum the enrollee will be able to receive services (either directly through the MCO or the State agency) to the same degree as the services covered under the State plan. Further, we expect the State agency to use the same definition of medical necessity for all its contacts. Any services included in the State plan but not required under the contract are the responsibility of the State agency, including those services that are inadvertently not covered in the contract because of ambiguity in the contract language.

In § 438.310(b), we propose to require that, in processing requests for initial or continuing authorization of services, the MCO and its subcontractors follow written policies and procedures that reflect current standards of medical practice and that they utilize the services of appropriately trained health care personnel to make these decisions.

In § 438.310(b), we are also proposing that the State agency ensure through its contracts with MCOs that the MCO, and any subcontractor, follows written policies and procedures, reflecting current standards of medical practice, for processing requests for initial authorization of services or requests for continuation of services. While we require that these policies and procedures be in compliance with requirements defined by the State agency, and reflect current standards of medical practice, at a minimum, they must specify the timeframe for responding to such requests for initial and continued authorization consistent with § 438.310(d), provide for expedited response to requests for authorization of services needed in an urgent manner, specify information required for authorization decisions, and provide for consultation with requesting providers when appropriate. We propose that the State agency set its own timeframes for responding to requests for initial and continued authorization consistent with § 438.310(d), such that these timeframes are not longer than those established in the M+C regulation. We recognize that timeframes may differ according to the urgency of the need for the requested services and the complexity involved in evaluating the request; however, the State agency must be able to demonstrate that its timeframes are reasonable. The policies and procedures must specify the information that is ordinarily required to process and authorize the request, and the circumstances under which additional information may be required. The MCO information standards must ensure that the authorization process is not unduly burdensome for practitioner, provider staff, or enrollees. Information should not be required that is not in fact used in the evaluation or recording of the request. In addition, policies must provide for consultation with requesting providers when appropriate.

We propose in § 438.310(b)(2) that mechanisms must be in place to ensure consistent application of review criteria and compatible decisions. The MCO should be required to ensure that all employed or contracted reviewers understand coverage policies and review criteria, through manuals, training programs, or other means. In addition, the MCO should have to periodically assess the consistency of authorization decisions. Possible approaches may include review of test cases by different utilization management staff or audits of samples of recent decisions. In addition, upon request, the organization should furnish

enrollees (or their representatives) and requesting provider(s) the review criteria that is used to reach a decision.

Under proposed § 438.310(c), the MCO would be required to provide the requesting provider and the enrollee written notice, in accordance with § 438.404 of any decisions to deny, limit, or discontinue authorization of services. Appropriate information regarding rights to file a grievance or request a State fair hearing must also be included with this notice as described in subpart F of this part. Further, information must be included regarding how continuing care can be received during an appeal process. In setting the timeframe for providing this notification, the State agency should ensure that the timeframe could not jeopardize an enrollee's health. The manner in which this notice is provided is also not prescribed in this rule; however, it must occur in a manner that ensures that the State agency can document when the requesting provider receives the information and whether enrollees are able to comprehend what is stated.

We propose in § 438.310(d) that the timeframes established by State agencies under § 438.310(c) for response to requests for initial and continued services may be no longer than the following two provisions. First, for a case not requiring expedited review, the decision must be rendered as expeditiously as the enrollees health condition requires but no longer than 14 calendar days after the request for services, or up to 14 additional days if the enrollee requests the extension or the MCO justifies (upon request, to the State agency) that it needs additional information, and why the delay is in the interest of the enrollee. Second, in the case where applying the timeframe for a standard review could seriously jeopardize the life or health of the enrollee, or the enrollee's ability to regain maximum function, resolution of the request for service must occur as expeditiously as the enrollee's health condition requires but no later than 72 hours of receipt for the request or up to 14 additional days if the enrollee requests the extension or the MCO justifies to the State agency (upon request) the need for additional information, and the delay is in the interest of the enrollee.

In proposed § 438.310(e) we provide that, consistent with §§ 438.6(g) and 422.208 of this chapter, compensation to the organization or persons that conduct utilization management activities is not structured so as to provide incentives for the denial, limitation, or discontinuation of medically necessary services for any individual.

Structure and Operation Standards

10. Establishment of Provider Networks (§ 438.314)

We are proposing that State agencies ensure that MCOs have written policies and procedures for the selection and retention of practitioners. These policies include items such as criteria for credentialing and re-credentialing of practitioners appropriate to the nature of the services to be furnished to enrollees.

In general, credentialing is a process for the review of qualifications and other relevant information pertaining to a practitioner who seeks employment from or a contract with an MCO. The initial credentialing process often includes steps such as written applications and site visits, if appropriate, as well as verification from primary sources of licensure, disciplinary status, and eligibility for payment under Medicare. Re-credentialing often includes re-verification of items such as licensure, clinical privileges, malpractice coverage, and history of professional liability claims. Recredentialing must be in accordance with timeframes set by the State agency, but may not occur less frequently than what the State agency requires for private HMOs.

Similar provisions regarding the recredentialing process, provider qualifications, and selection are found in the M+C regulation.

By requiring State agencies to ensure that MCOs document the qualifications of their providers, these provisions are consistent with the CBRR. In particular, these provisions are consistent with the right of consumers to information on health professionals such as education and board certification. Further, they are consistent with the right of consumers to choose qualified specialists for women's health services and for individuals with complex medical conditions.

11. Enrollee Information (§ 438.318)

For an enrollee to access quality health care that meets their specific needs, they must first be informed of the choices available to them. Therefore, in addition to the information requirements in proposed § 438.10, which are predominately elements of information that an MCE, MCO, or primary care case manager must provide, in § 438.318 we propose what we consider to be the minimum information elements that must be provided by the State agency, or its contracted representative. In proposed § 438.10(i), we propose information requirements that apply only if a State agency provides for mandatory MCE enrollment under section 1932(a)(1)(A) of the Act. These are not incorporated in § 438.318 as a mandatory part of a State agency's quality strategy under section 1932(c)(1) of the Act, because they are not necessarily appropriate in a non-mandatory program. Instead, as discussed below we are proposing in § 438.318(b) different minimum standards for beneficiary information as part of the State agency's quality strategy than those in § 438.10(i). Under the standards in § 438.318(b), a State agency is not required to provide quality and performance indicators for each contracted MCO unless they choose to do so. Further, within this section, the methodology for presenting this information is left up to the State agency, unlike in § 438.10(i) which requires that the information be provided in a comparative, chart like format with respect to mandatory managed care programs.

Through the requirements at § 438.10 and the minimum requirements in paragraph § 438.318, we believe that we have required that potential enrollees and enrollees receive the basic information elements that are essential for the beneficiary to access health care and participate in decision making about their provider and services received. Further, it is our belief that these requirements are not substantially different from current MCE and State practice.

As a basic rule, we propose to require that the State agency or its contracted representative comply with the applicable requirements in proposed § 438.10 (a) through (h), which specify information that must be provided by the State agency, MCEs, MCOs, and primary care case managers, as well as requirements regarding the manner and format for providing information.

In § 438.318(b)(2), we propose that the State agency, or its contracted representative provide information on: the benefits covered; the cost-sharing imposed by each MCO; the service area of the MCO; current provider network including information on who is not accepting new patients and any restriction on enrollee's ability to select from any affiliated provider; and information on any benefits that the enrollee is entitled to receive under the Medicaid program but which is not made available to them through the MCO, including how transportation services will be provided. Information on the benefits covered should include sufficient detail to ensure that the

beneficiary is aware of any limitation on services as required under § 438.310, such as pharmaceuticals, mental health, and substance abuse services. If cost-sharing is permitted, the enrollees must be informed of this in sufficient detail. Information on the current provider network should include, at a minimum, information on primary care physicians, specialists, and hospitals. We also suggest that information be provided regarding ancillary care providers on which enrollees with special health care needs may be dependent for care. If this information is not included, information must be provided that informs potential enrollees about how they can obtain this supplemental information. In addition, enrollees making a decision about whether to enroll in a particular MCO may rely on the provider listings in making their selection and may assume that they will be able to obtain covered services from any of the providers listed. If a provider is not accepting new Medicaid enrollees, this must be clearly indicated as this provider may not be available to the enrollee for selection. Further, it is essential that the MCO's informational materials emphasize any limitations on enrollees' provider selections. If the MCO contracts with formal subnetworks, or the MCO's arrangement with primary care providers allows for the establishment of informal subnetworks, the MCO's informational materials must clearly indicate which providers are available under each subnetwork. The materials must also explain the procedures under which an enrollee may request referral to an affiliated provider not included in the subnetwork. In addition, we propose to require that information be provided to enrollees that informs them of any benefits that the enrollee is entitled to receive under the Medicaid program but that are not made available to them through the MCO, including any cost sharing requirements and how transportation services will be provided.

In § 438.318(b), we propose to require that the State agency or contracted representative provide this information to any potential enrollee(s) who requests it and to all potential enrollees when they first become eligible for Medicaid, are considering choice of MCOs under a voluntary program, or are first required to choose an MCO under a mandatory enrollment program. Further, the information must be provided within a timeframe that enables them to use the information in choosing among available MCOs. When the State agency is determining this timeframe, factors such as the default assignment process and length of time allotted for a mandatory enrollment period should be considered.

12. Enrollee Rights (§ 438.320)

As part of these standards, we are proposing requirements to ensure that each contract with an MCO have written polices with respect to enrollee rights and that the MCO ensure compliance with Federal and State laws affecting the rights of enrollees. Although not limited to the following, each enrollee has a right to: receive information regarding their health care; have access to health care; be treated with respect and consideration for enrollee dignity and privacy; to participate in decision-making regarding his or her health care; and to receive information on available treatment options or alternative courses of care. In addition, we are requiring that each enrollee has a right to access his or her medical records in accordance with applicable Federal and State laws. We are proposing these standards because interpersonal aspects of care are highly important to most patients and closely related to quality of care. Enrollees' interactions with the organization and its providers can have an important bearing on their willingness and ability to understand and comply with recommended treatments and hence on outcomes and costs. Although not as exhaustive as the CBRR, these rights are consistent with the rights expressed in the CBRR.

As a general rule, we propose to require that the State agency have in its contract with MCOs written polices with respect to enrollees' rights and that its staff and affiliated providers understand these requirements and take them into account when furnishing services to enrollees. Further, the MCO must comply with any other Federal and State law pertaining to enrollee rights. These requirements extend to an individual acting on behalf of someone who is unable to exercise his or her rights. The MCO should monitor compliance with these requirements through analysis of complaints or grievances, requests to change providers, enrollee satisfaction surveys, rapid disenrollment surveys, and other sources of enrollee information. Issues in compliance should be addressed through education or counseling of the staff or providers or other corrective action, and information on compliance with the policies should be considered during the recredentialing and staff evaluation process.

Although not limited to those rights stated therein, as a basic right each enrollee has a right to receive information in accordance with § 438.318 and have access to health care as required in § 438.306 through § 438.310. In addition, each enrollee has the right to be treated with respect and consideration for enrollee dignity and privacy. The MCO must ensure that enrollees' dignity and privacy are respected in its own facilities and must address these issues in site visits to offices or facilities of affiliated providers. Examples of privacy concerns include privacy of examining rooms and measures to assure that enrollees are not interviewed about medical, financial, or other issues within the hearing range of other patients.

In addition, the enrollee has the right to participate in decision-making regarding his or her health care and to receive information on available treatment options or alternative courses of care. The MCO's policies must promote enrollees' understanding of their conditions or problems and facilitate development of treatment goals. While participating in treatment planning is important for all enrollees, special emphasis should be placed on involvement of enrollees and their families in development of plans of care for enrollees with mental health or substance abuse problems.

Enrollees have a right to receive information on available treatment options or alternative courses of care. As required in § 438.102, contracts with providers may not limit a provider's ability to counsel or advise an enrollee of treatment options that may be appropriate for the enrollee's condition or disease, whether or not the options are covered by the organization unless excluded under the terms of § 438.102(c). Enrollees have an affirmative right to a clear explanation of their condition, any proposed treatments or procedures and any alternatives; the benefits, drawbacks, and likelihood of success of each option; and the possible consequences of refusal or non-compliance with a recommended course of care. In addition, as an enrollee right, we require that each enrollee have access to his or her medical records in accordance with applicable Federal and State law. The MCO must have procedures through which an enrollee can obtain timely access to all medical records and health information maintained by the organization, including records maintained by subcontracting providers from whom the enrollee has received services.

In § 438.320(c), we require MCOs and their subcontractors to comply with Federal and State laws affecting the rights of enrollees. Federal laws affecting the rights of enrollees include, but are not limited to: Title VI of the

Civil Rights Act; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Titles II and III of the Americans with Disabilities Act; Section 542 of the Public Health Service Act pertaining to nondiscrimination against substance abusers; and Title 45, Part 46 of the Code of Federal Regulations, pertaining to research involving human subjects. While these laws are enforced by agencies other than HCFA or State agencies, to the extent feasible and appropriate, assessment of compliance should be included in the organization's credentialing procedures. For example, site visits to individual practitioners' offices should include a general assessment of physical accessibility.

13. Confidentiality (§ 438.324).

Current regulations at 42 CFR part 431, subpart F govern the safeguarding of beneficiary information at the State agency level. The regulations in this subpart specify, among other requirements, the types of information to be safeguarded, when such information may be released, and how such information is to be distributed.

In § 438.324, we are proposing that the State agency, consistent with the regulations at part 431 subpart F, ensure, through its contracts with MCOs, that each MCO establish procedures:

- To develop and promulgate policies in accordance with Federal and State law establishing who is authorized to receive such information;
- To safeguard the privacy of any information that identifies a particular enrollee by ensuring that: information from the MCO or copies of records may be released only to authorized individuals; unauthorized individuals cannot gain access to or alter patient records; and original medical records must be released only in accordance with Federal or State law, court orders, or subpoenas;
- To address the confidentiality and privacy for minors, subject to applicable Federal and State law;
- To ensure timely access to enrollees who wish to examine their records; and
- To abide by all Federal and State laws regarding confidentiality and disclosure for mental health records, medical records, other health information and any information about an enrollee.

The requirements we are proposing in this section are consistent with section 1932(c)(1)(A)(ii) of the Act. The proposed requirements are also consistent with the right to confidentiality of health information supported by the CBRR.

In § 438.324(a), we propose that the State agencies ensure that MCOs keep records in an accurate and timely manner.

In § 438.324(b), we are proposing that the State agency safeguard the privacy of any information that identifies a particular enrollee. It should ensure that each MCO's confidentiality procedures apply, not just to medical records, but to any information in the possession of the organization or its contractors that could disclose medical conditions or the use of specific services, such as claims information collected in the course of quality assessment and performance improvement, utilization management, or other processes. The procedures should address both written materials and information created in other formats, such as electronic records, facsimiles, or electronic mail.

As part of the above requirement, we specify that any such information from the MCO or copies of records may be released only to authorized individuals. Thus the MCO must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records must be released only in accordance with Federal and State law, court order, or subpoena. This requirement pertains to the release of information to third parties and is not meant to impede the exchange of information within the MCO or among its affiliated providers and other contractors as necessary to carry out the organization's contractual responsibilities. However, the MCO procedures should ensure that information on enrollees will be released to outside parties only with the consent of the enrollee (or authorized representative) except when required by a subpoena or other legal requirements (such as the mandatory reporting of certain communicable diseases).

In § 438.324(c), we are proposing that the State agency ensure that each MCO procedure address the confidentiality and privacy for minors, subject to applicable Federal and State law. These procedures should define whether and under what circumstances treatment may be furnished to a minor without parental consent and what information will be released to a parent upon request. Specific issues to be addressed by the procedures should include family planning and mental health and substance abuse services, taking into account any State law requirements with respect to these issues.

In § 438.324(d), we are proposing that the State agency ensure that each MCO establish and communicate to enrollees procedures under which enrollees can obtain access to all records and information about themselves. The procedures should include reasonable time limits for providing such access, and should include provision for explaining and interpreting the records to an enrollee, as well as procedures for identification and correction of errors found by enrollees in their own records.

In § 438.324(e), we propose that the State agency ensure that the MCO's policies regarding use and disclosure of enrollee information comply with all laws governing the confidentiality of the information they hold.

14. Enrollment and Disenrollment (§ 438.326) and Grievance Systems (§ 438.328)

These proposed sections require, consistent with section 1932(c)(1)(A)(ii) of the Act, that a State agency include as part of its quality strategy ensuring compliance with the enrollment requirements in proposed § 438.326 and the grievance requirements in subpart F.

15. Subcontractual Relationships and Delegation (§ 438.330)

With some exceptions, an MCO may, by written subcontract, delegate any activity required under its primary contract with the State agency. However, an MCO entering into a contract with the State agency remains entirely accountable to the State agency for the performance of any delegated function. It is the sole responsibility of the MCO to ensure that the delegated function(s) is performed in accordance with applicable contractual requirements.

Subcontracts that delegate (in whole or in part) functions from the MCO should clearly indicate what function(s) has been delegated and if functions are only partially delegated, which entity retains responsibility for each function.

The MCO should document that it has approved its subcontractors' policies and procedures with respect to the delegated function. In addition, the MCO should have written procedures for monitoring and review of delegated activities. Such monitoring should be conducted by MCO staff who are qualified to assess the delegated function(s).

Finally, these provisions are consistent with the CBRR as they relate to consumer choice of provider networks that are adequate to serve the needs of consumers. In particular, these provisions ensure that State agencies, through their contracts with MCOs, hold plans accountable for the availability and adequacy of all covered services.

Measurement and Improvement Standards

16. Practice Guidelines (§ 438.336)

In order to achieve greater consistency across public and private sector quality standards, this section addresses the need for each MCO to use practice guidelines as a component of its quality measurement and improvement activities. The science of quality measurement (and by that, the ability to improve health care quality) is dependent upon having a strong base of evidence on what constitutes effective health care (that is ''evidenced-based'' practice guidelines). The critical importance of the existence and use of practice guidelines in the delivery of quality health care services has been widely accepted by experts in health care quality measurement and improvement. The President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry (Commission) underscored the importance of the adoption and use of clinical practice guidelines in its report, ''Quality First: Better Health Care for All Americans.'' This report stated that,

> The development and dissemination of practice guidelines by the Federal government, professional associations and health plans have accelerated during the 1990s. The benefits of practice guidelines include developing an evidenced-based consensus of the best practices for a particular condition, consolidating disparate sources of information regarding clinical effectiveness and outcomes, and preparing health research into a useable format for practitioners.

The National Committee for Quality Assurance's (NCQA's) standards for the accreditation of managed care organizations include as a standard, ''The managed care organization is accountable for adopting and disseminating practice guidelines for the provision of acute and chronic care services that are relevant to its enrolled membership.'' NCQA's standards also include more detailed requirements addressing the use of clinical practice guidelines; however, we chose not to include those details in this proposed rule.

17. Quality Assessment and Performance Improvement Program (§ 438.340)

Section 438.340(a) requires that a State agency that contracts with an MCO require the MCO to have an ongoing quality assessment and performance improvement program for the services it furnishes to its enrollees. The quality assessment and performance improvement program as outlined in this section of the rule incorporates and expands upon the quality assurance activities currently required of MCOs under § 434.34, with one exception. Section 434.34(a) requires that an HMO's internal quality assurance system be consistent with the utilization control requirements of part 456. Because incentives to reduce unnecessary services are inherent to a risk capitation system of payment, we believe the application of utilization control requirements as prescriptive as those of part 456 to MCOs is unwarranted, and we will not require compliance with these requirements; rather, we believe it is appropriate to hold them to the same general requirements that must be met by organizations that contract with Medicare under the M+C program. These requirements are: that the MCO, in processing requests for initial or continued authorization of services, follow written policies and procedures that reflect current standards of medical practice; and, that the MCO have in effect mechanisms to detect both underutilization and overutilization of services. The former requirement is found in § 438.310 (''Coverage and authorization of services''), and the latter is found in § 438.340(b).

Section 438.340(b) specifies the basic elements of an acceptable quality assessment and performance improvement program for MCOs. The rule takes a two-tiered approach to ensuring quality: First, the MCO must achieve minimum performance levels on standardized quality measures. Second, the MCO must conduct performance improvement projects.

a. Minimum Performance Levels. Section 438.340(c) elaborates on § 438.340(b)(1) by requiring that the MCO measure its performance, using standard measures required by the State agency; report its performance to the State agency; and achieve any minimum performance levels that the State agency establishes on those standard measures.

The rule permits the standard measures to be specified in uniform data collection and reporting instruments required by the State agency. As was noted earlier, some State agencies have already begun requiring reporting of standardized quality measurement data through instruments such as HEDIS. The rule does not specify the particular measures for which reporting will be required. The State agency will be expected to identify required measures as part of its MCO contract specifications.

There are two key reasons for making performance measurements and minimum performance levels a part of the contracting process. First, it will give the State agency the flexibility needed to respond to new developments in the state of the art of quality measurement and improving performance levels. Second, when necessary, it will allow the State to focus on measures that are appropriate for a specific MCO so that the measures will reflect the characteristics and needs of the MCO's enrolled population and take into account its past performance.

In establishing minimum performance levels, the State agency should ensure that the targets are achievable, meaningful, and equitable. The State agency must consider historical plan and fee-for-service Medicaid performance data and trends. Other criteria that should guide the selection of measures for which minimum performance levels would be established, include their significance for the health of the MCO's enrolled population and the likelihood that they fairly reflect the MCO's performance.

The State agency must establish the minimum performance levels prospectively upon contract initiation and renewal, so that the MCO will have the entire contract year in which to take action to meet them. By the end of the contract year, the MCO must meet the minimum performance levels. Often, the next contract year will already have begun by the time the State agency learns whether the MCO has met the minimum performance levels established for the previous year. However, the rule guarantees the State agency the right to non-renew the MCO's contract in the year that the State agency determines that the MCO failed to meet the minimum performance levels, even if the failure itself was in the prior contract year.

The strategy of relying on performance measurement and performance levels to assess and improve quality is heavily dependent on the validity of the data collected and reported by plans. For that reason, § 438.342 requires that each MCO, whatever the design of its particular information system, ensure the completeness and accuracy of the data it compiles for external reporting or for use in its own quality improvement efforts. However, the rule does not impose uniform requirements for MCOs' data systems; for example, it does not require automated patient records.

b. Performance Improvement Projects. Section 438.340(d) elaborates on paragraph § 438.340(b)(2) by requiring that an MCO's performance improvement projects focus on specified areas of clinical and non-clinical services. It also requires the State

agency to set contractual obligations for the number and distribution of these projects among the specified areas. In addition, it authorizes the State agency to direct an MCO to undertake specific performance improvement projects as the State agency determines appropriate.

Section 438.340(d)(1) describes the components of performance improvement projects. All projects must involve measuring performance, implementing system interventions, evaluating the effectiveness of the interventions, and planning for sustained or increased improvement.

Section 438.340(d)(2) requires that projects address the entire population to which the performance measure is relevant. After a topic has been selected, the MCO must ensure that its measurement and improvement efforts are system-wide. Each project must, to the extent feasible, reach all enrollees and providers in its network who are involved in the aspect of care or services to be studied. This does not mean that MCOs must review the performance of each and every provider who furnishes the services that are the subject of the project, or that it must survey every affected enrollee. Sampling is acceptable so long as the MCO ensures that its samples are genuinely random. The MCO could do so by showing, for example, that:

- Each relevant provider and enrollee has an equal chance of being selected; no provider or enrollee is systematically excluded from the sampling;
- Each provider serving a given number of enrollees has the same probability of being selected as any other provider serving the same number of enrollees; and
- Providers and enrollees who were not included in the sample for the baseline measurement have the same chance for being selected for the follow-up measurement as providers and enrollees who were included in the baseline.

Section 438.340(d)(3) requires the State agency to establish contractual obligations for the number and distribution of projects among the specified clinical and non-clinical areas.

Section 438.340(d)(4) specifies certain focus areas of clinical care that must be addressed by the MCO for the full spectrum of populations enrolled under the contract. These minimum focus areas address: preventive care, care of chronic and acute conditions, high-volume and high-risk conditions, and continuity and coordination of care.

Section 438.340(d)(5) specifies certain non-clinical focus areas to be addressed by performance improvement projects: appeals, grievances, and complaints; and, access to and availability of services. Additional non-clinical focus areas the State agency may consider requiring through contract include: denials of authorization or payment for services and cultural competence. Cultural competency means the development and provision of systems of care for diverse populations, and a demonstrated awareness and integration of: health related beliefs and cultural values, disease incidence and prevalence, and appropriate management and prevention of disease. The period of time that an MCO will be given to undertake projects in all of the required focus areas will be established in contract.

Within each clinical and nonclinical focus area, the State agency should give an organization considerable freedom to select its own particular topics for measurement and improvement, so that it can conduct projects relating to aspects of care and services that are significant for its own population. In this way, the State agency can achieve a balance between encouraging flexibility and innovation and ensuring that every MCO conducts meaningful projects over a broad spectrum of care and services. Additional mechanisms to ensure that MCOs conduct meaningful projects are established in § 438.340(d)(6). The first is the authority for the State agency to require that an individual MCO conduct particular performance improvement projects that are specific to the MCO. This would be necessary when the MCO demonstrates significantly weaker performance in a particular area than its counterparts. The second is the option for the State agency to require that all of its MCOs participate annually in at least one statewide performance improvement project. In such a statewide performance improvement project, the State agency would be responsible for identifying an aspect of care that is of high priority, and for specifying the quality indicators (which will be discussed below) that its MCOs must use in assessing the success of their efforts to improve their performance in the aspect of care the State agency has identified.

In general, we believe that a clinical or non-clinical topic selected for study should affect a substantial portion of the MCO's Medicaid enrollees (or a specified subpopulation of enrollees) and have a potentially significant impact on enrollee health, functional status, or satisfaction. There may be instances in which less frequent conditions or services warrant study, as when data show a pattern of unexpected adverse outcomes. However, the prevalence of a condition or volume of services involved should be sufficient to permit meaningful study.

A project topic may be suggested by patterns of inappropriate utilization—for example, frequent use of the emergency room by enrollees with a specific diagnosis. However, the project should be clearly focused on identifying and correcting deficiencies in care or services that might have led to this pattern, such as inadequate access to primary care, rather than on utilization and cost issues alone. This is not to say that the MCO may not make efforts to address overutilization, but only that such efforts might not be considered projects for the purpose of assessing compliance with this rule, unless the primary objective is to improve health outcomes. Thus, it would be acceptable for a project to focus on patterns of overutilization that present a clear threat to health or functional status, for example, a high risk of iatrogenic problems or other adverse outcomes.

Because the achievement of demonstrable improvement is a central criterion in the evaluation of projects, they should necessarily focus on areas in which meaningful improvement can be achieved through system interventions by the MCO. It will therefore generally be advisable for the MCO to avoid projects that focus on clinical areas in which outcomes are largely dictated by factors that are unlikely to be influenced by delivery system changes. Most MCOs are likely to give priority to areas in which there is significant variation in practice and resulting outcomes within the MCO, or in which the MCO's performance as a whole falls below acceptable benchmarks or norms.

It is recognized that the requirement for demonstrable improvement creates incentives for MCOs to focus all of their projects on aspects of care in which rapid and measurable improvement is possible through simple interventions. It is not the intention of this rule to discourage MCOs from undertaking more complex projects or innovative projects that have a high risk of failure but that offer some offsetting potential for making a significant difference in the health or functional status of enrollees. MCOs considering such projects should avail themselves of the opportunity to work in consultation with the State agency to develop long-range goals for projects and set agreed-upon criteria for evaluation of the MCO's progress in implementing its project.

Section 438.340(d)(7) requires that the MCO assess its performance for each project using one or more quality indicators, and the paragraph

establishes criteria for selecting indicators. The rule requires that the quality indicators measure outcomes such as changes in health status, functional status, and enrollee satisfaction, or valid proxies of these outcomes. We recognize that relatively few standardized performance measures actually address outcomes. Even when outcome measures are available, their utility as quality indicators for projects may be limited because outcomes are substantially affected by factors outside the MCO's control. In other instances improvement is possible, but the resources and sophistication needed to analyze the complex factors involved in the outcome and develop meaningful interventions might be beyond the reach of many MCOs.

Therefore, the rule does not require that quality indicators be outcome measures. Process measures are acceptable so long as the MCO can show that they are valid proxies, that is, there is strong clinical evidence that the process being measured is meaningfully associated with outcomes. To the extent possible, this determination should be based on published guidelines that support the association and that cite evidence from randomized clinical trials, case control studies, or cohort studies. An MCO may furnish its own similar evidence of association between a process and an outcome so long as this association is not actually contradicted by a published guideline. Although published evidence is generally required, there may be certain areas of practice for which empirical evidence of process or outcome linkage is limited. At a minimum, the MCO should be able to demonstrate that there is a consensus among relevant practitioners as to the importance of a given process. We encourage State agencies to consider using HEDIS as a standardized tool for performance reporting.

While MCOs must consider enrollee satisfaction as an important aspect of care, improvement in satisfaction should not be the sole demonstrable outcome of a project in any clinical focus area. Some improvement in health or functional status should also be measured. (Note that this measurement can rely on enrollee surveys that address topics in addition to satisfaction. For example, self-reported health status may be an acceptable indicator; reduction in school absence could be used as an indicator of functional status in children.) For projects in the non-clinical areas, use of health or functional status indicators is generally preferred, particularly for projects addressing access and availability. However, there may be some non-clinical projects for which enrollee satisfaction indicators alone are sufficient. We would encourage State agencies and plans to use the CAHPS instrument when surveying enrollee satisfaction and experiences with care.

Section 438.340(d)(8) requires that the MCO's assessment of its performance on the selected indicators be based on systematic, ongoing collection, and analysis of valid and reliable data. We expect that data will most commonly be derived from administrative data generated by the MCO's health information system or from review of medical records. (In assessing non-clinical services, other sources such as enrollee or provider surveys may be appropriate.) When data are derived from the health information system, their reliability is obviously a function of the general reliability of the system. By contrast, when data are derived from direct review of medical records or other primary source documents, steps must be taken to ensure that the data are uniformly extracted and recorded. Appropriately qualified personnel should be used; this will vary with the nature of the data being collected and the degree of professional judgment required. There should be clear guidelines or protocols for obtaining and entering the data; this is especially important if multiple reviewers are used or if data are collected by multiple subcontractors. Inter-reviewer reliability should be assured through, for example, repeat reviews of a sample of records.

Section 438.340(d)(9) requires that the MCO's interventions result in improvement that is significant and sustained over time. The State agency might choose to consider judging improvement to be significant when the MCO either (1) achieves a benchmark level of performance that is defined in advance by the State agency; or (2) achieves a reduction specified by the State agency in the percentage of enrollees who do not achieve the outcome defined by the indicator. The State agency might choose to consider requiring a 10 percent reduction in adverse outcomes. An MCO would meet this requirement if, for example, its child immunization rate is 80 percent in the baseline and increases to 82 percent, because the percentage of children *not* immunized has dropped from 20 percent to 18 percent, a 10 percent reduction. An MCO whose baseline rate is 60 percent would have to reach 64 percent—a reduction in non-immunized children from 40 percent to 36 percent. (Note that, to ensure uniform computation of improvement across indicators, all indicators must first be stated in the form of a positive outcome, and improvement measured as a reduction in its inverse.)

We suggest that the State agency require a 10 percent reduction in adverse outcomes for several reasons. First, the use of a constant percentage reflects the likelihood that change is harder to achieve when a MCO's baseline performance is already superior. Thus, the MCO with an 80 percent immunization rate is only expected to achieve a 2 percent improvement, while the MCO with a 60 percent rate must achieve a 4 percent improvement. Second, the 10 percent level is consistent with results HCFA has observed in successful improvement projects sponsored by the agency.

Note that improvement in an *indicator* is not necessarily the same as improvement in the health or functional status of enrollees. For example, the ''health of seniors'' indicator under HEDIS 3.0(c) will track, over time, changes in the functional status of elderly enrollees. Each enrollee's functional status may remain stable or actually decline. However, an MCO would demonstrate improvement on the indicator if it slowed the rate of decline, whether or not it actually improved enrollees' functional status. The State agency might choose to consider judging improvement to be sustained when the MCO demonstrates through continued measurement that its performance gains have endured for at least one year.

We recognize that many MCOs still have limited experience in conducting well-designed performance improvement projects, and that any given project may take some time to produce measurable improvement. Therefore, we encourage the State agency to incorporate into the contract process a gradual phase-in of the number of focus areas for which improvement must be demonstrated. State agencies and plans desiring further technical instructions in designing quality improvement projects are directed to the NCOA publication, ''Health Care Quality Improvement Studies in Managed Care Settings—Design and Assessment'' developed under HCFA contract #HCFA–92–1279.

Section 438.340(d)(10) requires the MCO to report the status and results of each project to the State agency as requested.

c. Program review by the State agency. Section 438.340(e) requires that the State agency review, at least annually, the impact and effectiveness of the MCO's quality assessment and performance improvement program. The review must include the MCO's performance on the standard measures on which the MCO is required to report,

and the results of the MCO's performance improvement projects.

In addition, § 438.340(e) authorizes the State agency to require that the MCO have in effect a process for its own evaluation of the impact and effectiveness of its quality assessment and performance improvement program. The State agency might choose to direct the MCO to consider whether the activities in its work plan are being completed on a timely basis or whether commitment of additional resources is necessary. The State agency might choose to require that the MCO's evaluation include recommendations for needed changes in program strategy or administration, and that these recommendations be forwarded to and considered by the policy making body of the MCO.

18. Health Information Systems (§ 438.342)

Section 1932(c)(1)(iii) of the Act requires State agencies that contract with Medicaid managed care organizations to develop a State quality assessment and improvement strategy that includes procedures for monitoring and evaluating the quality and appropriateness of care and services to enrollees that reflect the full spectrum of populations enrolled under the contract and that includes requirements for provision of quality assurance data to the State agency by MCOs using the data and information set that the Secretary has specified for use under Part C of Title XVIII or such alternative data as the Secretary approves, in consultation with the State agency.

In § 438.342, we are proposing that the State agency ensure through its contracts with MCOs that each MCO be required to maintain a health information system that collects, analyzes, integrates, and reports data that can achieve the objectives of this part. We would expect the State agency to work with plans, providers, and others in developing its requirements and that the requirements will reflect the differing capabilities and structures of different kinds of plans. Every MCO should be able to collect and integrate data from all components of its network, in order to develop a comprehensive picture of enrollee needs and utilization. Each MCO should be able to use these data in its quality assessment and performance improvement program, as well as in other management activities. Under proposed paragraph § 438.342(a), we provide that the system should provide information on areas including, but not limited to, utilization, grievances, disenrollments and solvency.

In § 438.342(b)(1), we are proposing that the State agency ensure through its contracts with MCOs that each MCO be required to collect data on enrollee and provider characteristics as specified by the State agency, and on plan services furnished to enrollees through an encounter data system or such other methods as may be specified by the State agency. Although an encounter data system may be the most efficient means of meeting the requirements of this standard, the organization may use any methods or procedures for data collection, so long as it can demonstrate that its system achieves the objectives of this standard.

In § 438.432(b)(2), we are proposing that the State agency ensure through its contracts with MCOs that each MCO be required to ensure that data received from providers are accurate and complete by verifying the accuracy and timeliness of reported data, screening the data for completeness, logic, and consistency, and by collecting service information in standardized formats to the extent feasible and appropriate. Each organization must have an ongoing process for ensuring the reliability of the data, whether compiled in its own facilities or reported by outside contractors. It must have a system for comparing reported data to a sample of medical records to verify the accuracy and timeliness of reporting or transmission. It must have mechanisms to ensure that reported data contain all data elements required by the organization's standards. Standard formats are needed to ensure that data elements are reported uniformly by all providers, and that reports from multiple sources are comparable and can be reliably merged.

In § 438.342(b)(3), we are proposing that the State agency through its contracts with MCOs require that each MCO make available all collected data upon request to the State agency and HCFA. The BBA includes significant new requirements for State agencies and for plans. We are cognizant of the immediate need of State agencies and plans to modify and test existing systems to ensure no disruption at the millennium and that this additional burden could jeopardize the success of those efforts. One area in particular is that some State agencies may need to develop or modify systems to meet the requirements in subpart E to establish an information system that will support initial and ongoing operation and review of the State's quality strategy. Similarly, we are aware that plans may be required to develop or modify information systems to meet requirements in their States. We encourage State agencies to remain cognizant of plans' need to modify and test their systems for millennium compliance and the possible and burden that this could create. Specifically, we invite comment on the following areas.

- What type of system changes do State agencies envision necessary for implementation of this proposed rule?
- How long do State agencies envision these system changes to take and what is an estimate of the cost associated with such changes?
- What other systems are likely to be affected by these changes?
- What type of system changes do plans envision necessary in implementing the BBA requirements and this proposed rule?
- Will efforts to achieve millennium compliance affect plans' ability to make any necessary systems changes?

E. Grievance Systems (Subpart F)

Section 4704(a) of the BBA added section 1932(b)(4) to the Act to require MCOs to establish internal grievance procedures ensuring that Medicaid managed care enrollees may challenge denials of coverage of medical assistance or payment for medical assistance under managed care contracts.

In this subpart, we propose regulations that lay out the required elements of this grievance system: describing what constitutes a notice (that is, the first step in the grievance system); how to handle complaints and grievances after they are in the system; how to resolve grievances; and how to notify enrollees of the resolution. We then propose to address grievances that require expedited resolution (that is, describing how special situations must be handled). Next, we propose to require that MCOs clearly and fully inform enrollees of the entire system so that they are aware of it and how to use it. When MCOs inform enrollees, materials should be understandable to enrollees at a fourth to fifth grade reading level, or at another level established by the State agency that adequately reflects the enrollee population. In addition, any materials should be in prevalent languages spoken by the populations in the geographic area in order to facilitate enrollee understanding. Finally, we include proposed requirements relating to record keeping, monitoring, and consequences of noncompliance. We propose to require effective record keeping (while ensuring confidentiality), sensible monitoring of the whole system (to keep it working well), and compliance with this subpart.

This proposed regulation also would explicitly reflect in regulations HCFA's longstanding policy that managed care enrollees are entitled to a hearing in the State fair hearing process provided for under subpart E of part 431, if they are denied benefits by their MCO. These fair hearing regulations have never been amended to reflect the fact that a substantial proportion of Medicaid beneficiaries are enrolled in managed care. We also make clear that the requirement for an internal grievance process does not substitute for a right to a State fair hearing. We are specifically requesting comments on the interaction of the proposed provisions of subpart F, set forth in this proposed rule, which address MCOs' internal grievance systems, and the existing regulations regarding the Medicaid State fair hearing process (in subpart E of part 431). Several issues were raised during the development of this proposed regulation concerning whether the timeframes specified in the current fair hearing regulations are adequate for managed care, specifically for the timely consideration of prior approvals and for grievances that involve access to services. We especially invite public comment on the following issues:

- The adequacy of the length of time specified in the current fair hearing regulation for review of MCO denials of services, particularly in circumstances warranting expedited action;
- The need to classify and differentially process at the fair hearing level different types of denials such as pre-service denials, service denials involving continuation of benefits, and denials of payment for services that have already been received;
- The inclusion an expedited appeals process as well as of a medical exigency standard consistent with the M+C regulations in § 422.590;
- Addressing grievances arising from primary care case manager services (particularly denial of prior approval) in the State fair hearing regulation; and
- Automatic referral of some or all kinds of MCO denials to the fair hearing process.

Based on comments we receive on these issues, we may revise the fair hearing regulation as it pertains to managed care in the final regulation.

We considered several sources in developing this proposed regulation including: Negotiating the New Health System, a nationwide study of Medicaid Managed Care Contracts developed by the Center for Health Policy Research at the George Washington University Medical Center, which reviewed and analyzed 54 separate Medicaid managed care contracts; the current 1915(b) and 1115 waiver programs, specifically the State experiences of Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, and Tennessee; the Quality Improvement System for Managed Care (QISMC); the Consumer Bill of Rights; the Medicare+Choice regulations; and comments received at public forums from members of the American Public Human Services Association (APHSA) and beneficiary advocates.

1. Statutory Basis and Definitions (§ 438.400)

In § 438.400(a), we set forth the statutory basis for the regulations in subpart F. In addition to section 1932(b)(4) of the Act, which requires MCOs to have an internal grievance system, these regulations are also based on section 1902(a)(4) of the Act, which authorizes HCFA to provide for necessary and proper methods of administration, and section 1902(a)(3) of the Act, which requires that Medicaid beneficiaries have the right to a fair hearing when denied Medicaid benefits.

Terms used in the proposed regulations in this subpart are defined in § 438.400(b). We acknowledge that terminology used in describing grievance and appeal processes differs greatly from State to State and program to program. We believe, however, that it is necessary to define such terms as ''complaint'' and ''grievance'' that are critical to the grievance system to ensure a basic level of consistency in State and MCO practice and beneficiary protection.

In developing definitions for ''compliant'' and ''grievance'', we consulted with beneficiary advocacy groups and reviewed definitions and concepts used by State agencies, as well as those reflected in the CBRR, various model grievance acts and other sources. We were interested in reflecting that, from the beneficiary's perspective, many disputes that are ultimately appealed arise in the context of broader expressions of confusion or dissatisfaction. This approach underlies the process and consumer assistance requirements of this subpart.

We therefore elected to define ''complaint'' as broadly as possible, as any oral or written communication, made by or on behalf of an enrollee expressing dissatisfaction with any aspect of an MCO's or provider's operations, activities or behavior, regardless of whether remedial action is sought. We defined ''grievances'' as written communications explicitly addressing dissatisfaction with the following: the availability, delivery, or quality; payment, treatment, or reimbursement of claims for services; or issues unresolved through the complaint process. Our proposed definition of grievance is consistent with the definition used by the National Association of Insurance Commissioners (NAIC) in its 1996 version of the ''Model Grievance Act'', which we believe is among the most comprehensive and widely-used definitions of the term.

As discussed further under § 438.402, each MCO must provide for a grievance system that consists of a complaint process, a grievance process and a link to the fair hearing process. The complaint process would address those communications that are not grievances. Examples of topics that would likely be addressed as complaints in this process would include such issues as waiting times, operating hours, demeanor of health care personnel and the adequacy of facilities. We believe this use of complaints is consistent with the use of the term in most State Medicaid programs. (It should be noted, however, that Medicare and Medicaid use different terms for similar concepts. Under the M+C reguation (like earlier Medicare HMO regulations), this grievance definition most closely resembles Medicare's definition of a ''reconsideration request.''

In addition to the terms we defined in the proposed rule, many terms are being used in practice; however, we chose not to include them in the proposed rule either because we did not consider them part of the grievance system or we believed inclusion would cause confusion. For example, the term ''inquiry,'' as defined by the State of Missouri, means a request from a member to MCO consumer relations departments for information that would clarify health plan policy, benefits, procedures, or any aspect of health plan function that may be in question. Although inquiries are not part of the formal grievance system, we believe that MCOs ought to thoroughly explore inquiries in order to address misunderstandings as soon as they arise. We are interested in learning of State and MCO best practices to address issues associated with enrollee inquiries. (For example, we are interested in receiving information concerning MCO policies and procedures to log and track inquiries and to identify inquiry patterns, so as to minimize the possibility of complaints being treated as inquiries.)

2. General Requirements (§ 438.402)

The proposed rule would provide for a grievance system consisting of multiple avenues of recourse available

for enrollees in Medicaid managed care to resolve issues arising from their membership in an MCO. At a minimum, the grievance system includes the enrollee's initial contact with a designated office within the MCO (as described in § 438.406) to inquire about the MCO's policies and procedures; two tracks for MCO review (the complaint process and grievance process); and access to the State fair hearing system. The MCO has to allow the enrollee a reasonable time from the date that notice of intended action is mailed (at least the 90 days permitted for beneficiaries in the fair hearing process at § 431.221) to file a grievance. Note that the timeframe may be shorter if the beneficiary wishes to continue to receive services while resolution of the grievance is pending (see discussion of § 438.420.)

Under proposed § 438.402(b)(2) and (3), both the complaint and grievance processes must be approved by the State agency and the MCO's governing body. Proposed § 438.402(b)(3) and (4) would require that the MCO's governing body be responsible for effective operation of these processes and that it review and resolve the complaints and grievances, unless it delegates this responsibility to a grievance committee.

We believe that the grievance process is a more formal stage in the overall system than the complaint process because it is also used to resolve issues relating to quality of care; and therefore its requirements are more extensive than those for the complaint process. For example, a complaint may involve an enrollee's dissatisfaction with the rudeness of the physician's office staff. On the other hand, a grievance could address a restricted number of therapy visits or denials of a particular type of specialist referral. The grievance process must be available for disputes between the MCO and the enrollee concerning the following: denials, reductions, or terminations of services; dissatisfaction with providers; appropriateness of services furnished; availability of services; the inability to obtain culturally and linguistically appropriate care; or disputes concerning disenrollment.

In order to ensure that matters related to the timely acquisition of needed services are resolved as expeditiously as the enrollee's health requires, under proposed § 438.402(c), the grievance process is required to include clearly explained steps, time limits for intermediary steps established by the State agency, and, as discussed more fully below, resolution of grievances within timeframes consistent with those established by Medicare (as described in §§ 438.406 through 438.410). In any event, resolution of all issues must be made by a certain date that would allow the State agency to proceed with a fair hearing, if applicable, and ensure a final decision within 90 days of the initial grievance. As noted earlier, we are seeking comment on whether and how to extend the requirement for attention to the medical exigency of the appeal to the fair hearings process.

The grievance process under proposed § 438.402(c)(3) would require that an in-person hearing be provided at the option of the enrollee. In addition, proposed § 438.402(c)(4) would require that final grievance decisions wholly or partially adverse to the beneficiary must be forwarded to the State agency for review and monitoring. We considered but rejected requiring that adverse MCO decisions automatically proceed to the fair hearing process. Such a policy would have required no further beneficiary involvement to obtain a fair hearing and would have further ensured the State agency's ability to resolve grievances within 90 days of the initial filing of the grievance.

Automatic filing for a State fair hearing would also have been consistent with Medicare's requirement that M+C organizations automatically forward to HCFA's external review entity the appeal case file of any reconsideration that is not fully favorable to the enrollee. We decided to deviate from Medicare on this point because we are sensitive to the burden on State fair hearing systems that such a requirement would impose. We seek comments on this policy. While we are not requiring that grievances automatically proceed to a fair hearing, we are setting the timeframes for forwarding the decision and all supporting documentation to the State agency under proposed § 438.402(c)(4) to be no greater than these in Medicare, that is, these must be forwarded as expeditiously as the medical condition of the enrollee dictates or within 30 days of the beneficiary's filing a standard grievance (or the date of the extension's expiration) or 24 hours after an expedited decision.

Finally, proposed § 438.402(c)(5) would reflect our current longstanding policy that an MCO's internal grievance process is not a substitute for the State fair hearing system. The State system is an additional avenue of recourse for Medicaid managed care enrollees. Under proposed § 438.402(c)(6), State agencies would be required to define a process that either permits individuals to pursue grievances simultaneously through State fair hearing and MCO grievance systems, or alternatively, to provide that individuals will be entitled to a fair hearing only after they have exhausted administrative consideration by their MCO. The intent of this proposed regulation is that if the State agency requires the beneficiary to use the MCO grievance process prior to accessing the State fair hearing system then such an ''exhaustion requirement'' would be an attribute of the State design of the grievance system as it applies to all MCOs and would not vary for each MCO.

As noted in a policy letter sent to State Medicaid Directors on February 20, 1998, providers do not have an independent right under Federal law to challenge MCO coverage decisions, but may bring a challenge on behalf of an enrollee, with that enrollee's consent. However, this proposed regulation would not prohibit a State agency from granting providers with such an independent right to challenge MCO decisions. For further information, please refer to the State Medicaid Director Letter dated February 20, 1998.

3. Notice of Intended Action (§ 438.404)

We are proposing that the notice MCOs would be required to provide to enrollees under proposed § 438.404 be the first step in the grievance system. It would serve as the enrollee's first formal indication that the MCO will take action such as denying payment or denying, limiting, reducing, delaying, or terminating a service through a service authorization decision. The notice should, therefore, be easy-to-read and understand.

In these proposed regulations, Medicaid is requiring the State agency to establish service authorization procedures that, at a minimum, comply with Medicare timeframes for organizational determinations. Medicare requires M+C Organizations to make organizational determinations in a case requiring standard resolution as expeditiously as the enrollee's health condition requires but no later than 14 calendar days after the request for services, with the possibility of an extension of up to 14 additional days if (1) the enrollee requests the extension; or (2) the M+C Organization justifies (upon request, to the State Medicaid agency) a need for additional information, and why the delay is in the interest of the enrollee. Medicare also requires M+C organizations to make expedited organizational determinations in circumstances that could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function, as expeditiously as the enrollee's health condition requires but no later than 72

hours after the request, with the possibility of an extension of up to 14 additional days if (1) the enrollee requests the extension or; (2) the M+C Organization justifies a need for additional information, and why the delay is in the interest of the enrollee. We do not propose that MCOs be required to submit written justifications of grievance timeframe extensions prior to exercising these extensions.

Although not mentioned under the definition of service authorizations in § 438.310(d), we would like to clarify that timeframes for a notice of intended MCO payment denials should, at a minimum, follow the standard timeframes outlined in § 438.310(e). We chose that timeframe because payment denials will occur after care has already been delivered to the member and not involve circumstances jeopardizing the life or health of the enrollee or the enrollee's ability to regain maximum function.

The notice would be required to include 10 elements that are listed in proposed § 438.404, and would clearly explain how to access the grievance system.

The 10 elements that would be required in a notice under § 438.404 are the following:

- The action the MCO intends to take;
- The reasons for the intended action or the delay;
- Any laws and rules that support the action;
- The enrollee's right to file a complaint or grievance with the MCO and to request a State fair hearing;
- The circumstances under which expedited grievance review is available and how to request it;
- How to file complaints, grievances and State fair hearing requests;
- That if the enrollee files a grievance, he or she has a right to appear in person before the MCO personnel assigned to resolve the grievance;
- The circumstances under which benefits will continue pending resolution of the grievance or issuance of a State fair hearing decision;
- How to contact the designated office described in § 438.406(a); and
- How to obtain copies of the enrollee's records, not limited to medical records.

The reasons for the intended action should be written in plain English and clearly identify whether the reason for denial is based on medical reasons or insurance coverage.

It is important to note that, while this section specifies MCO requirements for complaint and grievance notices to enrollees, it does not diminish or eliminate State requirements for fair hearing notices to Medicaid beneficiaries as delineated in part 431, subpart E. Each State agency may delegate its responsibilities for fair hearing notices to the MCO, and each State agency must determine how State fair hearing and MCO complaint and grievance notices are given to beneficiaries. A single combined notice may, at the option of the State agency, be used for both purposes if such notice meets both the requirements under part 431, subpart E and in this proposed rule.

We considered, but rejected, the proposal of some advocates that notices should also include an explanation of the availability of free legal services. At this time we have not provided for such notification in this regulation. We invite comment on this issue.

4. Handling of Complaints and Grievances (§ 438.406)

We propose in § 438.406(a) that each MCO be required to establish and maintain a designated office that is adequately staffed and that serves as the central point of contact for enrollee issues, including complaints. Such an office could be generally available to all plan enrollees, but its availability to Medicaid enrollees would have to be made clear. This office would function as an initial step in the grievance system, where staff can receive inquiries from enrollees or their representatives by telephone or in person. Ideally such contracts would result in many complaints being resolved satisfactorily on an informal basis. Although these consumer relations activities operate through verbal communication, MCO staff would be required under § 438.406(b) to acknowledge receipt of each complaint or grievance, and, as discussed below, under proposed § 438.416, to document the communication and maintain adequate records of all communications. As discussed below, we propose in § 438.416 that if the MCO does not use a separate log for Medicaid recipients, the general log should distinguish Medicaid enrollees from other MCO enrollees. This information would be required to be available and regularly reported in aggregate form to the State agency, as described in § 438.416.

With regard to grievances, we considered, but did not include, a requirement that all grievances be filed first with the State agency, as is required by the State of Tennessee. We are concerned that the central log-in system used by that State agency would not necessarily work well in other States. Associated administrative costs and the need for a well-developed infrastructure to support such a system could be unduly burdensome for many States. Therefore, we decided not to include a similar system in this proposed rule. Furthermore, we believe that other parts of this proposed rule will result in many of the same benefits promised by advocates of the approach used by Tennessee. For example, advocates have noted that a central log-in system would enhance the program's ability to use complaint information in quality monitoring. We believe the quality strategies that State agencies will establish under to part 438, subpart E of this proposed rule will serve the same purpose. Beneficiary advocates have suggested that MCOs or State agencies should establish ombuds programs to assist beneficiaries through the grievance process. After careful consideration, we have decided not to include this requirement; however, we support their creation and encourage State agencies and MCOs to work together to establish such programs, if they believe they are desirable for that particular State. We believe that each State agency should establish its own approach to how enrollees obtain assistance for the full grievance process including the State fair hearing process. In proposed § 438.406(c), we would require only that the MCOs provide assistance in completing forms or take other steps to obtain resolution of the complaint or grievance within the MCO. More general assistance could be part of a more comprehensive ombuds program.

Another important aspect of proposed § 438.406(d) is the requirement that the MCO conduct the grievance process using persons not involved in any previous level of review or decision making and that reviews of denials based on a lack of medical necessity be performed by physicians with appropriate clinical expertise. The reviewer(s) in each step of the process would have to be impartial. Both of these requirements are consistent with those imposed under the M+C program. Medicare requires that any reconsideration that relates to a determination to deny coverage based on a lack of medical necessity must be made only by a physician with an expertise in the field of medicine that is appropriate for the services at issue (§ 422.590(g)(2)).

Proposed § 438.406(e) provides that all complaints and grievances must be resolved within the timeframes specified in § 438.408.

5. Grievance Resolution and Notification (§ 438.408)

In proposed § 438.408(a), we would require that an MCO investigate grievances; resolve the grievances within specified timeframes; base its decision on the case record, including a hearing; and give parties written notice of the decision within specified timeframes. As noted above, the timeframes within which grievances must be resolved (and notices of the decision must be sent) are based on those that apply to Medicare managed care contractors under the new Medicare+Choice regulations, as discussed in § 422.590.

Specifically, in the case of a grievance not requiring expedited resolution, the grievance must be resolved, and notice to the enrollee must be provided in writing, as expeditiously as the enrollee's health condition requires, but no later than 30 days after receipt of the beneficiary grievance. The MCO may extend the timeframe by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence from noncontract providers may change an MCO's decision to deny). As noted above, with respect to authorization timeframe extensions (§ 438.310), we are not proposing that MCOs be required to submit written justification grievance timeframe extensions before to exercising those extensions. Instead we propose that justifications for extensions would only be required to be submitted to the State agency upon request during retrospective reviews.

In the case of a grievance that is required to be expedited under proposed § 438.410 (discussed below), grievances must be resolved, and notice provided, as expeditiously as the enrollee's health condition requires but no later than 72 hours after receipt of the grievance. Again, this timeframe may be extended by up to 14 days for the reasons set forth above.

The decision to require a Medicaid MCO to notify a Medicaid enrollee of a complaint or grievance decision that is adverse to the enrollee prior to an external hearing is not consistent with Medicare policy. In the M+C appeal process, the M+C organization only issues a written decision if it is fully favorable to the enrollee (that is, constitutes complete reversal of the earlier decision to deny service or payment). If the M+C organization does not completely reverse the earlier decision, it automatically forwards the appeal case file with a written explanation to the external reviewer, which makes the final decision.

To address a recommendation by the CBRR that an independent external system be made available to review an adverse decision made by the MCO to deny, reduce, or terminate coverage or deny payment for services, we have clarified the interaction of the State fair hearing process and the MCO grievance system by making conforming changes to part 431, subpart E. That subpart now expressly provides for a fair hearing under the situations described in part 438, subpart F. Specifically, language was added to clarify that members of Medicaid MCOs are eligible to appeal adverse decisions through the State fair hearing regulations. We believe that this policy ensures MCO enrollees the type of independent external review recommended by the CBRR. As stated earlier, we are interested in receiving comments about the fair hearing process as it applies to managed care.

We considered requiring MCOs to automatically resolve in the enrollee's favor any dispute that it did not resolve within a defined timeframe. Beneficiary advocates supported such a requirement; however, we believed it was inappropriate for this proposed rule. As with other aspects of the grievance process, we invite comments on this issue.

In § 438.308(b), we specify the content of the notice that would have to be provided to enrollees (or, if adverse, forwarded to the State agency). This notice would have to include the following information:

- The name of the staff person who resolved the grievance;
- The results of the grievance process and the date it was completed;
- A summary of the steps taken on behalf of the enrollee to resolve the issue;
- A clear explanation of the right to a State fair hearing, if the enrollee is dissatisfied with the decision, and how to timely file for a fair hearing;
- If a grievance decision is wholly or partly adverse to the enrollee, the notice must also explain the circumstances under which—

—Benefits will continue if he or she files the fair hearing request timely; and

—The enrollee may be required to pay the cost of any services furnished during the pendency of the appeal, if the final decision is adverse.

6. Expedited Resolution of Grievances (§ 438.410)

Under proposed § 438.410, MCOs would be required to implement an expedited grievance resolution process for issues requiring immediate resolution. Some States, such as Tennessee and Minnesota, have recognized the need to establish an expedited hearing process for cases involving urgently needed care. For example, if the complaint involves a dispute about an urgently needed service in Minnesota, the plan uses an expedited process appropriate to the particular situation and notifies the Commissioner of Health within 2 business days from the date the complaint was registered. This practice has reduced the number of appeals that become stalled at the MCO level, potentially placing an enrollee's health in jeopardy. The CBRR and beneficiary advocates have both recommended the adoption of this provision.

Under proposed § 438.410, beneficiaries would now have a choice to request either standard or expedited resolution of their grievances. Any oral request made by a beneficiary or a provider must be followed up within 24 hours in writing. If the beneficiary or their provider believes that taking the time for a standard non-expedited resolution could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, the beneficiary and provider would be allowed to request a more expedited resolution process. If a beneficiary makes the request without the support of a physician, the MCO would decide whether the standard for expedited review is met. If a physician makes the request, or supports a beneficiary request, and attests that the standard for expedition is met, the MCO would be required to expedite the grievance. If the MCO decides not to expedite a beneficiary's request for grievance, the MCO would be required to automatically transfer a request to the standard timeframe and make the determination within the 30-day timeframe and give the enrollee prompt oral notice of the denial and follow up, within 2 working days, with a written letter meeting the requirements in § 438.410(f)(2).

Requiring an expedited grievance resolution process is consistent with the requirements that apply under the M+C program. In the case of expedited reconsiderations, an M+C organization must issue the determination no later than 72 hours after it receives the request for expedited reconsideration, with the possibility of up to a 14-day extension for certain circumstances (for example, the organization justifies a need for additional information and how the delay is in the interest of the enrollee). Also, in Medicare, the request

for an expedited decision may be made by any physician, not just a physician participating in the M+C program or the particular M+C plan. The Medicaid expedited grievance resolution provision was written using the same timeframes and physician criteria as the Medicare expedited reconsideration process.

As has been previously mentioned, in Medicare, if the reconsidered decision is not entirely favorable to the enrollee, the decision is automatically subject to further review by an independent review entity contracted by HCFA. In instances involving expedited requests, the M+C organization must forward its decision to the independent entity as expeditiously as the enrollee's health condition requires, but not later than within 24 hours of its affirmation of the adverse organization determination. We have retained this timeframe for forwarding documentation from the MCO to the State agencies.

There is one significant difference between the timeframes used by the external review entity for the expedited grievance resolution process in the M+C program and the Medicaid managed care program. In Medicare, an expedited decision subject to further review by the independent entity must be decided within the same timeframes that M+C organizations resolve expedited grievances (within 72 hours or the date of the extension's expiration). Conversely, in Medicaid, the State fair hearing process does not specifically recognize expedited decisions but requires resolution within 90 days of the beneficiary request, a much longer time period than that required of M+C organizations. We invite comment on the question of whether this 90 day timeframe should be shortened.

7. Information about the Grievance System (§ 438.414)

Under proposed § 438.10(d)(1)(i) and (e)(10), enrollees would receive easy-to-read information about how to access the grievance process, including both the MCO complaint and grievance processes and the State fair hearings, at the time they enroll. Proposed § 438.10(d)(1)(ii) would require that the same information be provided to potential enrollees upon request. Under proposed § 438.404, information on grievances would also have to be provided whenever a service requested by a health care provider, enrollee, or enrollee representative is denied or before an ongoing course of treatment is reduced or terminated. Under proposed paragraph (a)(3) of § 438.414, this information would have to be provided to all providers, at the time of subcontracting with the MCO.

While the MCO would be required to notify all enrollees of the grievance process in writing, it may also notify enrollees of the grievance process orally (for example, for disabled or illiterate people, where necessary). All written and oral information about the complaint process must be available in a format that beneficiaries can understand. Iowa and Missouri and some other States specify use of standard MCO handbook language in their contracts with MCOs. In California, enrollees receive descriptions of the process in handbooks and annual notices; additionally, whenever a plan denies services requested by a health care provider, a notice must be given to the enrollee and the enrollee's representative on a standardized form and must explain the right to representation and the right to use the plan's grievance process before or at the same time the beneficiary is pursuing a State fair hearing.

In proposed § 483.414(b), we specify the content of the information on grievances and appeals that would have to be provided. Specifically, we propose to require that the following information be provided as specified in § 438.10 and § 438.414(a)(3):

(1) Specification of what constitutes grounds for a complaint, grievance, or State fair hearing request;

(2) An explanation of how to file complaints, grievances and State fair hearing requests, and the timeframes for doing so;

(3) An explanation of the availability of assistance with the grievance process and State fair hearings;

(4) Toll-free numbers for the MCO that the enrollee can use to register a complaint or complete a grievance form by telephone (the toll-free numbers must have adequate TTY and interpreter capability);

(5) The specific titles and telephone numbers of the persons in the MCO who have responsibility for the proper functioning of the grievance process and the authority to require corrective action;

(6) Assurance that filing a grievance or requesting a State fair hearing will not negatively affect or impact the way the MCO and its providers, or the State agency treat the enrollee;

(7) Information on procedures for obtaining care or services during the grievance and fair hearing processes as specified in § 438.420.

In § 483.414(c), we propose that MCOs provide enrollees with aggregate or summary information, derived from the information collected under § 438.416(e). This information may be publicly disclosed by the State agency in consumer information materials; however, such disclosure must maintain the confidentiality of enrollees.

8. Record Keeping and Reporting Requirements (§ 438.416)

We propose to require under § 438.416(a) and (b) that MCOs maintain a log of all complaints and grievances and their resolution, and track each grievance through its final resolution. At a minimum, the MCO must have a system for monitoring its progress in reviewing and resolving each grievance, to ensure that each step is completed within the timeframe specified in the MCO's grievance processes. The tracking should include a log maintained for all complaints and grievances containing sufficient information to identify the grievant, date of receipt, nature of the grievance, and the date the grievance is resolved.

Under proposed § 438.416(c), MCOs would be required to record any disenrollment, and the reason for the disenrollment, even if it occurs before the grievance process is completed. We believe that State agencies, as part of their overall monitoring of MCOs, monitor the completeness of the reporting of MCO data on disenrollments. Proposed § 438.416(d) would require that records of complaints, grievances (including their resolution) and disenrollments, for 3 years, in a central location accessible to the State agency. If any litigation, claim negotiation, audit, or other action involving the documents or records has been started before the expiration of the 3-year period, the MCO should retain the records until completion of the action and resolution of issues that arise from it or until the end of the regular 3-year period, whichever is later. See also 45 CFR part 92.

Under proposed § 438.416(e), the MCO must also maintain, aggregate and analyze information on the nature of issues raised by enrollees and on their resolution, including inquiries, disenrollments, complaints, grievances, and fair hearings. Under part 438 subpart E, this information must be used to develop activities under the organization's Quality Assessment and Performance Improvement (QAPI) program, both to improve the issue resolution process itself and to make improvements that address other system issues raised in the process. Improvement goals and corrective action plans must be established as necessary.

Our goal in requiring this information is to establish a standard of accountability, consistent with the MCO's own activities, that will permit the State agency, and if needed HCFA, to assure that enrollee disputes are resolved in a fair, complete, and timely manner. We recognize that not all Medicaid providers and MCOs are alike, and welcome comments on how best to meet our goal without presuming that ''one size fits all.''

9. Continuation of Benefits Pending Grievance Resolution or State Fair Hearing Decision (§ 438.420)

In § 438.420, we are proposing that when the dispute involves the termination or reduction of a service currently being provided, the MCO must continue the enrollee's benefits until issuance of the final grievance decision or State fair hearing decision, if all of the following occur: (1) the initial grievance (standard or expedited) or the State fair hearing request is filed in a timely manner, (2) the enrollee requests continuation of the services, and (3) the services were ordered by an authorized MCO physician. Although we allow for State agency flexibility in defining timely filing timeframes, this continuation of benefits requirement should, at a minimum, meet the requirements outlined in the current State fair hearing process at §§ 431.230 and 431.231 (that is, at a minimum, meet the 5- or 10-day timeframes). We seek comments on the appropriateness of these timeframes for managed care services.

This provision only applies when the MCO physician initially authorized the services (that is, it does not apply to pre-service authorization requests that were denied) and when the beneficiary requests the services be continued (that is, the mere action of filing for a grievance or fair hearing in a timely manner is not sufficient for benefits to be continued). The continuation of benefits provision will not require a further statement of authorization from the MCO physician or affect benefits not originally authorized. We expect that the MCO will neither take nor threaten to take any punitive action against a physician who requests continuation of benefits or supports an enrollee's request for continuation of benefits.

Beneficiaries who have received continuation of benefits while they appeal to the MCO are not obligated to pursue their appeal further through the fair hearing process if the plan denies their appeal unless they so choose. It is important to note, however, that enrollees who lose their appeal at either the plan or fair hearing levels will be liable for the costs of all appealed services from the later of the effective date of the Notice of Intended Action or the date of the timely-filed appeal, through the date of the denial of the appeal.

As mentioned earlier, we had considered but rejected an option that would have required MCOs to automatically forward appeals they reject to the State fair hearing process for external review, as is currently the case in Medicare. Under this option, continuation of benefits could have also automatically occurred with the forwarding of the request. We have rejected this as well.

10. Effectuation of Reversed Grievance Resolutions (§ 438.421)

In § 438.421, we are proposing that if the MCO reverses its grievance resolution, the MCO must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 30 calendar days after the date the MCO receives the request for reconsideration. Furthermore, if the MCO's grievance resolution is reversed under the State fair hearing process, the MCO must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires within timeframes established by the State agency, but no less than 60 calendar days from the date the MCO receives notice reversing the MCO's grievance resolution.

11. Monitoring of the Grievance System (§ 438.422)

In § 438.422, we are proposing that the MCO and State agency use the complaint and grievance logs and annual grievance summary for contract compliance and quality monitoring. The specific contract compliance and quality monitoring should, at a minimum, include the MCO and State agency reviewing the logs and summary for trends in complaints and grievances against a particular provider or in a particular service, and the MCO conducting following up reviews, reporting results of the reviews to the State agency, and taking corrective action when necessary.

Some State agencies do not currently make full use of complaint and grievance data to monitor contracts with MCOs or to improve the functioning of Medicaid managed care. State agencies should review the types of complaints filed with each MCO to determine whether they point to systemic problems and should review MCOs' responses to complaints for both adequacy and timeliness.

12. Consequences of Noncompliance (§ 438.424)

Under section 1932(e)of the Act and § 438.718 of the regulations, discussed below, a contract with an MCO may be terminated if the MCO fails to comply with section 1903(m)(2)(A) or section 1932 of the Act. Proposed § 438.424(a) provides that the State agency may terminate the MCO's contract if it fails to comply with requirements in subpart F.

In addition, under section 1903(m)(2)(A)(xi) of the Act, absent a statutory exemption, Federal financial participation (FFP) in comprehensive risk contracts is conditioned on compliance with applicable requirements in section 1932 of the Act. The regulations in this subpart implement the grievance requirements in section 1932(b)(4) of the Act. Accordingly, compliance with these requirements is a condition for Federal matching, and failure to comply could result in a disallowance. In order to emphasize the importance of the grievance and appeal requirements in subpart F, proposed § 438.424(b) provides that if an MCO fails to comply with the provisions of this subpart, HCFA may deny FFP in payments under the contract.

F. Certifications and Program Integrity Protections (Subpart H)

Section 438.600 of subpart H contains provisions pertaining to plan certification of data, information, and material and general contract provisions.

Sections 1902(a)(4) and (19) of the Act, establish methods of administration that are necessary for the proper and efficient operation of the plan and ensure that care and services will be provided in a manner consistent with the best interest of the recipient and to preserve the integrity of the Medicaid program. In this proposed rule, we are requiring MCOs to certify the accuracy, completeness, and truthfulness of any data, including but not limited to, enrollment information or encounter data, that may be submitted to determine the basis for payment from a State agency. In addition, MCOs must certify the accuracy and completeness of information provided in contracts, requests for proposals, or other related documents specified by the State agency. We are also requiring that any entity seeking to contract as an MCO must have certain procedures in place designed to guard against fraud and abuse that include provisions for reporting to the State agency, HCFA, and the OIG information of violations of

law by the MCO, subcontractors, or enrollees for a determination as to whether criminal, civil, or administrative action may be appropriate.

G. Sanctions (Subpart I)

Section 1932(e)(1) of the Act requires, as a condition for entering into or renewing contracts under section 1903(m) of the Act, that State agencies have in place intermediate sanctions that the State agency may impose on MCOs if an MCO commits one of six specified offenses discussed below (in the case of an offense involving marketing, the Congress provides for sanctions against primary care case managers as well as MCOs). The Congress also in section 1932(e)(2) of the Act provides specific sanction authority under Federal law (civil money penalties, the appointment of temporary management, disenrollment rights for enrollees, and suspension of enrollment or payment) that State agencies can use to fulfill the sanction obligation in section 1932(e)(1) of the Act. In addition, section 1932(e)(3) of the Act requires that specified sanctions (temporary management and enrollee disenrollment rights) be imposed on MCOs with chronic violations, and section 1932(e)(4) of the Act authorizes State agencies to terminate MCE contracts if they fail to meet the requirements in sections 1932, 1903(m), or 1905(t) of the Act. Finally, certain sanctions (suspension of enrollment or of payment for new enrollees) may be imposed on any MCE for a failure to comply with requirements in section 1932 of the Act generally (or, in the case of an MCO, a failure to comply with section 1903(m) of the Act, as discussed below). This new sanction and termination authority under section 1932(e) of the Act would be implemented in proposed regulations in subpart I.

The new sanction authority in section 1932(e) of the Act represents the first time that the Congress has granted Medicaid sanction authority directly to State agencies. Under section 1903(m)(5) of the Act, which the Congress has left in place, HCFA is provided with authority to impose sanctions when Medicaid-contracting HMOs committed essentially the same offenses as those identified in section 1932(e)(1) of the Act. In light of the fact that Medicaid is a State-run program, HCFA implemented section 1903(m)(5) of the Act in regulations that provided for State agencies to monitor for the HMO (now MCO) offenses in question, make findings on violations, and propose sanctions that would be deemed to be HCFA sanctions if HCFA did not inform the State agency that it disagreed with the State agency recommendations, as discussed in § 434.67. HCFA also retains the right under § 434.67 to directly sanction Medicaid MCOs. Because the Congress left the sanction authority in section 1903(m)(5) of the Act in place, we are proposing to retain the regulation implementing this separate sanction authority, with non-substantive revisions, and recodify it as part of this sanctions subpart as proposed in § 438.730, ''HCFA Sanctions.''

In addition to the opportunity State agencies have had to recommend that HCFA sanctions be imposed under section 1903(m)(5) of the Act and § 434.67 of the regulations, most State agencies already utilize some type of sanction authority of their own, even though previously there was no Federal requirement that State agencies have sanctions established. We consulted extensively with the Medicaid Quality Technical Advisory Group (Q-TAG) to receive their input on the proposed provisions described in this subpart and to gain a better understanding of how State agencies use intermediate sanctions against MCOs.

1. Basis for Imposition of Sanctions (§ 438.700)

Proposed § 438.700(a) sets forth the six MCO offenses that, under section 1932(a)(1)(A) of the Act, must make an MCO subject to sanction. These offenses are as follows:

- A failure to provide medically necessary items and services that are required (under law or contract) to be provided to an enrollee;
- The imposition of premiums or charges in excess of those permitted under title XIX;
- Any act to discriminate among enrollees on the basis of health status or requirements for health care services, including expulsion or refusal to reenroll an individual (except as permitted by title XIX), or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization by eligible individuals whose Medical condition or history indicates a need for substantial future medical services;
- A misrepresentation or falsification of information furnished to the following:

—HCFA or the State under title XIX; or

—An enrollee, potential enrollee, or health care provider under title XIX; and

- A failure to comply with the physician incentive requirements under section 1903(m)(2)(A)(x) of the Act.

Proposed § 438.700(b) would implement the last sentence in section 1932(e)(1)(A) of the Act, which provides that a State agency may also sanction a primary care case manager if it determines that it distributed (directly or through an agent) marketing material that was not approved by the State agency or was misleading in violation of section 1932(d)(2)(A)(i)(II) of the Act and proposed § 438.104(b) of the regulations.

2. Types of Intermediate Sanctions (§ 438.702)

Proposed § 438.702(a) sets forth the types of intermediate sanctions that State agencies may impose under Federal law in fulfillment of their obligation under section 1932(e)(1)(A) of the Act (in the case of MCOs) or under their authority in section 1932(e)(1)(A) of the Act (in the case of MCEs). These sanctions are (1) civil money penalties, in amounts specified in § 438.702 (discussed below); (2) the appointment of temporary management of the MCO (this sanction may not be imposed on a primary care case manager); (3) granting enrollees the right to terminate enrollment without cause, and providing notice of such right; (4) suspension or default of all enrollment of individuals in the MCO or MCE; and (5) suspension of payment for new enrollees.

Proposed § 438.702(b) implements the additional authority in sections 1932(e)(2)(D) and (E) if the Act to suspend enrollment, or payment for new enrollees in the case of any MCE that violates section 1903(m) or section 1932 of the Act. Because the requirements in section 1903(m) of the Act apply only to MCEs that are MCOs, and thus could not be ''violated'' by a primary care case manager, we specify in proposed § 438.702(b) that only MCOs can be sanctioned for violating section 1903(m) of the Act.

3. Amounts of Civil Money Penalties (§ 438.704)

In proposed § 438.704, we reflect the civil money penalty amounts that, under section 1932(e)(2)(A) of the Act, can be imposed by State agencies for specified violations. These specified maximum amounts range from $15,000 to $100,000, depending upon the violation. In the case of overcharges to enrollees, the penalty is based on double the amount of the excess charges.

We note that the maximum amounts specified in section 1932(e)(2)(A) of the

Act and proposed § 438.704 only apply to the extent the State agency is relying upon this Federal law as authority for the sanction it is imposing. State agencies remain free to provide for sanctions under State law that may be more severe than those authorized under section 1932(e)(2)(A) of the Act.

4. Special Rules for Temporary Management (§ 438.706)

In proposed § 438.706, we would implement the authority in section 1932(e)(2)(B) of the Act to appoint temporary management of an MCO in the case of continued egregious behavior or threats to enrollee health. In proposed § 438.706(a), we set forth the grounds for such a sanction set forth in section 1932(e)(2)(B) of the Act.

In proposed § 438.708, we implement the requirement in section 1932(e)(3) of the Act that State agencies impose the temporary management sanction in section 1932(e)(2)(B) of the Act, and the enrollee right to disenroll without cause under section 1932(e)(2)(C) of the Act, when the State agency finds that an HMO has repeatedly failed to meet requirements in sections 1903(m) or 1932 of the Act. This provision is designed to protect enrollees from organizations that have a pattern of providing substandard care or continually putting an enrollee's health at risk. After consultation with Q-TAG members, we realize that this provision may be particularly burdensome for State agencies. By using ''repeatedly fails'' language, the Congress left it to HCFA or the State agency to decide how many violations trigger the temporary management requirement. Our intent with this provision is to maintain as much State flexibility as possible. Therefore, we want to be clear that State agencies have the authority to first terminate a contract with an MCO that violates contractual provisions before resorting to temporary management, as long as the cause for termination falls short of the State Plan's threshold (number and severity) of violations agreed upon by the Secretary that would cause temporary management to take effect. We also do not believe that the Congress intended to mandate the imposition of this sanction in the case of minor or technical violations, even if these occur repeatedly. We accordingly provide in § 438.708 that State agencies are only required to impose this sanction in the case of repeated substantial violations of sections 1903(m) or 1932 of the Act. The proposed regulation allows the State agency to temporarily manage MCOs through any administrative means it deems necessary. This means that States may utilize resources beyond what those agencies that have Medicaid jurisdiction traditionally provide. For example, a State could involve, entirely or in part, its Insurance Commission, or even contract with private organizations to assist in temporary management.

5. Notice of Sanction; Due Process (§ 438.710)

Under section 1932(e)(5) of the Act, before imposing the sanctions under section 1932(e)(2) of the Act (other than the temporary appointment of management), the State agency must provide the MCO (or, where applicable, primary care case manager) with notice and such other due process protections as the State agency may provide except that ''a State agency may not provide a pre-termination hearing before imposing the sanction'' of appointing temporary management.

In proposed § 438.710(a), we would require that, except as provided in § 438.710(b), before imposing any sanction in this subpart, the State agency must give the affected MCE ''timely'' written notice that explains the basis and nature of the sanction, and provide other due process protections that the State agency may elect to provide, which must be explained in the notice of intent to sanction. This provision is intended to provide MCEs some level of warning and protection against sanctions imposed by State agencies. Under proposed § 438.710(a)(1), the State agency must provide ''timely'' notice, and this notice must include which intermediate sanction the State agency is going to impose and the State agency's reason(s) for imposition. The State agency may also provide any other due process, as defined by the State agency, as it sees fit. Each State agency will have the flexibility to define ''timely.'' § 438.710(b) would reflect the statutory prohibition on providing a ''pre-termination hearing'' to an MCO prior to imposing the temporary management sanction under § 438.706 or § 438.708. We believe the intent of this provision is to allow State agencies to take swift, corrective action when necessary to protect the health of enrollees.

6. Termination of an MCE Contract (§ 438.718)

Proposed § 438.718 would implement the authority in section 1932(e)(4) of the Act to terminate an MCE contract for failing to comply with its contract, or requirements under sections 1932, 1903(m) (in the case of MCOs), or 1905(t) of the Act (in the case of primary care case managers). We note that section 1932(e)(4) of the Act does not refer to the requirements of ''this section'' (1932), but to ''this part.'' We are interpreting this reference to have been intended to refer to requirements in section 1932 of the Act.

7. Hearing on Contract Termination (§ 438.720)

Proposed § 438.720 would implement the requirement in section 1932(e)(4)(B) of the Act that an MCE receive a right to a hearing before its contract is terminated. In proposed § 438.720(b)(1), we require that State agencies provide written notice of an intent to terminate within 30 days of deciding to terminate, and that this notice provide the reasons for the proposed termination, and the time and place of a hearing. Proposed § 438.720(b)(2) provides that the hearing must be not less than 30 or more than 60 days after the notice, unless the State agency and MCE agree in writing to a different date. The purpose of the timeframe requirements is to allow the MCE appropriate time to prepare for the hearing. In § 438.720(c), we would require that if the proposed termination decision is affirmed following the hearing, the State agency must indicate the date the termination is effective.

8. Disenrollment During Termination Hearing Process (§ 438.722)

Proposed § 438.722 would implement section 1932(e)(4)(C) of the Act, which provides that the State agency may provide individuals enrolled with an MCE that is the subject of a termination hearing that a decision to terminate the MCE's contract is under appeal, and permit such enrollees to disenroll immediately without cause. This authority provides an additional tool for a State agency to use during the contract termination hearing process.

9. Notice to HCFA (§ 438.724)

Under proposed § 438.724(a), the State agency would be required to give notice to the HCFA Regional Office whenever it imposes or lifts a sanction. Proposed § 438.724(b) would require that this notice specify the kind of sanction at issue, and the reason for the State agency's decision to impose or lift it. This provision was added in order that HCFA may be ensured that State agencies and contractors are in compliance with the requirements of section 1932(e) of the Act.

10. Sanction by HCFA (§ 438.730)

We propose to redesignate § 434.67 as § 438.730 with non-substantive revisions and appropriate changes in terminology.

H. Conditions for Federal Financial Participation (Subpart J)

In subpart J, we propose to include both existing and new regulations

pertaining to State eligibility for Federal financial participation (FFP) in payments under managed care contracts. As discussed above, absent a statutory exemption from its provisions, section 1903(m)(2)(A) of the Act conditions Federal matching in payments under a comprehensive risk contract on compliance with the requirements in section 1903(m)(2)(A) of the Act. These section 1903(m)(2)(A) of the Act requirements include meeting the definition of MCO, payment on an actuarially sound basis, prior approval by HCFA of the contract, physician incentive requirements, and the new disenrollment rights under section 1932(a)(4) of the Act, which are incorporated under section 1903(m)(2)(A)(vi) of the Act. Most significantly, section 1903(m)(2)(A)(xi) of the Act conditions Federal matching in comprehensive risk contracts on the contract's and the MCO's compliance with applicable requirements in section 1932 of the Act. This includes the MCO's role in complying with the State quality strategy established under subpart E, the beneficiary protections in subpart C, and the grievance requirements in subpart F. Indeed, all of the requirements in this part that apply to MCOs implement either section 1903(m) or section 1932 of the Act. Thus, Federal matching in MCO contracts is conditioned on compliance with these requirements in section 1932.

1. Basic Requirements (§ 438.802)

We provide in proposed § 438.802 that FFP is available in expenditures for payments under an MCO contract only for such periods during which the contract meets the requirements of part 438 and is in effect.

2. Prior Approval (§ 438.806)

Section 4708(a) of the BBA amended section 1903(m)(2)(A)(iii) of the Act to require the Secretary's prior approval for all MCO's contracts involving expenditures in excess of $1,000,000 for 1998. For subsequent years, the threshold amount for MCO contracts will be increased by the percentage increase as determined by the consumer price index for all urban consumers.

Before the amendments made by section 4708 (a) of the BBA, section 1903 (m)(2)(A)(iii) of the Act required that the Secretary must provide prior approval for all HMO contracts involving expenditures in excess of $100,000. There was no reference in law or regulations made for monetary increases of the threshold amount in future years.

We propose technical and conforming revisions to § 438.808, which would contain the rules currently found in § 434.80 (redesignated as § 438.802).

3. Expenditures for Enrollment Broker Services (§ 438.810)

Proposed § 438.810 would implement section 1903(b)(4) of the Act, added by section 4707(b) of the BBA, which provides for limitations on FFP in payments to enrollment brokers. Prior to this provision, there was no reference or provisions in current law or regulations specifically pertaining to enrollment brokers and their expenditures. This provision clarifies that States' expenditures for enrollment brokers are considered necessary for the proper administration of the State Plan, but only if the broker is independent of any managed care entity or health care provider that provides services in the same State in which the broker is conducting enrollment activities. No owner, employee, board member, or person who has a contract with the broker may have financial interest in such entity or provider, nor may the individual have been debarred by any Federal agency or subject to civil penalties under the Act.

In addition, State agencies would, under our proposed rule, be required to submit to HCFA all initial enrollment broker contracts or Memoranda of Agreement (MOA) for approval prior to the effective date of the contract or MOA. Contracts being renewed with the same contractor would not be subject to prior approval. We are proposing to impose this requirement under our authority under section 1902(a)(4) of the Act to provide for necessary and proper methods of administration. We believe that it is important that all parties know in advance whether an enrollment broker arrangement meets requirements for FFP. We accordingly believe that it is ''necessary and proper'' for the State agency to obtain prior approval of broker arrangements. HCFA will review contracts or MOAs to ensure that they meet the requirements for FFP.

4. Costs under Risk and Nonrisk Contracts (§ 438.812)

Proposed § 438.812 contains the rules on matching rates for costs under risk and non-risk contracts currently set forth in §§ 434.74 and 434.75.

I. Amendments and Revisions to Parts 400, 430, 431, 434, 435, 440, and 447

1. Amendments to Part 400

We propose to amend § 400.200 to add explanations of the acronyms ''HIO,'' ''MCE,'' ''MCO,'' and ''PHP.''

2. Amendments to Part 430

We propose to add a new § 430.5, containing definitions that currently appear in part 434 or elsewhere. We propose to include several current definitions unchanged, for example, Federally qualified HMO, clinical laboratory, health insuring organization, and risk contract. We also propose to revise several definitions. We propose to revise the current definition of ''capitation fee'' to refer to ''capitation payment.'' We believe this more accurately reflects the terminology actually used, and eliminates any confusion between capitation payments and ''fee'' for service payments that may arise from the use of the word ''fee.''

We propose to revise the current definition of ''risk comprehensive contract'' to refer more logically to a ''comprehensive risk contract.'' More importantly, we are proposing to revise this definition to separately identify each discrete service that is incorporated in the statutory definition of a contract subject to the requirements in section 1903(m)(2)(A) of the Act. Under section 1903(m)(2)(A) of the Act, a risk contract is subject to the requirements in section 1903(m)(2)(A)of the Act (and is considered a ''comprehensive risk contract'') if it includes inpatient hospital services and any one of several State plan services identified through citations to the statutory subsections providing for coverage of the services, or any three of the identified services. Confusion was created, however, by the fact that in some cases services were clustered together in a single subsection. For example, nursing facility services, EPSDT services, and family planning services were all in one cited subsection. Questions were raised as to whether a contract had to include all the services in a cluster in order for the services to count as an additional service when inpatient hospital services are covered, or as one of three outpatient services that would trigger section 1903(m)(2)(A) of the Act when inpatient hospital services are not provided. Also, when a cluster included three services, questions were raised as to whether covering three services in a single cluster counted as a single service, or as three services for purposes of the three services rule. The current regulation defining comprehensive risk contracts, § 434.21(b), does not do anything to resolve these questions, since it contains the same ''clusters'' of services as the statute. In our proposed revised definition of comprehensive risk contract, with the exception of ''laboratory and x-ray services'' that are

considered together as a single service, the services referenced in section 1903(m)(2)(A) of the Act are all listed separately, and it is clear that offering inpatient hospital services and any one of these nine services, or any three of these nine services, would trigger the definition of ''comprehensive risk contract,'' and (absent a statutory exemption) the requirements in section 1903(m)(2)(A) of the Act.

We propose to revise the definition of ''contractor'' to eliminate listed examples, and apply it more broadly to any contractor that meets the current introductory clause.

Finally, we propose to revise the definition of non-risk contract to reflect the fact that under such a contract, the contractor is paid based on costs to the extent they do not exceed the upper payment limit in § 447.362.

3. Revisions to Part 431

We propose conforming amendments to part 431 to reflect changes in terminology and other new provisions enacted in the BBA. As discussed in section B.5. above, we also have made conforming changes to the fair hearing regulations in part 431, subpart E, to reflect the MCO grievance and appeals requirements in part 438 subpart F.

4. Revisions to Part 434

As discussed above, we propose to revise part 434 to remove provisions relating to managed care, which we have moved to part 438 as described above.

5. Revisions to Part 435

a. Technical and Conforming Changes. We propose conforming amendments to part 435 to reflect changes in terminology and other new provisions enacted in the BBA. As discussed above, in section B.5., we also have made conforming changes to the fair hearing regulations in subpart E of part 435 to reflect the grievance and appeals provisions in subpart F of part 438. In addition, we propose to implement BBA changes to the rules on guaranteed eligibility.

b. Guaranteed Eligibility (§§ 435.212 and 435.326). Prior to the enactment on August 5, 1997 of section 4709 of the BBA, section 1902(e)(2) of the Act provided that State agencies, at their option, could provide for a minimum enrollment period, during which a Medicaid individual enrolled in a Federally qualified HMO or one of certain other specified entities retains eligibility for Medicaid services the HMO provides even if the enrollee otherwise loses Medicaid eligibility. Even though this provision was enacted in 1983, since that time only a few State agencies have opted to implement this provision. One factor we believe that has kept State agencies from making greater use of this provision is the requirement that it was limited only to those individuals who were enrolled in Federally qualified HMOs and other entities that are not prevalent in all States.

Section 4709 of the BBA expands section 1902(e)(2)(A) of the Act to include individuals enrolled in MCOs and primary care case management systems. This expansion greatly increases the number of individuals who will be potentially eligible for the guaranteed eligibility provision.

Specifically, section 4709 expands the State agency's option to guarantee up to 6 months of eligibility in two ways: (1) it expands the types of MCOs whose members may have guaranteed eligibility in that it now includes anyone who is enrolled with a Medicaid MCO as defined in section 1903(m)(1)(A) of the Act, and (2) it expands the option to include those individuals enrolled with a primary care case manager as defined in section 1905(t) of the Act. The provision also describes that when Medicaid benefits are furnished under the guaranteed eligibility provisions, the benefits include only those provided by the MCO or by or through the case manager. This provision applies to the 50 States and the District of Columbia.

We note that section 1902(e)(2) limits the ''guaranteed'' benefits provided for under its authority to benefits provided to the individual as an enrollee of the MCO, or by or through the case manager for primary care case management enrollees. In the revised § 435.212, we refer to services ''furnished to the beneficiary as an MCE enrollee.'' With respect to primary care case management arrangements, we have interpreted that the guaranteed benefits provided under this provision extend to services that do not require case-by-case authorization of the case manager, such as emergency services, dental, or OB/GYN services received by an enrollee. The scope of the blanket authorization can be defined by the State agency. An example of a blanket authorization would be one which allows Medicaid beneficiaries to access emergency room or dental services without the need to consult a case manager.

6. Revisions to Part 440: Primary Care Case Management Services (§ 440.168)

Section 4702 of the BBA adds primary care case management services to the list of optional Medicaid services in section 1905(a) of the Act. The BBA also added section 1905(t) to the Act. This new subsection defines primary care case management services, identifies who may provide them, and sets forth requirements for contracts between primary care case managers and the State agency. Before to the BBA, State agencies were permitted to implement a primary care case management system only through a freedom of choice waiver under section 1915(b)(1) of the Act or through a section 1115 waiver authority. This provision was set forth in order to allow State agencies more flexibility in providing quality services to Medicaid beneficiaries through an arrangement that has proven to be cost effective for the Medicaid program. We are proposing to add § 440.168—Primary Care Case Management Services. This new section will define primary care case management services and identify who may provide them.

Primary care case management services means case management related services that include the locating, coordinating, and monitoring of health care services provided by a primary care case management provider under contract with the State agency as set forth in § 438.6(j). This includes the authority for a primary care case management provider to deny services that are not medically necessary to require preauthorization of services.

A primary care case manager is a physician, physician group practice, or an entity employing or having other arrangements with physicians to provide primary care case management services under contract with the State agency. At the State agency's option, nurse practitioners, certified nurse midwives, and physician assistants may also qualify as primary care case management providers.

Primary care for the purpose of this provision includes all health care services and laboratory services customarily provided by or through a general practitioner, family medicine physician, internal medicine physician, obstetrician/gynecologist, or pediatrician in accordance with State licensure and certification laws and regulations.

7. Revisions to Part 447

a. Technical and Conforming Changes. We propose to make technical and conforming changes reflecting changes in terminology and other revisions made by the BBA.

b. Timely Claims Payment by Managed Care Organizations (§ 447.46). The purpose of this new section of the regulations is to implement section 4708(c) of the BBA, which added section 1932(f) to the Act. Under this provision, contracts, under section

1903(m) of the Act, with managed care organizations must provide that payment to affiliated health care providers for items and services covered under the contract must be made on a timely basis, consistent with the claims payment procedures described under section 1902(a)(37)(A) of the Act. To be consistent with section 1902(a)(37)(A) of the Act, the Medicaid MCO's contract must ensure that 90 percent of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the contract and furnished by health care providers are paid within 30 days of receipt and that 99 percent of such claims are paid within 90 days of receipt. However, the MCO and health care providers have the flexibility to establish an alternative payment schedule that is mutually agreed upon. If such an alternative payment schedule is established, it should also be described in the managed care organization's contract, so that providers are ensured payment under the procedures agreed to.

IV. Effective Date of the Final Rule

When this regulation is published as a final rule, we intend to make it effective 60 days following publication. Provisions that must be implemented through contracts with MCOs, PHPs, HIOs, or enrollment brokers will be effective with contracts entered into or revised on or after 60 days following the effective date, but no longer than 12 months from the effective date. Of course, many provisions in this proposed rule reflect statutory requirements that are already in effect. HCFA has provided State agencies with guidance on implementing these provisions through a series of letters to State Medicaid Directors. These letters appear on the HCFA Home Page and can be accessed at http://www.hcfa.gov. We invite comment on the proposed implementation timeframe.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

The following information collection requirements and associated burdens are subject to the PRA.

A. Section 438.10 Information Requirements

1. Section 438.10 (d), (e), and (f)

a. Requirement. In summary, § 438.10 (d) and (e) state that each State agency, MCE, or enrollment broker, as appropriate, must furnish information to enrollees and potential enrollees, to meet the requirements of this section. The basic information listed in § 438.10(e) of this section must be provided as follows:

- To each enrollee, by the MCO, within a reasonable time after it receives, from the State agency or the enrollment broker, notice of the recipient's enrollment;
- To any potential enrollee that requests it, by the MCO or by the State agency, if the State agency prohibits MCOs from providing it; and
- On an annual basis thereafter, the MCO must notify enrollees of their right to request and obtain this information. The information that must be provided includes the following:

—Kinds of benefits and amount, duration, and scope available under the contract;
—Procedures for obtaining services, including authorization requirements;
—Names and locations of current network providers, including identification of those who are not accepting new patients;
—Any restrictions on the enrollee's freedom of choice among network providers;
—The extent to which enrollees may obtain services from out-of-network providers;
—Provisions for after-hours and emergency coverage;
—Policy on referrals for specialty care and for other services not furnished by the enrollee's primary care provider;
—Cost-sharing, if any;
—Enrollee rights and responsibilities, such as §§ 438.56 and 438.320; and
—Grievance and appeals processes for the enrollee and health care provider, including procedures for obtaining care or services during the appeals process.

In addition, § 438.10(f) requires that information related to MCEs and health care facilities, their licensure, certification, and accreditation status. Information that includes, but is not limited to, education and board certification and recertification of health professionals must be furnished, upon request, to each enrollee, by the MCE, and to each potential enrollee, by the MCE, or by the State agency if the State agency prohibits MCEs from providing it.

b. Burden. We believe the burden placed on State agencies, MCEs, or enrollment brokers as a result of this requirement is the time associated with the modifying the content of existing information materials, as well as the time associated with distributing the materials to enrollees as specified by the regulation. We estimate that it will initially take 12 hours for each MCE to modify existing information materials to conform with the requirement above. We further estimate that there are approximately 568 MCEs, equating to an initial modification burden of approximately 6,800 hours. After the initial modification, we estimate that it will take MCEs approximately 4 hours each to annually update the information materials, equating to an annual total burden of approximately 2,300 hours.

We expect that it will take MCEs or State agencies approximately 5 minutes per enrollee to mail the initial packet, for an estimated 19,400,000 total enrollees. The total burden associated with this requirement is approximately 1,616,700 hours, approximately 2,800 hours per MCE or 33,700 hours per State agency.

We similarly estimate that it annually will take MCEs or State agencies 5 minutes per enrollee to mail

information materials upon request. We estimate that 10 percent of enrollees and potential enrollees will request information annually, equating to approximately 2,075,800 enrollees and potential enrollees. The annual mailing burden associated with this requirement is estimated to be 2,075,800 individuals multiplied by 5 minutes per person, for a total burden of approximately 173,000 hours (approximately 300 hours per MCE or 3,600 hours per State agency).

Finally, we estimate that it will annually take MCEs or State agencies 5 minutes per enrollee to notify enrollees of their right to receive information. Five minutes multiplied by an estimated total enrollee population of 19,400,000 individuals equates to an annual burden of approximately 1,616,700 hours or approximately 2,800 hours per MCE or 33,700 hours per State agency.

2. Section 438.10(g)

a. Requirement. Section 438.10(g) states that before or during enrollment, the State must, directly or through the MCE, provide information to Medicaid enrollees on (1) any benefits to which they may be entitled under the Medicaid program, but which are not covered under the MCE contract, (2) specific instructions on where and how to obtain these benefits, including how transportation is provided and, (3) cost sharing, if any.

b. Burden. The burden associated with this requirement is the time it would take State agencies to collect and mail this information to enrollees. We believe that it will take State agencies approximately 12 hours each to collect and prepare the information materials associated with this requirement, equating to an initial burden of 48 States times 12 hours, or 576 hours. The additional mailing time associated with this requirement is approximately 5 minutes per enrollee, equating to an annual mailing burden of 5 minutes multiplied by 19,400,000 enrollees, or approximately 1,616,700 hours (approximately 33,700 hours per State).

3. Section 438.10(h)

a. Requirement. Section 438.10(h) states that each primary care case manager must, upon request, provide information about the grievance processes available to enrollees and health care providers, including procedures for obtaining services during the appeals process.

b. Burden. The burden associated with this requirement is the amount of time required by primary care case managers to mail the required information to enrollees. We believe that it will take the estimated 60 primary care case managers approximately 5 minutes per enrollee to mail this information. We estimate that there are a total of approximately 4,300,000 primary care case manager enrollees, and that 10 percent of those enrollees will request this information. This equates to an annual burden of 5 minutes multiplied by 430,000 enrollees, or approximately 35,800 hours (approximately 600 hours per primary care case manager).

4. Section 438.10(i)

a. Requirement. In summary, section 438.10(i) states that if a State agency MCO or PHP provides for mandatory MCE enrollment under section 1932(a)(1)(A) of the Act, the State agency must provide information either directly or through the MCE to potential enrollees whenever they request it, and at least once a year in a comparative, chart-like format. The information must include the MCE's service area, the benefits covered under the contract, any cost sharing imposed by the MCE and, to the extent available, quality and performance indicators, including but not limited to disenrollment rates and enrollee satisfaction.

b. Burden. We believe that the additional burden on State agencies (that is, not yet captured in the above provisions) is the length of time associated with creating the comparative chart. We estimate that it will take State agencies approximately 4 hours each to create the comparative chart. We further estimate that approximately 3 State agencies per year will avail themselves of the State Plan Option, for a total annual burden of approximately 12 hours.

B. Section 438.56 Enrollment and Disenrollment: Requirements and Limitations

1. Section 438.56(f)

a. Requirement. Section 438.56(f) states that each enrollee must submit a written request for disenrollment to the State agency and to the MCE.

b. Burden. We believe that the burden associated with this requirement is the length of time it would take enrollees to submit in writing a disenrollment request. We estimate that it will take approximately 2 minutes per enrollee to generate a disenrollment request. We estimate that approximately 5 percent of MCE enrollees will request that they be disenrolled from an MCE. This equates to an annual burden of approximately 2 minutes multiplied by 1,940,000 affected enrollees, or approximately 32,300 hours.

2. Section 438.56(g)

a. Requirement. Section 438.56(g) requires that in a State where that State agency restricts disenrollment under this section, MCEs must notify enrollees and potential enrollees of their disenrollment rights at least 60 days before the start of each enrollment period and at least once a year.

b. Burden. The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the general information requirements in § 438.10.

C. Section 438.102 Enrollee-provider Communications

1. Requirement

Section 438.102(c) states that the general rule in paragraph (b) of this section does not require the MCO to cover, furnish, or pay for a particular counseling or referral service if the MCO objects to the provision of that service on moral or religious grounds; and makes written information on these policies available to (1) the State agency, with its application for a Medicaid contract, prospective enrollees, before and during enrollment, and (2) current enrollees, within 90 days after adopting the policy with respect to any particular service.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the general information requirements in § 438.10.

D. Section 438.110 Assurances of Adequate Capacity and Services

1. Sections 438.110(b) and (c)

a. Requirement. Sections 438.110(b) and (c) state that each MCO must give the State agency and HCFA assurances that it has the capacity to serve the expected enrollment in its service area in accordance with subpart E of this part. Each MCO must submit documentation to demonstrate that it (1) offers an appropriate range of services, in accordance with subpart E of this part, including access to preventive services, primary care services, and specialty services for the anticipated number of enrollees for the service area; (2) maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area and; (3) meets the availability of services requirements in § 438.306 of this part. Each MCO must submit the

documentation described in § 438.110(b) at least every 2 years, and, specifically (1) at the time it enters into or renews a contract with the State and (2) at any time the State agency determines there has been a significant change in the MCO's delivery network or enrollee population.

b. Burden. While these information collection requirements are subject to the Act, we believe that MCOs and PHPs already collect and provide this information to State agencies as part of their customary and usual business practices. Therefore, in accordance with 5 CFR 1320.3(b)(2), the burden associated with these information collection requirements is exempt because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

The only additional burden on MCOs and PHPs is the length of time required for MCOs and PHPs to compile this information in the format specified by the State agency, and the length of time for the MCOs and PHPs to mail the information to the State and HCFA. We estimate that it will take each MCO and PHP approximately 20 hours to compile the information necessary to meet this requirement, for a total burden of 20 hours multiplied by 502 MCOs and PHPs, or approximately 10,000 hours. In addition, we estimate that it will take MCOs and PHPs approximately 5 minutes each to mail the materials associated with this requirement to States, for an annual burden of approximately 5 minutes multiplied by 502 MCOs and PHPs, or approximately 42 hours.

2. Section 438.110(d)

a. Requirement. Section 438.110(d) states that in addition, after the State agency reviews the documentation, and after the MCO makes any changes required as a result of that review, the MCO must submit to HCFA assurances that include copies of the documentation reviewed by the State agency and the State's certification that the MCO has complied with the State's requirements for access to services, as set forth in the availability of services requirements in § 438.306 of this part.

b. Burden. While these information collection requirements are subject to the Act, we believe that State agencies already assess whether MCOs or PHPs have adequate capacity and services to serve the State's Medicaid population. Therefore, in accordance with 5 CFR 1320.3(b)(2), the burden associated with these information collection requirements is exempt because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

We believe that the only additional burden on State agencies is the length of time associated with preparing and mailing the certification forms that are required as part of this regulation. We estimate that it will take State agencies approximately 30 minutes per MCO/PHP to create and mail the certification letters. Thus, the annual burden associated with this activity is estimated to be 30 minutes multiplied by 502 MCOs and PHPs, for a total burden of approximately 251 hours.

MCOs and PHPs have an additional burden associated with mailing the documentation and certification letters to HCFA. We estimate this activity to take approximately 5 minutes per MCO and PHP, for a total annual burden of 5 minutes multiplied by an estimated number of 502 MCOs and PHPs, or approximately 42 hours.

E. Section 438.114 Emergency and Post-stabilization Services

1. Requirement

Section 438.114(b) states that at the time of enrollment and at least annually thereafter, each MCO must provide, in clear, accurate, and standardized form, information that, at a minimum, describes or explains (1) what constitutes an emergency, with reference to the definitions in paragraph (a) of this section; (2) the appropriate use of emergency services; (3) the process and procedures for obtaining emergency services, including use of the 911 telephone system or its local equivalent; (4) the locations of emergency settings and other locations at which MCO physicians and hospitals provide emergency services and post-stabilization care covered under the contract; and (5) the fact that prior authorization is not required.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the general information requirements in § 438.10.

F. Section 438.318 Enrollee Information

1. Requirement

Section 438.318(b) states that each State agency or its contracted representative must provide the information specified in paragraph (b)(2) of this section, for each contracting MCO throughout the State to any potential enrollee who requests it, and all potential enrollees, when they first become eligible for Medicaid, are considering choice of MCOs under a voluntary program, or are first required to choose an MCO under a mandatory enrollment program, within a time frame that enables them to use the information in choosing among available MCOs.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the general information requirements in § 438.10.

G. Section 438.340 Quality Assessment and Performance Improvement Program

1. Requirement

Section 438.340(d)(10) states that each MCO must report the status and results of each project to the State as requested.

2. Burden

We expect that, in any given year, each MCO will complete two projects, and will have four others underway. We further expect that State agencies will request the status and results of each MCO's projects annually. Accordingly, we estimate that it will take an MCO 5 hours to prepare its report for each project, for an annual total burden of 30 hours per MCO. In aggregate, this burden equates to 30 hours multiplied by an estimated 389 MCOs, or approximately 11,700 hours. We estimate that the maximum burden on PHPs is also 30 hours per PHP, with an aggregate burden of approximately 3,400 hours (5 hours per project times a maximum number of 6 projects multiplied by 113 PHPs).

H. Section 438.342 Health Information Systems

1. Requirement

Section 438.342(b)(3) states that each MCO must make all collected data available to the State agency and to HCFA, as required in this subpart, or upon request.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe that the burden associated with these information collection requirements is exempt from the Act in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would

be incurred by persons in the normal course of their activities.

I. Section 438.402 General Requirements

1. Requirement

In summary, § 438.402 states that if the MCO makes a standard grievance decision that is wholly or partly adverse to the enrollee, the MCO must submit the decision and all supporting documentation to the State agency as expeditiously as the enrollee's health condition requires but no later than 30 calendar days after it receives the grievance, for further review in the State's fair hearing system.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the general requirements in § 438.410.

J. Section 438.404 Notice of Intended Action

1. Requirement

In summary, § 438.404 states that if an MCO intends to deny, reduce, or terminate a service or deny payment, or does not furnish a service with reasonable promptness, the MCO must give the enrollee timely written notice that meets the requirements set forth § 438.404(a) through (k).

2. Burden

We estimate that the burden associated with this requirement is the length of time it would take an MCO or PHP to provide written notice of an intended action. We estimate that it will take MCOs and PHPs 5 minutes per action to make this notification. We estimate that approximately 5 percent of the approximately 14 million MCO and PHP enrollees will receive one notice of intended action per year from their MCO or PHP (1395 per MCO/PHP). The notification burden associated with this notice is estimated to be 5 minutes per request (115 hours per MCO/PHP), for a total burden of approximately 58,000 hours.

K. Section 438.406 Handling of Complaints and Grievances

1. Requirement

In summary, § 438.406 states that each MCO must acknowledge receipt of each complaint and grievance.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the grievance resolution and notification requirements in § 438.408.

L. Section 438.408 Grievance Resolution and Notification

1. Requirement

In summary, § 438.408 states that an MCO receiving an expedited grievance must make its decision and notify the affected parties (enrollee and the physician as warranted by the patient's medical condition or situation) in writing of its decision, whether adverse or favorable, as expeditiously as the enrollee's health condition requires, but not later than 72 hours after receiving the request. Similarly, an MCO receiving a standard grievance must make its decision and notify the affected parties (enrollee and the physician) as warranted by the patient's medical condition or situation) in writing of its decision, whether adverse or favorable, as expeditiously as the enrollee's health condition requires but no later than 30 calendar days after it receives the grievance. MCO notice of both expedited and standard grievance decisions must include the requirements specified in § 438.408 (b)(1) through (b)(5).

2. Burden

We estimate that approximately 1 percent of the approximately 14 million MCO and PHP enrollees will file a complaint with their MCO or PHP (279 per MCO/PHP). The notification burden associated with the acknowledgment of each complaint is estimated to be 5 minutes per request (23 hours per MCO/PHP) for a total burden of approximately 11,670 hours. We also estimate that approximately .5 percent of the approximately 14 million MCO and PHP enrollees will file a grievance with their MCO or PHP (139 per MCO/PHP). The estimated notification burden associated with the acknowledgment of each grievance is estimated to be 5 minutes per request (12 hours per MCO/PHP), for a total burden of approximately 5,800 hours.

For these cases, we estimate that the burden on the enrollee filing a complaint or grievance is approximately 20 minutes per case, for a total aggregate burden of 70,000 hours annually. We estimate that the burden on the MCO or PHP is approximately 4 hours per case. This time includes both the information collection activity and the decision making process. The estimated annual burden on MCOs and PHPs equates to approximately 1,700 hours per MCO/PHP, or approximately 280,000 hours in total. Finally, the estimated notification burden on MCOs and PHPs associated with the grievance resolution is 5 minutes per request (12 hours per MCO/PHP) for an aggregate annual burden of approximately 5,800 hours.

M. Section 438.410 Expedited Resolution of Grievances

1. Section 438.410(c)

a. Requirement. Section 438.410(c) states that if the MCO makes an expedited grievance decision that is wholly or partly adverse to the enrollee, the MCO notifies the State agency of each decision and submits records and documentation to support the decision, as expeditiously as the enrollee's health condition requires, but no later than 24 hours after the expedited decision.

This section contains the applicable requirements for submitting and appealing an MCO's or PHPs's adverse grievance decision through the Medicaid State Fair Hearing process. The required procedures generally involve a written request from an enrollee, preparation of a brief, written explanation and case file by the MCO or PHP organization, and notification of the decision by the MCO or PHP.

b. Burden. We estimate that, annually, approximately 30 percent of grievances result in a decision that is adverse to the enrollee, and will undergo review through the State Fair Hearing process (approximately 42 cases per MCO/PHP). For these cases, we estimate an additional burden on the MCO or PHP of approximately 2 hours per case. Thus, the estimated total annual burden on MCOs and PHPs associated with grievances is 84 hours per MCO/PHP, or an aggregate total burden of 42,000 hours (2 hours multiplied by an estimated 21,000 affected enrollees).

2. Section 438.410(f)

a. Requirement. Section 438.410(f) states that if an MCO denies a request for expedited grievance, it must automatically transfer the request to the standard timeframe process and give the enrollee prompt oral notice of the denial and follow up, within 2 working days, with a written letter that meets the requirements specified in 438.410(f)(2)(i) through (f)(2)(iii).

b. Burden. We estimate that, annually, expedited grievance requests will account for fewer than 30 percent of all grievances filed with MCOs and PHPs (42 per MCO/PHP). We further estimate that MCOs and PHPs will deny less than 2 percent of all requests for expedited grievances (1 per MCO/PHP). We estimate that the burden associated with this requirement is the length of time it would take an MCO or PHP to provide

oral and written notice of this denial. We estimate that it will take MCOs and PHPs 5 minutes per oral notice and 5 minutes per written notice to make this notification (that is, a total burden of 10 minutes per MCO/PHP) for a total aggregate annual burden of approximately 70 hours.

N. 438.414 Information about the Grievance System

1. Requirement

Sections 438.414(a) and (b) state that each MCO must provide information about the grievance system, as specified in § 438.10 and this subpart to (1) enrollees; (2) potential enrollees (as permitted by the State agency); and (3) all providers, at the time of subcontracting. The information must explain the grievance system through a State-developed or State-approved description and must include the information set forth in § 438.414 (b)(1) through (b)(6).

In addition, § 438.414(c) states that upon request, the MCO must provide enrollees and potential enrollees with aggregate information, derived from the collected information in § 438.416(e), regarding the nature of enrollee grievances and their resolution.

2. Burden

The following information collection requirements are subject to the PRA. However, we believe the burden associated with these requirements is captured in the general information requirements in § 438.10.

O. Section 438.416 Record Keeping and Reporting Requirements

1. Requirement

Sections 438.416(a), (c), and (d) state that each MCO must maintain (1) a log of all complaints and grievances and their resolution; (2) a record any disenrollment and the reason for it, even if it occurs before the grievance process is completed; and (3) retain the records of complaints, grievances (including their resolution) and disenrollments for 3 years, in a central location, and make them accessible to the State agency.

In addition, § 438.416(e) states that each MCO must, at least once a year, send to the State agency a summary that includes the following information: (1) the number and nature of all complaints and grievances; (2) the timeframes within which they were resolved, and the decisions; (3) a listing of all grievances that have not been resolved to the satisfaction of the affected enrollee, (4) the number and nature of grievances for which the MCO provided expedited resolution, and the decisions; and (5) any trends relating to a particular provider or a particular service.

This section contains the applicable requirements that MCOs and PHPs must follow to record and track complaints and grievances. We estimate that approximately 1 percent of the approximately 14 million MCO and PHP enrollees will file a complaint with their MCO or PHP (279 complaints per MCO/PHP). The recording and tracking burden associated with each complaint is estimated to be 1 minute per request (5 hours per MCO/PHP) for a total aggregate burden of 2,300 hours (1 minute multiplied by an estimated 140,000 enrollees who would file a complaint).

2. Burden

We estimate that approximately .5 percent of the approximately 14 million MCO and PHP enrollees will file a grievance with their MCO or PHP (139 per MCO/PHP). The recording and tracking burden associated with each grievance is estimated to be 1 minute per request (2 hours per MCO/PHP) for a total aggregate burden of 1,200 hours (1 minute multiplied by an estimated 70,000 enrollees who would file a grievance).

This section also contains the applicable requirements that MCOs and PHPs must follow to submit the annual summary of complaints and grievances. Every MCO and PHP (approximately 502 organizations) must submit an annual report. We estimate that the burden on the MCO or PHP for collecting information and preparing this summary will be approximately 4 hours per MCO/PHP or approximately 2,000 hours total. We estimate that the annual burden on each MCO or PHP for mailing the summary will be approximately 5 minutes per MCO/PHP, or approximately 42 hours in aggregate.

P. Section 438.602 Certification of Data That Determine Payment

1. Requirement

When payments from State agencies to MCOs are based on data submitted by the MCO that includes, but is not limited to, enrollment information, encounter data, or other information required by the State, the MCO must, concurrent with the submission of the data attest to such data's accuracy, completeness, and truthfulness as a condition of receiving such payment.

2. Burden

While the requirement for a MCO to attest to the accuracy of enrollment information, encounter data, or other information required by the State agency, is subject to the PRA, the burden associated with this requirement is captured during the submission of such data. Therefore, we are assigning 1 token hour of burden for this requirement.

Q. Section 438.608 Certification of Proposals or Contracts

1. Requirement

MCOs must certify the accuracy, completeness, and truthfulness of information provided in contracts, requests for proposals, or other related documents specified by the State agency.

2. Burden

While the requirement for a MCO to certify the accuracy, completeness, and truthfulness of information provided in contracts, requests for proposals, or other related documents specified by the State agency is subject to the PRA, the burden associated with this requirement is captured during the submission of such information. Therefore, we are assigning one token hour of burden for this requirement.

R. Section 438.710 Notice of Sanction; Due Process

1. Requirement

Section 438.710(a)(1) states that before imposing any of the sanctions specified in this subpart, the State must give the affected MCE written notice that explains the basis and nature of the sanction.

2. Burden

Based on current knowledge of State law prior to the Federal requirements imposed under BBA, State agencies already impose sanctions against MCEs and provide written notice to MCEs explaining the violation and sanction to be imposed. Accordingly, because this activity constitutes a reasonable and customary business practice on the part of State agencies, as defined in 5 CFR 1320.3(b)(2) and (b)(3), we estimate that there is no additional burden as a result of the requirement in § 438.710(a)(1).

S. Section 438.720 Hearing on Contract Termination

1. Requirement

Section 438.720(b)(1) states that within 30 days after reaching the determination to terminate a MCE the State agency must give the MCE written notice of its intent to terminate, the reason for termination, and the time and place of the hearing.

2. Burden

Based on current knowledge of State law, most State agencies have been terminating contracts with MCEs prior to the imposition of the BBA requirements. In addition, State agencies that have been terminating contracts have also given MCEs written notice of their intent to terminate. Therefore, because this activity constitutes a reasonable and customary business practice, as defined in 5 CFR 1320.3(b)(2) and (3), we believe that this provision imposes no additional burden on State agencies as described in § 438.720(b)(1).

T. Section 438.722 Disenrollment During Termination Hearing Process

1. Requirement

Section 438.722(a) states that after a State agency has notified an MCE of its intention to terminate the MCE's contract, the State agency may give the MCE's enrollees written notice of the State agency's intent to terminate the MCE's contract.

2. Burden

State agencies have already had the authority to terminate MCE contracts according to State law and have been providing written notice to the MCEs. State agencies are now given, at their discretion, the option of notifying the MCE's enrollees of the State agency's intent to terminate the MCE's contract. While it is not possible to gather an exact figure, we estimate that 12 States agencies may terminate 1 contract per year. We estimate that it will take States 30 minutes to prepare the notice to enrollees, for a total burden of 6 hours. In addition, we estimate that it will take State agencies approximately 5 minutes per beneficiary to notify them of the termination, equating to a burden of 5 minutes multiplied by 12 States multiplied by 34,000 beneficiaries per MCE, for a total burden of approximately 34,000 hours.

U. Section 438.724 Notice to HCFA

1. Requirement

In summary, § 438.724 states that the State agency must give the HCFA Regional Office written notice whenever it imposes or lifts a sanction that specifies the affected MCE, the kind of sanction, and the reason on which imposition or lifting is based. The notice must be provided no later than 30 days after a sanction has been imposed or lifted.

2. Burden

We estimate that this provision will require State agencies 30 minutes to provide this type of notice per sanction imposed or lifted. In addition, we estimate that a total number of 36 State agencies will impose sanctions, with an average number of 1 sanction per State agency. Therefore, we estimate the total annual burden as a result of this requirement to be 18 hours.

V. Section 438.810 Expenditures for Enrollment Broker Services

1. Requirement

Section 438.810(c) requires that a State agency contracting with an enrollment broker must submit the contract or memorandum of agreement MOA) for services performed by the broker to HCFA for review and approval prior to the effective date of services required by the contract or MOA.

2. Burden

The burden associated with this requirement is the length of time for a State agency to mail each the contract to HCFA for review. We estimated that the burden associated with this requirement is 5 minutes per enrollment broker contract, for a total annual burden of approximately 3 hours per State agency (5 minutes multiplied by an estimated 35 enrollment broker contracts).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850 ATTN: Louis Blank, HCFA–2001–P

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer.

VII. Impact Analysis

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule meets the criteria of being economically significant, as the impact will be over $100 million. This is also a ''major rule'' under 5 U.S.C. 804.

The RFA requires agencies to analyze options for regulatory relief of small entities. The rule implements Medicaid provisions as directed by the BBA of 1997. The statute does not permit significant regulatory alternatives. Thus, we are not able to consider significant alternatives for reducing the burden on small entities. However, we invite interested parties to submit comments suggesting alternative rules that would reduce the burden. For purposes of the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, non-profit organizations, and governmental agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and State agencies are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We do not anticipate that the provisions in this proposed rule will have a substantial economic impact on most hospitals, including small rural hospitals. The BBA provisions include some new requirements on State agencies and managed care organizations, but not directly on individual hospitals. The impact on individual hospitals will vary according to each hospital's current and future contractual relationships with managed care organizations. Furthermore, the impact will also vary according to each hospital's current procedures and level of compliance with existing law and regulation pertaining to Medicaid managed care. For these reasons, this

proposed rule would not have a significant impact on the operations of a substantial number of hospitals.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

B. Summary of the Proposed Rule

This rule implements the Medicaid provisions as directed by the BBA. The primary objectives of these provisions are to allow for greater flexibility for State agencies to participate in Medicaid managed care programs and provide greater beneficiary protections, and quality assurance standards. The regulations address pertinent areas of concern between State agencies and MCEs, including enrollment, access to care, provider network adequacy, and grievance procedures for beneficiaries.

Since 1995, enrollment by Medicaid beneficiaries in Medicaid managed care programs has grown over 50 percent to more than 15 million enrollees in 1997. The Medicaid BBA provisions will likely help to maintain this level of managed care, and may contribute to some additional growth in the Medicaid managed care program.

C. Discussion of Impact

We believe that the overall impact of this proposed rule will be beneficial to Medicaid beneficiaries, MCOs, State agencies, and HCFA. Many of the BBA Medicaid managed care requirements merely codify in Federal law standards widely in place in State law or the managed care industry. Some of the BBA provisions represent new requirements for State agencies and MCOs, as well as expanded opportunities for participation in Medicaid managed care.

The BBA provisions addressed in this regulation that may have significant financial impact on State agencies or MCOs include: (1) State options to use managed care; (2) increased beneficiary protections; (3) new quality standards; and (4) improved administration. Initially, some of these provisions may increase administrative costs for State agencies and MCOs. However, quantifying these costs is difficult, given the disparity in State and MCO current status and capabilities relative to meeting these requirements.

Throughout the development of the regulation, we consulted with State agency representatives in order to gain more understanding of potential impacts. At the November, 1997 meeting of the Executive Board of the National Association of State Medicaid Directors (NASMD), we discussed the process for providing initial guidance to State agencies about the Medicaid provisions of BBA. We provided this guidance through issuance of a series of letters to State Medicaid Directors. From October, 1997 through July, 1998, over 40 of these letters were issued. Much of the policy included in this regulation relating to the State plan option provision was included in these letters. In May, 1998, the Executive Committee of NASMD was briefed on the general content of the regulation. More specific State agency input was obtained through discussions throughout the Spring of 1998 with the Medicaid Technical Advisory Groups (TAGs) on Managed Care and Quality. These groups are comprised of Medicaid agency staff with notable expertise in the subject area and our regional office staff and are staffed by the American Public Human Services Association. The Managed Care TAG devoted much of its agenda for several monthly meetings to BBA issues. The Quality TAG participated in two conference calls exclusively devoted to discussion of BBA quality issues. Through these contacts HCFA explored with State agencies their preferences regarding policy issues and the feasibility and practicality of implementing policy under consideration. We will also be seeking public comments as part of the Notice of Proposed Rulemaking process.

It is clear that all State agencies will be affected by the Medicaid regulations, but in varying degrees. Much of the burden will be on MCOs contracting with State agencies, but this will also vary by existing and continuing relationships between State agencies and MCOs. Further, because the Medicaid regulations will have direct authority over the State agencies, not the MCOs, the effects on these MCOs are not incorporated within this impact statement. Nonetheless, these regulations are intended to maximize State flexibility and minimize the compliance cost to State agencies and MCOs to the extent possible consistent with the detailed BBA requirements. We believe the proposed rule will result in improved patient care outcomes and satisfaction over the long term.

Recognizing that a large number of entities, such as hospitals, State agencies, and MCOs, will be affected by the implementation of these statutory provisions, and a substantial number of these entities may be required to make changes in their operations, we have prepared the following analysis. The terminology mainly used throughout this analysis is ''MCOs,'' which includes Federally qualified HMOs or public or private entities determined to meet the following conditions: (1) is organized primarily for the purpose of providing health care services; and (2) makes the services it provides to its Medicaid enrollees as accessible as those services are to other Medicaid recipients within the area served by the entity. Since primary care case managers do not fit this definition, the term ''MCEs'' is not used to describe the healthplans or MCOs in the analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by both the RFA and RIA.

D. State Options to Use Managed Care

Managed Care Organizations (MCOs)

Under this provision, a State may amend its State plan to require all Medicaid beneficiaries in the State to enroll in either a managed care organization or a primary care case manager, without the need to apply for a waiver of ''freedom of choice'' requirements under either section 1915(b) or 1115 of the Act. However, waivers would still be required to include certain exempted populations in mandatory managed care programs, notably, SSI populations, American Indians, and other groups of children with special needs. Federal review would be limited to a one time State Plan Amendment (SPA) approval, while State agencies would no longer need to request waiver renewals every 2 years for section 1915(b) and 5 years for section 1115 waivers. State agencies may include ''exempted'' populations as voluntary enrollees in State plan managed care programs, or to maintain parallel waiver programs to require enrollment of these groups in managed care, States agencies may also choose to continue to use one waiver process for groups that may be included under the State plan option. Currently, only a few State agencies have expressed interest in using SPAs to require beneficiary enrollment in managed care. In short, the new State plan option provides States agencies with a new choice of method to require participation in managed care. We do not anticipate that it alone will influence the prevalence of mandating managed care in Medicaid. MCOs and providers would continue to

provide care in a manner consistent with current and future standards, regardless of SPAs, and, consequently, Medicaid beneficiaries would receive the same level of health care in compliance with current and future standards.

Pursuing the SPA option rather than a section 1915(b) or section 1115 waiver may reduce State administrative procedures because it would eliminate the need for State agencies to go through the waiver renewals. Similarly, we will benefit from a reduced administrative burden if fewer waiver applications and renewals are requested. However, we believe the overall reduction in burden to both States and to us would be small in relation to the overall administrative requirements of the Medicaid program.

E. Primary Care Case Management

Prior to the BBA, many State agencies elected to implement a ''primary care case management'' system through a freedom of choice waiver under section 1915(b)(1) of the Act. Under the BBA, State agencies may now require beneficiaries to use a primary care case manager provider under their State plans without the need for a waiver. State agencies will have another avenue to include primary care case management contracts in Medicaid managed care programs. Most State agencies, however, are already participating in ''primary care case management'' programs. Therefore, while the BBA provision provides potential for more ''primary care case management'' programs to come into being, we do not expect expansion of primary care case managers to be substantial due to the State plan option. To the extent that the use of ''primary care case managers'' increases, patients of these providers will benefit from greater continuity of care and patient protections deriving from new and existing standards.

F. Elimination of 75:25 Rule

Prior to the passage of the BBA, nearly all HMOs contracting with Medicaid were required to limit combined Medicare and Medicaid participation to 75 percent of their enrollment, and State agencies had to verify enrollment composition as a contract requirement. Elimination of this rule allows MCOs to participate without verifying that they comply with this requirement, and eliminates the need for State agencies to monitor enrollment composition in contracting MCOs. This will broaden the number of MCOs available to State agencies for contracting, leading to more choice for beneficiaries.

With greater flexibility for State agency and MCO participation in managed care, providers can serve more Medicaid beneficiaries under managed care programs. Medicaid managed care enrollees will have more choice, better access to care, and improved satisfaction.

G. Increased Beneficiary Protection—Grievance Procedures

The BBA requires MCOs to establish internal grievance procedures that permit an eligible enrollee, or a provider on behalf of an enrollee, to challenge the denials of coverage of medical assistance or denials of payment. While these requirements did not previously exist in Federal law, we believe they reflect widespread current practice and, therefore, do not impose significant incremental costs on MCOs or State agencies.

H. Provision of Information

In mandatory managed care programs, we have required that beneficiaries be fully informed of the choices available to them in enrolling with an MCO. Section 1932(a)(5) of the Act, enacted in section 4701(a)(5) of the BBA, describes the kind of information that must be made available to Medicaid enrollees and potential enrollees. It also requires that this information, and all enrollment notices and instructional materials related to enrollment in MCOs, be in a format that can be easily understood by the individuals to whom it is directed. We do not believe that these requirements deviate substantially from current practice. Furthermore, there is no way to quantify the degree of burden on State agencies and MCOs for several reasons. We do not have State specific data on what information State agencies currently provide, or the manner in which they provide it. Variability among State agencies indicates that implementing or continuing enrollee information requirements will represent different degrees of difficulty and expense.

As a requirement under the provision of information section, State agencies opting to implement mandatory managed care programs under the SPA option are required to provide comparative information on MCOs to potential enrollees. Currently only a few State agencies have expressed interest in using SPAs to require beneficiary enrollment in managed care. However, for State agencies that do select this option, we do not believe that providing the data elements in themselves represents a burden to State agencies choosing the SPA option, as these are elements of information that most State agencies currently provide. The regulation specifies that the information must be presented in a comparative or chart-like form that facilitates comparison between MCOs. This may be perceived as a burden to States that have previously provided this information in some other manner; however, it is our belief that even in the absence of the regulation, the trend is for States and many accreditation bodies, such as the National Committee for Quality Assurance (NCQA), to utilize chart-like formats. Consequently, enrollees will benefit from improved mechanisms for selecting MCOs. In the short term, only a few State agencies have opted for SPAs, but it is anticipated that more State agencies will participate over the long term. State agencies that participate in the future will benefit from any comparative tools developed by HCFA and State agencies in the short term.

I. Demonstration of Adequate Capacity and Services

BBA requires Medicaid MCOs and Prepaid Health Plans (PHPs) to provide the State agency and the Secretary of HHS with assurances of adequate capacity and services, including service coverage within reasonable timeframes. State agencies currently require assurances of adequate capacity and services as part of their existing contractual arrangements with MCOs. However, we acknowledge that this information has not been routinely provided to HCFA in the past. Further, we have not required MCOs to submit to HCFA a certification from the State agency that the MCO or PHP has demonstrated adequate capacity and services. This regulation requires plans to send HCFA a copy of the certification they obtain from the State agency. Under this rule, each State agency retains its authority to establish standards for adequate capacity and services within MCO contracts. This may be perceived as a burden to MCOs and PHPs, and for State agencies that have not been required to formally certify that an MCO or PHP meets the State's capacity and service requirements; however, it allows MCOs to demonstrate to HCFA that adequate capacity and services standards established by State agencies are being met or exceeded.

Quantifying the additional burden on State agencies, MCOs or PHPs as a result of implementing this regulation is not feasible for several reasons. First, HCFA does not have State-specific data on the types of detailed information States currently require of their contractors (for example, MCOs and PHPs) to ensure

adequate capacity and services. Second, we do not have State-specific information on the manner in which State agencies collect and evaluate documentation in this area. Rather, each State agency has its own documentation requirements and its own procedures to ensure adequate capacity and services. This regulation contemplates that State agencies continue to have that flexibility.

Under this regulation, State agencies will determine and specify both the detail and type of documentation to be submitted by the MCO or PHP to ensure adequate capacity and services, and the type of certification to be submitted to us. Accordingly, variability among State agencies implementing this regulation represents different degrees of detail and expense. Regardless of the level of additional burden on MCOs, State agencies, and us, Medicaid beneficiaries will receive continued protections in access to health care under both State and Federal law.

J. New Quality Standards

The BBA requires that each State agency and MCO or PHP have an ongoing quality assessment and performance improvement program (QAPI) for health care services it provides to its Medicaid enrollees. The QAPI, among other things, must include: (1) standards for access to care so that covered services are available within reasonable timeframes and in a manner that ensures continuity of care; (2) examination of other aspects of care and service directly related to quality of care, including grievance procedures and marketing; (3) procedures for monitoring and evaluating the quality and appropriateness of care and service to enrollees; and (4) regular and periodic examinations of the scope and content of the quality program.

The requirements under this regulation provide that each MCO achieve minimum performance levels on standardized quality measures. They also require that plans conduct performance improvement projects that achieve, through ongoing measurement and intervention, demonstrable and sustained improvement in significant aspects of clinical care and non-clinical services that can be expected to affect health outcomes and member satisfaction. This approach to ensuring quality reflects the expansion in recent years of the problem-focused approach that was prevalent in the past to include a focus on systematic quality improvement as well.

We have worked closely with State Technical Advisory Groups (TAGs) in developing the managed care quality regulations and standards. Requirements under this regulation build on a variety of State and our efforts to promote the assessment and improvement of quality in plans contracting with Medicaid, including:

- The Quality Improvement System for Managed Care (QISMC), an initiative with State and Federal officials, beneficiary advocates, and the managed care industry to develop a coordinated quality oversight system that reduces duplicative or conflicting efforts and emphasizes demonstrable and measurable improvement.
- QARI, serving as a foundation to the development of QISMC, highlights the key elements in the Health Care Quality Improvement System (HCQIS), including internal quality assurance programs, State monitoring, and Federal oversight. This guidance emphasizes quality standards developed in conjunction with all system participants, such as managed care contractors, State regulators, Medicaid recipients or their representatives, and external review organizations.

We have built on efforts in other sectors in developing these quality assessment and performance improvement requirements in order to capitalize on current activities and trends in the health care industry. For example, many employers and cooperative purchasing groups and some State agencies already require that organizations be accredited by the National Committee on Quality Assurance (NCQA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Healthcare Accreditational Commission (AHAC), or other independent bodies. Many also require that organizations report their performance using Health Plan Employer Data & Information Set (HEDIS), Foundation for Accountability (FACCT), or other measures and conduct enrollee surveys using the Consumer Assessment of Health Plans Study (CAHPS) or other instruments. NCQA estimates that more than 90 percent of plans are collecting some or all of HEDIS data for their commercial population. Also, States agencies have heightened their regulatory efforts through insurance or licensing requirements, and the National Association of Insurance Commissioners (NAIC) has developed model acts on network adequacy, quality assessment and improvement, and utilization review.

We anticipate that many organizations will need to invest in new staff and information systems in order to perform these new quality improvement activities. It is difficult to quantify these financial and operational ''investments,'' as State agencies and MCOs across the country exhibit varying capabilities in meeting these standards. Even though these new quality requirements will present administrative challenges for some State agencies and MCOs, State agencies have significant latitude in how these requirements will be implemented. Acknowledging that there likely will be some degree of burden on State agencies and MCOs, we also believe that the long term benefits of greater accountability and improved quality in care delivery will outweigh the costs of implementing and maintaining these processes over time.

Regarding the new quality standards, we are interested in receiving comments concerning the cost or other impact of these provisions on State agencies and health plans.

K. Administration

1. Certifications and Program Integrity Protections

BBA sections 1902(a)(4) and (19) require that State agencies conduct appropriate processes and methods to ensure the efficient operation of the health plans. This includes mechanisms to not only safeguard against fraud and abuse, but also to ensure accurate reporting of data among health plans, State agencies, and HCFA.

Section 438.602 addresses the importance of reliable data that is submitted to State agencies. These data include enrollment information, encounter data, or other information that are used for payment determination. For the most part, State agencies reimburse MCOs on a capitated basis, and do not use claims or encounter data as a basis for payment. However, the collection of encounter, provider, and enrollment data will be most useful for State agencies in measuring quality performance and addressing various methodologies of rate setting and risk adjustment. The Medicaid provision of attesting to the validity of data presents an additional step in the process of data submission. MCOs have historically been working closely with State agencies when reporting Medicaid data to affirm that the data are accurate and complete. Submitting a certification of validity could take place in a variety of ways and will represent a varying degree of burden for health plans.

Section 438.606 requires MCOs to have effective operational capabilities to guard against fraud and abuse. This will result in reporting violations of law by

MCOs to the State agency. Providers and health plans have traditionally ensured compliance with Federal and State laws when providing and delivering health care to members. An example is compliance with National Association of Insurance Commissioners (NAIC) standards. However, additional resources and procedures will be necessary to have a systematic process for documenting violations and formally notifying the State agency of such instances.

The requirement of MCOs to certify the accuracy and completeness of provider contracts or other documents, as stated in § 438.608 is consistent with current practices. These demonstrations are evident in NCQA Accreditation procedures, Medicaid waiver reviews, and audits that are necessary for compliance with other relevant State and Federal laws. Depending on the MCO, new processes may be necessary to comply with this standard. This requirement may not necessarily result in new mechanisms or resources for MCOs, but may create the need for more coordination with additional State representatives in the review of provider contracts.

2. Change in Threshold from $100,000 to $1,000,000

Before the passage of the BBA, the Secretary's prior approval was required for all HMO contracts involving expenditures in excess of $100,000. Under the BBA, the threshold amount is increased to $1,000,000. This change in threshold will have minimal impact on plans currently contracting with State agencies for Medicaid managed care. Currently, only one or two plans in the country have annual Medicaid expenditures of under $1,000,000. Therefore, this new provision will not affect a significant number of plans or States.

L. Permitting Same Copayments in HMOs as in Fee-for-Service

Under section 4708(c) of the BBA, State agencies may now allow copayments for services provided by MCOs to the same extent that they allow copayments under fee-for-service. Imposition of copayments in commercial markets typically results in lower utilization of medical services, depending on the magnitude of payments required of the enrollee. Thus, we would normally expect State agencies that implement copayments for MCO enrollees to realize some savings as a result. However, applying copayments in Medicaid populations may cause State agencies and MCOs to incur more overhead costs related to administering these fees. Factors contributing to these costs include copayments that are significantly lower for Medicaid beneficiaries than typical commercial copayments and difficulty in ensuring compliance with these payments, along with collection efforts that would inevitably be necessary for MCOs to obtain all fees due to them. Also, if State agencies take full advantage of this option, Medicaid managed care enrollees would incur additional costs to obtain health care services. As a result of these variables, it is difficult to predict how many State agencies will take advantage of this new option of permitting copayments in HMOs.

M. Six-month Guaranteed Eligibility

The legislation has expanded the States' option to guarantee up to 6 months eligibility in two ways. First, it expands the types of HMOs whose members may have guaranteed eligibility, in that now it includes anyone who is enrolled with a Medicaid managed care organization as defined in section 1903(m)(1)(A) of the Act. Second, it expands the option to include those enrolled with a primary care case manager as defined in section 1905(t) of the Act. These changes are effective October 1, 1997. To the extent that State agencies choose this option, we expect MCEs in those States to support the use of this provision, as it affords healthplans with minimally acceptable assurance of membership for a specified period of time. Similarly, beneficiaries will gain from this coverage expansion and continuity of care will be enhanced.

The table below displays our estimates of the impact of the expanded option for 6 months of guaranteed eligibility under section 4709 of the BBA.

COST OF 6-MONTH GUARANTEED ELIGIBILITY OPTION [1]

[Dollars in millions]

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Federal	25	40	55	80	115
State	20	30	45	60	90
Total	45	70	100	140	205

[1] These estimates are rounded to the nearest $5 million.

The estimates of Federal costs are reflected in the current budget baseline. The estimates assume that half of the current Medicaid population is enrolled in managed care and that this proportion will increase to about two-thirds by 2003. We also assume that 15 percent of managed care enrollees are currently covered by guaranteed eligibility under rules in effect before to the BBA and that the effect of the expanded option under Section 4709 of the BBA will be to increase this rate to 20 percent initially and to 30 percent by 2003. The guaranteed eligibility provision is assumed to increase average enrollment by 3 percent in populations covered by the option. This assumption is based on computer simulations of enrollment and turnover in the Medicaid program. Per capita costs used for the estimate were taken from the President's FY 1999 budget projections and the costs for children take into account the interaction of this provision with the State option for 12 months of continuous eligibility under section 4731 of the BBA. The distribution between Federal and State costs is based on the average Federal share representing 57 percent of the total costs.

In States electing the 6-month guaranteed eligibility option, Medicaid beneficiaries will have access to increased continuity of care which should result in better health care management and improved clinical outcomes.

N. Conclusion

This BBA managed care regulation will affect HCFA, State agencies, MCOs, providers, and beneficiaries in different ways. The initial investments that are needed by State agencies and MCOs will result in improved and more consistent standards for the delivery of health care to Medicaid beneficiaries. Greater consumer safeguards will result from new quality improvement and

protection provisions. Consequently, long term savings will derive from more consistent standards across State agencies and MCOs, and increased opportunities for provider and beneficiary involvement in improved access, outcomes, and satisfaction. We solicit public comments on the costs that may be incurred by the above mentioned entities to the extent that they may be significantly economically affected by these provisions.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 430

Administrative practice and procedure, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 434

Grant programs—health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 438

Grant programs—health, Managed care entities, Medicaid, Quality assurance, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV would be amended as set forth below.

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 400.200 is amended to add the following definitions, in alphabetical order:

§ 400.200 General definitions.

* * * * *

HIO stands for health insuring organization.

* * * * *

MCE stands for managed care entity.

MCO stands for managed care organization.

* * * * *

PHP stands for prepaid health plan

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority citation for part 430 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In part 430 a new § 430.5 is added, to read as follows:

§ 430.5 Definitions.

As used in this subchapter, unless the context indicates otherwise—

Capitation payment means a payment the State agency makes periodically to a contract for each recipient enrolled under a contract for the provision of medical services under the State plan, regardless of whether the recipient receives services during the period covered by the fee.

Clinical laboratory means a facility that examines materials derived from the human body, for the purpose of providing information for the diagnosis, prevention or treatment of a disease or the assessment of a medical condition.

Comprehensive risk contract means a risk contract that covers comprehensive services, that is, inpatient hospital services and any of the following services, or any three or more of the following services:

(1) Outpatient hospital services.

(2) Rural health clinic services.

(3) FQHC services.

(4) Other laboratory and X-ray services.

(5) Nursing facility (NF) services.

(6) Early and periodic screening, diagnostic, and treatment (EPSDT) services.

(7) Family planning services.

(8) Physician services.

(9) Home health services.

Contractor means any entity that contracts with the State agency, under the State plan and in return for a payment, to process claims, to pay for or provide medical services, or to enhance the State agency's capability for effective administration of the program.

Federally qualified HMO means an HMO that has been determined by HCFA to be a qualified HMO under section 1310(d) of the PHS Act.

Health insuring organization means an entity that—

(1) Covers (through payments or arrangements with providers) services for recipients in exchange for a fixed payment amount; and

(2) Assumes risk for the cost of the services it covers.

Nonrisk contract means a contract under which the contractor—

(1) Is not at risk for costs incurred that do not exceed the upper limits on payments specified in § 447.362 of this chapter; and

(2) Is reimbursed based on the costs it actually incurs.

Prepaid health plan (PHP) means an entity that provides medical services to enrolled recipients, under contract with the State agency and on the basis of prepaid capitation payments, but does not have a comprehensive risk contract.

Risk contract means a contract under which the contractor—

(1) Assumes risk for the cost of the services covered under the contract; and

(2) Incurs loss if the cost of furnishing the services exceeds payment under the contract.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec 1102 of the Social Security Act (42 U.S.C. 1302).

§ 431.51 [Amended]

2. In § 431.51, the following changes are made:

a. In paragraph (a) introductory text, ''and 1915 (a) and (b) of the Act'' is revised to read 1915 (a) and (b) and 1932(a)(3) of the Act''.

b. Paragraphs (a)(4), and (a)(5) are revised and a new paragraph (a)(6) is added, to read as set forth below.

c. In paragraph (b)(1) introductory text, ''and part 438 of this chapter'' is added immediately before the comma that follows ''this section''.

d. In paragraph (b)(2), ''an HMO'' is revised to read ''a Medicaid MCO''.

§ 431.51 Free choice of providers.

(a) *Statutory basis.* * * *

(4) Section 1902(a)(23) of the Act provides that a recipient enrolled in a

primary care case management system or a Medicaid managed care organization (MCO) may not be denied freedom of choice of qualified providers of family planning services.

(5) Section 1902(e)(2) of the Act provides that an MCE enrollee who, while completing a minimum enrollment period, is deemed eligible only for services furnished by or through the MCE, may, as an exception to the deemed limitation, seek family planning services from any qualified provider.

(6) Section 1932(a) of the Act, as added by section 4701(a) of the Balanced Budget Act of 1997, permits a State to restrict the freedom of choice required by section 1902(a)(23), under specified circumstances, but not with respect to family planning services.

* * * * *

3. In § 431.55, the following sentence is added at the end of paragraph (c)(1)(i):

§ 431.55 Waiver of other Medicaid requirements.

* * * * *

(c) * * *

(1) * * *

(i) * * * The person or agency must comply with the requirements set forth in part 438 of this chapter for primary care case management contracts and systems.

4. Section 431.200 is revised to read as follows::

§ 431.200 Basis and scope.

This subpart—

(a) Implements section 1902(a)(3) of the Act, which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly;

(b) Prescribes procedures for an opportunity for hearing if the State agency takes action to suspend, terminate, or reduce services, or an MCO or PHP takes similar action under subpart F of part 438 of this chapter; and

(c) Implements sections 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals who—

(1) Are proposed to be transferred or discharged from nursing facilities; or

(2) Are adversely affected by the preadmission screening or the annual resident review required by section 1919(e)(7) of the Act.

5. In § 431.220(a) introductory text , paragraph introductory text is republished and a new paragraph (a)(5) is added to read as follows

§ 431.220 When a hearing is required.

(a) The State agency must grant an opportunity for a hearing to—

* * * * *

(5) Any MCO or PHP enrollee who is entitled to a hearing under subpart F of part 438 of this chapter.

* * * * *

PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 434.1, paragraph (a) is revised to read as follows:

§ 434.1 Basis and scope.

(a) *Statutory basis.* This part is based on section 1902(a)(4) of the Act, which requires that the State plan provide for methods of administration that the Secretary finds necessary for the proper and efficient operation of the plan.

* * * * *

§ 434.2 [Amended].

3. In § 434.2, the definitions of ''capitation fee'', ''clinical laboratory'', ''contractor'', ''enrolled recipient'', ''Federally qualified HMO'', ''health insuring organization'', ''health maintenance organization (HMO)'', ''nonrisk'' ''prepaid health plan'' ''provisional status HMO'' and ''risk or underwriting risk'' are removed.

§ 434.6 [Amended]

4. In paragraph (a)(1), '' , appendix G'' is removed.

Subpart C [Removed]

5. Subpart C, consisting of §§ 434.20 through 434.38, is removed and reserved.

Subpart D [Amended]

6. In subpart D, §§ 434.42 and 434.44 are removed.

Subpart E [Removed]

7. Subpart E, consisting of §§ 434.50 through 434.67, is removed and reserved.

Subpart F [Amended]

§ 434.70 [Revised]

8. Section 434.70 is revised to read as follows

§ 434.70 Conditions for Federal financial participation (FFP)

(a) *Basic requirements.* FFP is available only for periods during which the contract—

(1) Meets the requirements of this part;

(2) Meets the applicable requirements of 45 CFR part 74; and

(3) Is in effect.

(b) *Basis for withholding.* HCFA may withhold FFP for any period during which—

(1) The State fails to meet the State plan requirements of this part; or

(2) Either party substantially fails to carry out the terms of the contract.

§§ 434.71 through 434.75 and 434.80 [Removed]

9. Sections 434.71 through 434.75 and 434.80 are removed.

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 435.212 [Amended]

2. In § 435.212, the following changes are made:

a. Throughout the section, ''HMO'', wherever it appears, is revised to read '' MCO''.

b. The introductory text is revised to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an MCE.

The State agency may provide that a recipient who is enrolled in an MCE and who becomes ineligible for Medicaid is considered to continue to be eligible—

* * * * *

3. Section 435.326 is revised to read as follows:

§ 435.326 Individuals who would be ineligible if they were not enrolled in an MCE.

If the State agency provides Medicaid to the categorically needy under § 435.212, it may provide Medicaid under the same rules to medically needy recipients who are enrolled in an MCE.

1. A new part 438 is added to chapter IV, to read as follows:

PART 438—MANAGED CARE PROVISIONS

Subpart A—General Provisions

Sec.
438.1 Basis and scope.
438.2 Definitions.
438.6 Contract requirements.
438.8 Provisions that apply to PHPs.
438.10 Information requirements.
438.12 Provider discrimination.

Subpart B— State Responsibilities

438.50 State plan and contract requirements: General rule.
438.52 Choice of managed care entities.
438.56 Enrollment and disenrollment: Requirements and limitations.
438.58 Conflict of interest safeguards.
438.60 Limit on payment to other providers.
438.62 Continued service to recipients.
438.64 Computation of capitation payments.
438.66 Monitoring procedures.

Subpart C—Enrollee Protections

438.100 Benefits.
438.102 Enrollee-provider communications.
438.104 Marketing activities.
438.106 Liability for payment.
438.108 Cost sharing.
438.110 Assurances of adequate capacity and services.
438.114 Emergency and post-stabilization services.
438.116 Solvency standards.

Subpart D—[Reserved]

Subpart E—Quality Assessment and Performance Improvement

438.300 Scope.
438.302 State responsibilities.
438.304 Elements of State quality strategies.

Access Standards

438.306 Availability of services.
438.308 Continuity and coordination of care.
438.310 Coverage and authorization of services.

Structure and Operation Standards

438.314 Establishment of provider networks.
438.318 Enrollee information.
438.320 Enrollee rights.
438.324 Confidentiality.
438.326 Enrollment and disenrollment.
438.328 Grievance systems.
438.330 Subcontractual relationships and delegation.

Measurement and Improvement Standards

438.336 Practice guidelines.
438.340 Quality assessment and performance improvement program.
438.342 Health information systems.

Subpart F—Grievance System

438.400 Statutory basis and definitions.
438.402 General requirements.
438.404 Notice of intended action.
438.406 Handling of complaints and grievances.
438.408 Grievance resolution and notification.
438.410 Expedited resolution of grievances.
438.414 Information about the grievance system.
438.416 Recordkeeping and reporting requirements.
438.420 Continuation of benefits pending grievance resolution or State fair hearing decision.
438.421 Effectuation of reversed grievance resolutions.
438.422 Monitoring of the grievance system.
438.424 Consequences of noncompliance.

Subpart G—[Reserved]

Subpart H—Certifications and Program Integrity Protections

438.600 Statutory basis.
438.602 Certification of data that determine payment.
438.606 Conditions necessary to contract as an MCO.
438.608 Certification for contracts or proposals.

Subpart I—Sanctions

438.700 Basis for imposition of sanctions.
438.702 Types of intermediate sanctions.
438.704 Amounts of civil money penalties.
438.706 Special rules for temporary management.
438.708 Required imposition of temporary management for chronic substandard MCOs
438.710 Notice of sanction; due process.
438.718 Termination of an MCE contract.
438.720 Hearing on contract termination.
438.722 Disenrollment during termination hearing process.
438.724 Notice to HCFA.
438.730 Sanction by HCFA.

Subpart J—Conditions for Federal Financial Participation

438.802 Basic requirements.
438.806 Prior approval.
438.808 Exclusion of entities.
438.810 Expenditures for enrollment broker services.
438.812 Costs under risk and nonrisk contracts.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—General Provisions

§ 438.1 Basis and scope.

(a) *Statutory basis.* This part is based on sections 1902(a)(4), 1903(m), 1905(t), and 1932 of the Act.

(1) Section 1902(a)(4) requires that States provide for methods of administration that the Secretary finds necessary for proper and efficient operation. The application of the requirements of this part to PHPs that do not meet the statutory definition of MCO or a primary care case manager is under the authority in section 1902(a)(4).

(2) Section 1903(m) contains requirements that apply to comprehensive risk contracts.

(3) Section 1903(m)(2)(H) provides that an enrollee who loses Medicaid eligibility for not more than 2 months may be enrolled in the succeeding month in the same MCE if that MCE still has a contract with the State.

(4) Section 1905(t) contains requirements that apply to primary care case managers.

(5) Section 1932—

(i) Provides that, with specified exceptions, a State may require Medicaid recipients to enroll in managed care entities;

(ii) Defines ''managed care entity (MCE)'' as ''an MCO or a primary care case manager'';

(iii) Establishes the rules that MCOs, primary care case managers, the State, and the contracts between the State and those entities must meet, including compliance with requirements in sections 1903(m) and 1905(t) of the Act that are implemented in this part ;

(iv) Establishes numerous protections for enrollees of MCEs;

(v) Requires States to develop a quality assessment and performance improvement strategy;

(vi) Specifies certain prohibitions aimed at the prevention of fraud and abuse;

(vii) Provides that a State may not enter into contracts with MCEs unless it has established intermediate sanctions that it may impose on an MCE that fails to comply with specified requirements; and (viii) Makes other minor changes in the Medicaid programs.

(b) *Scope.* This part sets forth requirements, prohibitions, and procedures for the provision of Medicaid services through managed care entities. Requirements vary depending on the type of entity and on the authority under which the State contracts with the entity. Provisions that apply only when the contract is under a mandatory managed care program authorized by section 1932(a)(1)(A) of the Act are identified as such.

§ 438.2 Definitions.

As used in this part—

Authorized representative means an individual authorized by an enrollee to act on his or her behalf in any dealings with an MCE or the State. The rules for appointment of representatives set forth in 20 CFR part 404, subpart R apply unless otherwise provided in this subpart.

Managed care entity (MCE) means—

(1) A Medicaid managed care organization (MCO) that has a comprehensive risk contract under section 1903(m) of the Act; or

(2) A primary care case manager.

Managed care organization (MCO) means—

(1) A Federally qualified HMO that meets the advance directives requirements of subpart I of part 489 of this chapter; or

(2) Any public or private entity that meets the advance directives requirements and is determined to also meet the following conditions:

(i) Is organized primarily for the purpose of providing health care services.

(ii) Makes the services it provides to its Medicaid enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid recipients within the area served by the entity.

(iii) Meets the solvency standards of § 438.116.

Prepaid health plan (PHP) means an entity that provides medical services to enrolled recipients under contract with the State agency, and on the basis of prepaid capitation fees, but does not have a comprehensive risk contract.

Primary care means all health care services and laboratory services customarily provided by or through a general practitioner, family physician, internal medicine physician, obstetrician/gynecologist, or pediatrician, in accordance with State licensure and certification laws and regulations.

Primary care case management means a system under which a primary care case manager contracts with the State to furnish case management services, (which include the location, coordination and monitoring of primary health care services) to Medicaid recipients.

Primary care case manager means a physician, a physician group practice, an entity that employs or arranges with physicians to furnish primary care case management services or, at State option, one of the following:

(1) A physician assistant.

(2) A nurse practitioner.

(3) A certified nurse-midwife.

Provider means—

(1) Any individual who is engaged in the delivery of health care services in a State and is licensed or certified by the State to engage in that activity in the State; and

(2) Any entity that is engaged in the delivery of health care services in a State and is licensed or certified by the State to deliver those services if licensing or certification is required by State law or regulation.

§ 438.6 Contract requirements.

(a) *Entities eligible for comprehensive risk contracts.* A State agency may enter into a comprehensive risk contract only with one of the following:

(1) An MCO.

(2) The entities identified in section 1903(m)(2)(B)(i), (ii) and (iii) of the Act.

(3) Certain Community, Migrant, and Appalachian Health Centers identified in section 1902(m)(2)(G) of the Act. Unless they qualify for a total exemption under section 1902(m)(2)(B) of the Act, these entities are subject to the regulations governing MCOs under this part.

(4) An HIO that arranges for services and became operational before January 1986.

(5) An HIO described in section 9517(c)(3) of the Omnibus Budget Reconciliation Act of 1985 (as added by section 4734(2) of the Omnibus Budget Reconciliation Act of 1990).

(b) *Capitation payments.* All risk contracts must specify—

(1) The actuarial basis for computation of the capitation payments; and

(2) That the capitation payments and any other payments provided for in the contract do not exceed the payment limits set forth in § 447.361 of this chapter.

(c) *Enrollment discrimination prohibited.* Contracts with MCEs must provide as follows:

(1) During open enrollment periods, the MCE accepts individuals eligible for enrollment in the order in which they apply without restriction (unless authorized by the Regional Administrator), up to the limits set under the contract.

(2) Enrollment is voluntary, except as provided under § 438.50 or under a waiver of freedom of choice under section 1115(a)(1) or section 1915(b) of the Act.

(3) The MCE will not, on the basis of health status or need for health services, discriminate against individuals eligible to enroll.

(d) *Services that may be covered.* An MCE contract may cover, for enrollees, services that are in addition to those covered under the State plan for recipients who are not enrollees.

(e) *Compliance with contracting rules.* All contracts must meet the requirements of this section.

(f) *Inspection and audit of financial records.* Risk contracts must provide that the State agency and the Department may inspect and audit any financial records of the entity or its subcontractors relating to the entity's capacity to bear the risk of potential financial losses.

(g) *Physician incentive plans.* (1) MCO contracts must provide for compliance with the requirements set forth in §§ 422.208 and 422.210 of this chapter.

(2) In applying the provisions of §§ 422.208 and 422.210, references to ''M+C organization'', ''HCFA'', and ''Medicare beneficiaries'' must be read as references to ''MCO'', ''State agency'' and ''Medicaid recipients'', respectively.

(h) A*dvance directives.* (1) MCO contracts must provide for compliance with the requirements of subpart I of part 489 of this chapter for maintaining written policies and procedures with respect to advance directives.

(2) The MCO must provide adult enrollees with oral and written information on advance directives policies, and include a description of applicable State law.

(3) The information must reflect changes in State law as soon as possible, but no later than 90 days after the effective date of the change.

(i) *Special rules for certain HIOs.* Contracts with HIOs that began operating on or after January 1, 1986, and that the statute does not explicitly exempt from requirements in section 1903(m) of the Act, are subject to all the requirements of this part that apply to MCOs and contracts with MCOs. These HIOs may enter into comprehensive risk contracts only if they meet the criteria of paragraph (a) of this section.

(j) *Additional rules for contracts with primary care case managers.* A primary care case manager contract must meet the following requirements:

(1) Provide for reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment for emergency medical conditions.

(2) Restrict enrollment to recipients who reside sufficiently near one of the manager's delivery sites to reach that site within a reasonable time using available and affordable modes of transportation.

(3) Provide for arrangements with, or referrals to, sufficient numbers of physicians and other practitioners to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care.

(4) Prohibit discrimination in enrollment, disenrollment, and re-enrollment, based on the recipient's health status or need for health care services.

(5) Provide that enrollees have the right to terminate enrollment in accordance with § 438.56.

§ 438.8 Provisions that apply to PHPs.

The following requirements and options apply to PHPs, PHP contracts, and States with respect to PHPs, to the same extent that they apply to MCOs, MCO contracts, and States with respect to MCOs.

(a) The requirements of § 438.6, except those that pertain, respectively, to physician incentive plans, advance directives, and HIOs.

(b) The information requirements of § 438.10.

(c) The provision against provider discrimination in § 438.12.

(d) The requirements in subpart C of this part (enrollee protections).

(e) The requirements in subpart E of this part (quality) that are applicable to services furnished by the PHP.

(f) The requirements in subpart F of this part (grievance and appeals) except for HCFA denial of FFP under § 438.424(b).

(g) The requirements in § 438.56 (e) through (h) (enrollment and disenrollment) and § 438.58 (conflict of interest safeguards).

438.10 Information requirements.

(a) *Basic rules.* (1) Each State, MCE, and enrollment broker must, in furnishing information to enrollees and potential enrollees, meet the requirements that are applicable to it under this section.

(2) The provisions of paragraphs (b) and (c) of this section apply to all information furnished to enrollees and potential enrollees, such as enrollment notices, informational and instructional materials and the information specified in paragraphs (d) through (i) of this section.

(b) *Language.* The State must meet the following requirements:

(1) Establish a methodology for determining the prevalent language or languages in a geographic area.

(2) Make information available in the languages that predominate throughout the State, and require each MCE to make its information available in the languages that predominate in its particular service area.

(3) Make translation services available and require each MCE to make translation services available to meet the needs of all enrollees and potential enrollees.

(4) Provide instructions to enrollees and potential enrolees and require each MCE to provide instructions to its enrollees and potential enrollees on how to obtain information in the appropriate language and how to access translation services.

(c) *Format.* The material must—

(1) Use easily understood language and format; and

(2) Take into consideration the special needs of those who, for example, are visually impaired or have limited reading proficiency.

(d) *Provision of basic information.* (1) The information listed in paragraph (e) of this section must be provided as follows:

(i) To each enrollee, by the MCO or by the State if the State prohibits the MCO from providing it, within a reasonable time after it receives, from the State or the enrollment broker, notice of the recipient's enrollment.

(ii) To any potential enrollee who requests it, by the MCO, or by the State if the State prohibits MCOs from providing it.

(2) Once a year the MCO must notify its enrollees of their right to request and obtain the information listed in paragraph (e) of this section.

(e) *Basic information.* The following information must be provided as specified in paragraph (d) of this section.

(1) Kinds of benefits, and amount, duration, and scope of benefits available under the contract. There must be sufficient detail to ensure that enrollees receive the services to which they are entitled, including pharmaceuticals, mental health, and substance abuse services.

(2) Procedures for obtaining services, including authorization requirements.

(3) Names and locations of current network providers, including identification of those who are not accepting new patients.

(4) Any restrictions on the enrollee's freedom of choice among network providers.

(5) The extent to which enrollees may obtain services from out-of-network providers.

(6) The extent to which after-hours and emergency coverage are provided.

(7) Policy on referrals for specialty care and for other services not furnished by the enrollee's primary care provider.

(8) Cost sharing, if any.

(9) The rights and responsibilities of enrollees, such as those set forth in §§ 438.56 and 438.320.

(10) Complaint, grievance, and fair hearing procedures required under § 438.414(b).

(11) Any appeal rights that the State chooses to make available to providers.

(f) *Additional information available upon request.* (1) The information specified in paragraph (f)(2) of this section must be provided, upon request, as follows:

(i) To each enrollee, by the MCO; and

(ii) To each potential enrollee, by the MCO, or by the State if the State prohibits the MCO from providing it.

(2) The following information must be provided in accordance with paragraph (f)(1) of this section:

(i) With respect to MCOs and health care facilities, their licensure, certification, and accreditation status.

(ii) With respect to health professionals, information that includes, but is not limited to, education and Board certification and recertification.

(g) *Additional information: Medicaid-covered benefits not provided under the MCE contract.* Before or during enrollment, the State must, directly or through the MCE, provide to Medicaid recipients information on the following:

(1) Any benefits to which they may be entitled under the Medicaid program, but that are not covered under the MCE contract.

(2) Specific instructions on where and how to obtain those benefits, including how transportation is provided.

(3) Cost sharing, if any.

(h) *Information that primary care case managers are required to provide.* Each primary care case manager must, upon request, provide information about the grievance procedures available to enrollees, including procedures for obtaining services during the appeals process.

(i) *Additional information: Mandatory MCE enrollment under section 1932 of the Act.*

(1) *Basic rule.* If the State plan provides for mandatory MCE enrollment under section 1932(a)(1)(A) of the Act, the State must provide the information specified in paragraph (i)(2) of this section, either directly or through the MCE—

(i) To potential enrollees whenever they request it, and at least once a year; and

(ii) Presented in a comparative, chart-like format.

(2) *Required information.* The information must include the following for each contracting MCE:

(i) The MCE's service area.

(ii) The benefits covered under the contract.

(iii) Any cost sharing imposed by the MCE.

(iv) To the extent available, quality and performance indicators, including but not limited to disenrollment rates, as defined by the State, and enrollee satisfaction.

§ 438.12 Provider discrimination.

(a) *General rules.* (1) An MCO may not discriminate with respect to the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable State law, solely on the basis of that license or certification.

(2) The MCO must contract with all health care professionals in the manner specified in § 438.314.

(b) *Construction.* Paragraph (a) of this section may not be construed to—

(1) Require the MCO to contract with providers beyond the number necessary to meet the needs of its enrollees;

(2) Preclude the MCO from using different reimbursement amounts for different specialties; or

(3) Preclude the MCO from establishing measures designed to

maintain quality of services and control costs, consistent with its responsibilities to enrollees.

Subpart B—State Responsibilities

§ 438.50 State plan and contract requirements: General rule.

A State plan that provides for requiring Medicaid recipients to enroll in managed care entities must—

(a) Specify the types of entities with which the State will contract under a mandatory enrollment program authorized by section 1932(a)(1)(A) of the Act, the payment method that will be used (whether fee-for-service or capitation), and whether the contract is a comprehensive risk contract; and

(b) Provide assurances that the State will meet all applicable requirements of—

(1) Section 1903(m) of the Act, with respect to MCOs;

(2) Section 1905(t) of the Act, with respect to primary care case managers and primary care case manager contracts;

(3) Section 1932(a)(1)(A) of the Act, which provides the option for States to limit freedom of choice by requiring recipients to receive their benefits through managed care entities; and

(4) This part, with respect to MCEs.

(c) Provide assurances that—

(1) All contracts will meet the applicable requirements of this part and of part 434 of this chapter;

(2) All MCO contracts will also meet the requirements of section 1903(m)(2) of the Act;

(3) All primary care case manager contracts will comply with the requirements of section 1905(t) of the Act; and

(4) All risk contracts will comply with the upper limit of payment restrictions imposed by § 447.361 of this chapter.

§ 438.52 Choice of managed care entities.

(a) *Terminology.* For purposes of this section, a State may define ''rural area'' as any of the following:

(1) Any area outside of an ''urban area'' as defined in § 412.62(f)(1)(ii) of this chapter.

(2) Any area not delineated as an ''urbanized area'' in the last census conducted by the Census Bureau, as described in § 491.5(c) of this chapter.

(3) Any area (except the whole State) under a definition proposed by a State and approved by HCFA or determined by HCFA (that may apply to one State or all States).

(b) *General requirement.* Except as specified in paragraphs (c) and (d) of this section, a State that requires Medicaid recipients to enroll in an MCE must give recipients a choice of at least two MCEs.

(c) *Exception for rural area residents.* For recipients who reside in a rural area, the State may, under a program authorized by section 1932(a) of the Act, or under a waiver under § 431.55 of this chapter, limit recipients to a single MCE, provided it permits the recipient—

(1) To choose from at least two physicians or case managers; and

(2) To obtain services from any other provider under the following circumstances:

(i) The service or type of provider is not available within the MCE network.

(ii) The provider is not part of the MCE network, but has an existing relationship with the recipient.

(iii) The only plan or provider available to the recipient does not, because of moral or religious objections, provide the service the enrollee seeks.

(iv) The State determines that other circumstances warrant out-of-network treatment.

(d) *Exception for certain health insuring organizations (HIOs).* The State may limit recipients to a single HIO if—

(1) The HIO is one of those described in section 1932(a)(3)(C) of the Act; and

(2) The recipient who enrolls in the HIO has a choice of at least two providers within the entity.

§ 438.56 Enrollment and disenrollment: Requirements and limitations.

(a) *Applicability.* (1) The provisions of paragraphs (b) through (d) of this section apply only to enrollment mandated under the authority of section 1932 of the Act.

(2) Paragraphs (a) and (e) through (h) apply under all MCE contracts, regardless of whether enrollment is mandated under section 1932, or voluntary, and under PHP contracts, as provided in § 438.8.

(b) *Limitations on enrollment.* The State must provide assurances that, in implementing the State plan managed care option, it will not require the following groups to enroll in an MCE:

(1) Recipients who are also eligible for Medicare.

(2) Indians who are members of Federally recognized tribes, except when the MCE is—

(i) The Indian Health Service; or

(ii) An Indian health program operated by a tribe or tribal organization under a contract, grant, cooperative agreement or compact with the Indian Health Service.

(3) Children under 19 years of age who are:

(i) Eligible for SSI under title XVI;

(ii) Eligible under section 1902(e)(3) of the Act;

(iii) In foster care or other out-of-home placement;

(iv) Receiving foster care or adoption assistance; or

(v) Receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of title V, and is defined by the State in terms of either program participation or special health care needs.

(c) *Priority for enrollment.* Enrollment procedures must include a system under which recipients already enrolled in an MCE are given priority to continue that enrollment if the MCE does not have the capacity to accept all those seeking enrollment under the program.

(d) *Enrollment by default.* (1) For recipients who do not choose an MCE during their enrollment period, the State must have a default enrollment process for assigning those recipients to contracting MCEs.

(2) The process must seek to preserve existing individual provider-recipient relationships and relationships with providers that have traditionally served Medicaid recipients. If that is not possible, the State must distribute the recipients equitably among qualified MCEs available to enroll them.

(3) An ''existing provider-recipient relationship'' is one in which the provider was the main source of Medicaid services for the recipient during the previous year. This may be established through State records of previous managed care enrollment or fee-for-service experience, or through contact with the recipient.

(4) A provider is considered to have ''traditionally served'' Medicaid recipients if it has experience in serving the general Medicaid population.

(e) *Disenrollment by the recipient: Timing.* (1) *General rule.* If the State chooses to restrict disenrollment, its contracts must provide that a recipient enrolled in an MCE is permitted to disenroll as follows:

(i) For cause, at any time.

(ii) Without cause, as follows:

(A) During the 90 days following the effective date of the individual's initial enrollment with the MCE. (If notice of enrollment to the recipient is delayed, the 90-day period may be extended to compensate for that delay.)

(B) At least once every 12 months thereafter.

(2) *Special rule for certain programs.* The provisions of paragraph (e)(1) of this section apply to changes among individual physicians or primary care case managers, for enrollees who—

(i) Reside in a rural area in which the State makes available only one MCE, as permitted under § 438.52(c); or

(ii) Reside in an area in which only one HIO is available, as permitted under § 438.52(d).

(f) *Procedures for disenrollment for cause.* (1) *Request for disenrollment.* (i) The enrollee must submit a written request to the State agency or, if the State permits MCEs to process disenrollments for cause, to the MCE.

(ii) When an MCE receives a request for disenrollment, it must promptly submit a copy to the State agency.

(2) *Action on enrollee's request.* (i) The MCE may approve the request if the State permits MCEs to process disenrollments for cause.

(ii) If the MCE approves the request, it must give the enrollee and the State agency written notice of the approval and of the effective date of disenrollment, which must be consistent with paragraph (f)(4) of this section.

(iii) If the MCE, for whatever reason, does not take action to approve the request, it must notify the State agency within a reasonable time-frame established by the State.

(iv) Upon receipt of the MCE's notice, the State agency determines whether there is good cause for disenrollment, based on the following:

(A) Reasons cited in the request, such as poor quality care, lack of access to necessary specialty services covered under the contract, or other reasons satisfactory to the State agency.

(B) Information provided by the MCE at the State agency's request.

(3) *Use of the MCE's grievance procedures.* (i) The State agency may require that the enrollee seek redress through the MCE's grievance system before making a determination on the enrollee's request, except when the request alleges that any delay would pose immediate jeopardy to the enrollee's health.

(ii) The grievance process, if used, must be completed in time to permit the disenrollment (if approved) to be effective no later than the first day of the second month after the month the enrollee makes the request.

(iii) If, as a result of the grievance process, the MCE approves disenrollment, the State agency is not required to make a determination.

(4) *State agency determination.* (i) If a State agency determination is required, the timing of that determination must be such as to permit disenrollment effective no later than the first day of the second month following the month in which the enrollee makes the request.

(ii) If the State agency fails to make a determination within the specified time frames, the request for disenrollment is considered approved.

(g) *Notice and appeals.* A State that restricts disenrollment under this section must take the following actions:

(1) Require MCEs to notify enrollees and potential enrollees of their disenrollment rights—

(i) At least 60 days before the start of each enrollment period; and

(ii) At least once a year.

(2) Establish an appeals process for enrollees dissatisfied with a State agency determination that there is not good cause for disenrollment.

(h) *Automatic reenrollment.* If the State plan so specifies, the contract must provide for automatic reenrollment of a recipient who is terminated from an MCE solely because he or she loses Medicaid eligibility for a period of two months or less.

§ 438.58 Conflict of interest safeguards.

(a) As a condition for contracting with MCOs a State must have in effect safeguards against conflict of interest on the part of State and local officers and employees and agents of the State who have responsibilities relating to MCO contracts or the default enrollment process specified in § 438.56 of this chapter.

(b) These safeguards must be at least as effective as the safeguards specified in section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

§ 438.60 Limit on payment to other providers.

(a) *Basic rule.* The State agency must ensure that, except as provided in paragraph (b) of this section, no payment is made, for services not furnished through the MCO if the services were available under the MCO contract with the State agency.

(b) *Exception.* In accordance with § 438.114(c) and (d), emergency services and post-stabilization services are not subject to the limitation of paragraph (a) of this section.

§ 438.62 Continued service to recipients.

The State agency must arrange for Medicaid services to be provided without delay to any Medicaid enrollee of an MCO whose contract is terminated and for any Medicaid enrollee who is disenrolled from an MCO for any reason other than ineligibility for Medicaid.

§ 438.64 Computation of capitation payments.

The State agency must determine that capitation payments and any other payments provided for in the contract are computed on an actuarially sound basis.

§ 438.66 Monitoring procedures.

The State agency must have in effect procedures for monitoring the following aspects of the MCO's practices and procedures:

(a) Enrollment and termination practices.

(b) Implementation of grievance procedures.

(c) Violations subject to intermediate sanctions, as provided in subpart I of this part.

(d) Violations of the conditions for FFP, as set forth in subpart J of this part.

Subpart C—Enrollee Protections

§ 438.100 Benefits.

(a) Contracts with MCOs must specify the services that the entity is required to provide to Medicaid enrollees.

(b) If the contract does not cover all Medicaid services covered under the State plan, the State must make arrangements for furnishing those other services and give enrollees written instructions on how to obtain them.

§ 438.102 Enrollee-provider communications.

(a) *Practitioner defined.* As used in this subpart ''practitioner'' means a physician, as defined in section 1861(r) of the Act, or any of the following: a psychologist, physician assistant, physical or occupational therapist or therapist assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse midwife), licensed or certified social worker, registered respiratory therapist and certified respiratory therapy technician.

(b) *General rule.* An MCO may not prohibit, or otherwise limit or restrict a participating practitioner (who is acting within the scope of his or her practice) from advising an enrollee who is the practitioner's patient, about the enrollee's health status or about medical care or treatment for the enrollee's condition or disease, regardless of whether the MCO provides benefits for the particular type of care or treatment.

(c) *Conscience protection.* The general rule in paragraph (b) of this section does not require the MCO to cover, furnish, or pay for a particular counseling or referral service if the MCO—

(1) Objects to the provision of that service on moral or religious grounds; and

(2) Makes written information on these policies available as follows:

(i) To the State, with its application for a Medicaid contract.

(ii) To prospective enrollees, before and during enrollment.

(iii) To current enrollees, within 90 days after adopting the policy with respect to any particular service.

(d) *Construction.* Nothing in paragraph (c) of this section may be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974.

§ 438.104 Marketing activities.

(a) *Terminology.* As used in this section—

Choice counseling means activities such as answering questions and providing information (in an unbiased manner) on available delivery system options, and advising on what factors to consider when choosing among them and in selecting a primary care provider.

Cold-call marketing means any unsolicited personal contact by the MCE with a potential enrollee for the purpose of influencing the individual to enroll in that particular MCE.

Enrollment activities means activities such as distributing, collecting, and processing enrollment materials and taking enrollments by phone or in person.

Enrollment broker means an individual or entity that performs choice counseling or enrollment activities, or both.

Marketing materials means materials that—

(1) Are produced in any medium, by or on behalf of an MCE;

(2) Are used by the MCE to communicate with individuals who are not its enrollees; and

(3) Can reasonably be interpreted as intended to influence the individuals to enroll or reenroll in that particular

MCE and *entity* include any of the entity's employees, affiliated providers, agents, or contractors.

Recipient and *potential recipient* include the recipient's authorized representative.

(b) *Requirements and prohibitions.* Each MCE contract must——

(1) Specify the methods by which the entity assures the State agency that marketing plans and materials are accurate and do not mislead, confuse, or defraud the recipients or the State agency.

(2) Provide that the entity—

(i) Does not distribute any marketing materials without first obtaining State approval;

(ii) Distributes the materials to its entire service area;

(iii) Complies with the information requirements of § 438.10 to ensure that, before enrolling, the recipient receives, from the entity or the State, the accurate oral and written information he or she needs to make an informed decision on whether to enroll;

(iv) Does not seek to influence enrollment in conjunction with the sale of any other insurance: and

(v) Does not, directly or indirectly, engage in door-to-door, telephone, or other ''cold-call'' marketing activities.

(c) *State agency review.* In reviewing the marketing materials submitted by the entity, the State must consult with the Medical Care Advisory Committee established under § 431.12 of this chapter or an advisory committee with similar membership.

§ 438.106 Liability for payment.

Each MCO must provide that its Medicaid enrollees are not held liable for any of the following:

(a) The debts of the MCO, in the event of its insolvency.

(b) Services provided to the enrollee, for which—

(1) The State does not pay the MCO; or

(2) The State or the MCO does not pay the individual or health care provider that furnishes the services under a contractual, referral, or other arrangement.

(c) Payments for services furnished under a contract, referral, or other arrangement, to the extent that those payments are in excess of the amount that the enrollee would owe if the MCO provided the services directly.

§ 438.108 Cost sharing.

The contract must provide that any cost sharing imposed on Medicaid enrollees is in accordance with §§ 447.50 through 447.58 of this chapter.

§ 438.110 Assurances of adequate capacity and services.

(a) *Basic rule.* Each MCO must give the State and HCFA assurances that it has the capacity to serve the expected enrollment in its service area in accordance with subpart E of this part.

(b) *Nature of assurances.* The MCO must submit documentation, as provided in paragraphs (c) and (d) of this section, to demonstrate that it—

(1) Offers an appropriate range of services, including access to preventive services, primary care services and specialty services for the anticipated number of enrollees for the service area; and

(2) Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area; and

(3) Meets the availability of services requirements of § 438.306.

(c) *Timing of documentation.* The MCO must submit the documentation described in paragraph (b) of this section at least every 2 years, and, specifically—

(1) At the time it enters into or renews a contract with the State; and

(2) At any time the State determines there has been a significant change in the MCO's delivery network or enrollee population.

(d) *State review and submission to HCFA.* After the State reviews the documentation, and after the MCO makes any changes required as a result of that review, the MCO must submit to HCFA assurances that include copies of—

(1) The documentation reviewed by the State; and

(2) The State's certification that the MCO has complied with the State's requirements for availability of services, as set forth in § 438.306.

§ 438.114 Emergency and post-stabilization services.

(a) *Definitions.* As used in this section—

Emergency medical condition means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(1) Serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of the woman or her unborn child;

(2) Serious impairment of bodily function; or

(3) Serious dysfunction of any bodily organ or part.

Emergency services means covered inpatient or outpatient services that are—

(1) Furnished by a provider qualified to furnish emergency services; and

(2) Needed to evaluate or stabilize an emergency medical condition.

Post-stabilization services means medically necessary non-emergency services furnished to an enrollee after he or she is stabilized following an emergency medical condition.

(b) *Disclosure requirements.* At the time of enrollment and at least annually thereafter, each MCE must provide, in clear, accurate, and standardized form, information that, at a minimum, describes or explains the following:

(1) What constitutes an emergency, and what constitutes post-stabilization services, with reference to the

definitions in paragraph (a) of this section.

(2) The appropriate use of emergency services.

(3) The process and procedures for obtaining emergency services, including use of the 911 telephone system or its local equivalent.

(4) The locations of any emergency settings and other locations at which MCE physicians and hospitals provide emergency services and post-stabilization services covered under the contract.

(5) The fact that prior authorization is not required for emergency services.

(6) The fact that the provider must request authorization for post-stabilization services, but pre-authorization is not required if the MCE does not provide it within an hour after receiving a request for authorization or cannot be reached for authorization.

(c) *Coverage and payment: Post-stabilization services.* (1) The provider of post-stabilization services must request prior authorization for those services.

(2) Each MCE with a risk contract that covers post-stabilization services must pay for those services if—

(i) The services are pre-approved by the MCE; or

(ii) The services are not pre-approved because the MCE does not respond within 1 hour after receiving the provider's request, or cannot be contacted for approval.

(3) If services are covered under paragraph (c)(2) of this section, the MCE must continue to pay for the services until it contacts the provider and makes other arrangements.

(4) If post-stabilization services are not covered under an MCE risk contract, the State must pay for those services if they meet the conditions of paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(5) If authorization by a primary care case manager is a condition for coverage of services, a primary care case manager may not deny authorization for post-stabilization services that meet the conditions of paragraph (c)(2)(ii) of this section.

(d) *Additional rules for emergency services.* (1) An MCO must pay for emergency services regardless of whether the entity that furnishes the services has a contract with the MCO.

(2) A primary care case manager must—

(i) Allow enrollees to obtain emergency services outside the primary care case management system regardless of whether the case manager referred the enrollee to the health care provider that furnishes the services; and

(ii) Pay for the emergency services if the manager's contract is a risk contract that covers those services.

(e) *Financial responsibility.* (1) An MCO may not deny payment for treatment obtained under either of the following circumstances:

(i) An enrollee had an emergency medical condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in paragraphs (1), (2), and (3) of the definition of ''emergency medical condition'' in this section.

(ii) A practitioner or other representative of the MCO instructs the enrollee to seek emergency services.

(2) The MCO is not responsible for services obtained outside the network unless they are emergency services or post-stabilization services that meet the requirement of paragraph (c)(2) of this section.

(f) *Stabilized condition.* The attending physician, or the practitioner actually treating the enrollee, determines when the enrollee is sufficiently stabilized for transfer or discharge, and that determination is binding on the MCO.

§ 438.116 Solvency standards.

(a) *Basic rule.* Each MCO must meet the solvency standards in paragraph (b) of this section, and must provide assurances satisfactory to the State showing that it has adequate provision against the risk of insolvency such as to ensure that its Medicaid enrollees will not be liable for the MCO's debts if it becomes insolvent.

(b) *State solvency standards requirement.* Except as provided in paragraph (c) of this section, an MCO satisfies the solvency requirements if it meets the solvency standards established by the State for private health maintenance organizations, or is licensed or certified by the State as a risk-bearing entity.

(c) *Exceptions to State solvency standards requirement.* The requirement of paragraph (b) of this section does not apply if the MCO—

(1) Does not provide both inpatient hospital services and physician services;

(2) Is a public entity;

(3) Is (or is controlled by) one or more Federally qualified health centers and meets the solvency standards established by the State for those centers;

(4) Has its solvency guaranteed by the State;

(5) Entered into its current contract before October 1998; or

(6) Had a contract under 1903(m) on August 5, 1997. (This exemption expires on August 5, 2000.)

Subpart D [Reserved]

Subpart E—Quality Assessment and Performance Improvement

§ 438.300 Scope.

This subpart implements section 1932(c)(1) and sets forth specifications for quality assessment and performance improvement strategies that States must implement to ensure the delivery of quality health care by MCOs. It also establishes standards that States and MCOs must meet.

§ 438.302 State responsibilities.

Each State contracting with an MCO must—

(a) Have a strategy for assessing and improving the quality of managed care services offered by the MCO;

(b) Ensure compliance with standards established by the State, consistent with this subpart; and

(c) Conduct regular, periodic reviews to evaluate the effectiveness of the strategy, as often as the State considers appropriate, but at least every three years.

§ 438.304 Elements of State quality strategies.

At a minimum, State strategies must include the following—

(a) Contract provisions that incorporate the standards specified in this subpart.

(b) Procedures for assessing the quality and appropriateness of care and services furnished to all Medicaid enrollees under the contract. These procedures include, but are not limited to, continuous monitoring and evaluation of MCO compliance with the standards.

(c) Arranging for annual, external independent reviews of the quality outcomes and timeliness of, and access to services covered under each MCO contract.

(d) Appropriate use of intermediate sanctions that, at a minimum, meet the requirements of Subpart I of this part.

(e) An information system that is sufficient to support initial and ongoing operation and review of the State's quality strategy.

(f) Standards, at least as stringent as those in this subpart, for access to care, structure and operations, and quality measurement and improvement.

Access Standards

§ 438.306 Availability of services.

(a) *Basic rule.* Each State must ensure that all covered services are available and accessible to enrollees.

(b) *Choice of entities.* If a State limits freedom of choice, it must comply with

the requirements of § 438.52, which specifies the choices that the State must make available.

(c) *Services not covered by the MCO contract.* If an MCO contract does not cover all of the services covered under the State plan, the State must arrange for those services to be made available from other sources and instruct all enrollees on where and how to obtain them, including how transportation is provided.

(d) *Delivery network.* The State must ensure that each MCO complies with the requirements set forth in this paragraph.

(1) The MCO maintains and monitors a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract. In establishing and maintaining the network, the MCO must consider the following:

(i) The anticipated enrollment, with particular attention to pregnant women and children.

(ii) The expected utilization of services, considering enrollee characteristics and health care needs.

(iii) The numbers and types of providers required to furnish the contracted services.

(iv) The number of network providers who are not accepting new patients.

(v) The geographic location of providers and enrollees, considering distance, travel time, the means of transportation ordinarily used by enrollees, and whether the location provides physical access for enrollees with disabilities.

(2) The MCO provides female enrollees with direct access to a women's health specialist within the network for womens' routine and preventive health care services, notwithstanding that the MCO maintains a primary care provider for each enrollee.

(3) If seeking expansion of its service area, the MCO demonstrates that it has sufficient numbers and types of providers to meet the anticipated additional volume and types of services the added enrollee population may require.

(4) The MCO demonstrates that its providers are credentialed as required by § 438.314.

(5) When medically appropriate, the MCO makes services available 24 hours a day, 7 days a week. This applies, at a minimum, to —

(i) Emergency services and post-stabilization services; and

(ii) Non-emergency services that are required immediately because of an unforseen illness.

(6) The MCO ensures that its providers' hours of operation are convenient for enrollees and do not discriminate against Medicaid enrollees.

(e) *Provision of services.* The State must ensure that each MCO complies with the requirements of this paragraph.

(1) *Timely access.* The MCO must—

(i) Meet and require its providers to meet State standards established under § 438.304(f) for timely access to care and member services, taking into account the urgency of need for services;

(ii) Establish mechanisms to ensure compliance;

(iii) Monitor continuously to determine compliance; and

(iv) Take corrective action if there is failure to comply.

(2) *Initial assessment.* The MCO must provide initial assessments within the following time frames:

(i) For each enrollee, within 90 days of the effective date of enrollment.

(ii) For pregnant women and enrollees with complex and serious medical conditions, within a shorter period of time, as determined by the State.

(3) *Pregnancy and complex and serious medical conditions.* The MCO must have in effect State-approved procedures under which the MCO—

(i) Timely identifies and furnishes care to pregnant women;

(ii) Timely identifies individuals with complex and serious medical conditions, assesses those conditions and identifies appropriate medical procedures for monitoring or treating them; and

(iii) Implements a treatment plan that—

(A) Is appropriate to the conditions identified and assessed under paragraph (e)(3)(ii) of this section;

(B) Is for a specific period of time;

(C) Specifies an adequate number of direct access visits to specialists as required by the treatment plan; and

(D) Is updated periodically by the physician responsible for overall coordination of the enrollee's health care.

(4) *Cultural considerations.* The MCO ensures that services are provided in a culturally competent manner to all enrollees, including at least the language requirements of § 438.10.

§ 438.308 Continuity and coordination of care.

The State must ensure that each MCO meets the requirements of this section.

(a) *Primary care and over-all coordination.* This requires written policies that—

(1) Provide that each enrollee has an ongoing source of primary care appropriate to the enrollee's needs, and a health care practitioner who is formally designated as primarily responsible for coordinating the enrollee's overall health care; and

(2) Specify whether coordination is provided by the enrollee's primary care provider or by a different practitioner.

(b) *Coordination program.* Each MCO must ensure coordination of services internally and with services available from community organizations and other social programs.

(c) *Patient care information.* The MCO and its providers must have the information necessary for effective and continuous patient care and quality improvement, including procedures to ensure that—

(1) Each provider maintains, for Medicaid enrollees, health records that meet the requirements established by the MCO, taking into account professional standards; and

(2) There is appropriate and confidential exchange of information among providers.

(d) *Enrollee participation.* To ensure optimum enrollee participation, there must be procedures to ensure that providers—

(1) Inform enrollees of specific health conditions that require follow-up and, if appropriate, provide training in self-care; and

(2) Deal with factors that hinder enrollee compliance with prescribed treatments or regimens.

§ 438.310 Coverage and authorization of services.

(a) *Coverage.* Each contract must—

(1) Identify, define, and specify the amount, duration, and scope of each service that the MCO offers;

(2) Specify what constitutes ''medically necessary services'' to the extent they are described in the State plan; and

(3) Provide that the MCO furnishes the services in accordance with that provision.

(b) *Processing of requests.* Each contract must—

(1) Require that, in processing requests for initial and continuing authorization of services, the MCO and its subcontractors follow written policies and procedures that reflect current standards of medical practice;

(2) Specify the information required for authorization decisions and require that the MCO—

(i) Have in effect mechanisms to ensure consistent application of review criteria for authorization decisions;

(ii) Consult with the requesting provider when appropriate; and

(iii) Observe the time-frames specified in paragraph (d) of this section.

(c) *Notice of adverse action.* Each contract must provide that, within the time frames specified in paragraph (d) of this section, the MCO will give the requesting provider and the enrollee written notice, in accordance with § 438.404, of the following:

(1) Any decision to deny, limit, reduce, delay, or terminate a services, including specific reasons for the decision.

(2) The enrollee's right to file a grievance or request a State fair hearing, in accordance with subpart F of this part.

(d) *Time-frames.* Each contract must specify that the MCO will provide services as expeditiously as the enrollee's health condition requires and within State-established time-frames that may not exceed the following:

(1) Ordinarily, no later than 14 calendar days after receipt of the request for service, with a possible extension of up to 14 additional calendar days, if—

(i) The enrollee requests extension; or

(ii) The MCO justifies (to the State agency upon request) a need for additional information and how the extension is in the enrollee's interest.

(2) If the physician indicates, or the MCO determines that following the ordinary time-frame could seriously jeopardize the enrollee's life or health or ability to regain maximum function, no later than 72 hours after receipt of the request for service, with a possible extension of up to 14 additional calendar days if—

(i) The enrollee requests extension; or

(ii) The MCO justifies (to the State agency upon request) a need for additional information and how the extension is in the enrollee's interest.

(e) *Compensation for utilization management activities.* Each contract must provide that, consistent with § 438.6(g), and § 422.208 of this chapter, compensation to individuals or entities that conduct utilization management activities is not structured so as to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary services to any enrollee.

Structure and Operation Standards

§ 438.314 Establishment of provider networks.

(a) The State must ensure that each MCO implements a documented selection and retention process that meets the requirements of this section.

(b) For each practitioner, including each practitioner who is a member of a contracting group that provides services to the MCO's Medicaid enrollees, the process must include procedures for the following:

(1) Initial credentialing that is based on a written application and site visits as appropriate, as well as primary source verification of licensure, disciplinary status, and eligibility for payment under Medicaid.

(2) Recredentialing that is accomplished—

(i) Within time-frames set by the State, but no less frequently than required by the State for private health maintenance organizations; and

(ii) Through a process that updates information obtained during initial credentialing and considers performance indicators, including those obtained through the following:

(A) The quality assessment and performance improvement program.

(B) The utilization management system.

(C) The grievance system.

(D) Enrollee satisfaction surveys.

(E) Other MCO activities, as specified by the State.

(3) Use of formal selection and retention criteria that, consistent with § 438.12 do not discriminate against particular practitioners, such as those who serve high risk populations, or specialize in conditions that require costly treatment.

(4) For each provider other than an individual practitioner, initial determination and periodic redetermination (at specified intervals determined by Federal and State credentialing cycles) to ensure that, at a minimum, the provider is licensed (if the State requires licensing to operate in the State) and in compliance with any other Federal or State requirements.

§ 438.318 Enrollee information.

(a) *General rule.* The requirements that States must meet under § 438.10 constitute part of the State's quality strategy.

(b) *Additional requirement.* (1) Each State or its contracted representative must also provide the information specified in paragraph (b)(2) of this section, for each contracting MCO throughout the State—

(i) To any potential enrollee who requests it; and

(ii) To all potential enrollees, when they first become eligible for Medicaid, are considering choice of MCOs under a voluntary program, or are first required to choose an MCO under a mandatory enrollment program; and

(iii) Within a time frame that enables them to use the information in choosing among available MCOs.

(2) *Required information.* Following is the information that the State must provide:

(i) Benefits covered.

(ii) Cost-sharing, if any.

(iii) Service area.

(iv) Names and locations of current network providers, including identification of those who are not accepting new patients.

(v) Benefits that are available under the State plan but are not covered under the contract, including how and where the enrollee may obtain those services, any cost sharing, and how transportation is provided.

§ 438.320 Enrollee rights.

(a) *General rule.* The State must ensure that each MCO has written policies regarding the enrollee rights specified in this section, complies with any other Federal and State laws that pertain to enrollee rights, and ensures that its staff and affiliated providers take into account those rights when furnishing services to enrollees.

(b) *Basic rights.* The State must ensure that each enrollee has the right to—

(1) Receive information in accordance with §§ 438.10 and 438.318.

(2) Be provided health care services in accordance with §§ 438.306 through 438.310.

(3) Be treated with respect and with due consideration for his or her dignity and privacy;

(4) Receive information on available treatment options and alternatives;

(5) Participate in decisions regarding his or her health care; and

(6) Have access to his or her medical records in accordance with applicable Federal and State laws.

(c) *Other statutory requirements.* The State must ensure that each MCO complies with any other Federal or State laws (such as the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the Americans with Disabilities Act) that pertain to enrollee rights.

§ 438.324 Confidentiality.

The State must ensure, consistent with the regulations in subpart F of part 431 of this chapter, that each MCO establishes and implements procedures to do the following:

(a) Maintain the records and any other information (in oral, written, or electronic format) in a timely and accurate manner.

(b) Safeguard the privacy of any information that identifies a particular enrollee by ensuring that—

(1) Original medical records are released only in accordance with Federal or State law, or court orders or subpoenas;

(2) Copies of records and information from the MCO are released only to authorized individuals; and

(3) Unauthorized individuals do not gain access to, or alter, patient records.

(c) Protect the confidentiality and privacy of minors, subject to applicable Federal and State law.

(d) Ensure that enrollees have timely access to the records and information that pertain to them.

(e) Abide by all Federal and State laws regarding confidentiality and disclosure of mental health records, medical records, other health information, and any information about an enrollee.

§ 438.326 Enrollment and disenrollment.

The State must ensure that each MCO complies with the enrollment and disenrollment requirements and limitations set forth in § 438.56.

§ 438.328 Grievance systems.

The State must ensure that each MCO has in effect a grievance system that meets the requirements of subpart F of this part.

§ 438.330 Subcontractual relationships and delegation.

(a) *General rule.* The State must ensure that each MCO oversees and is accountable for any functions and responsibilities that it delegates to any subcontractor, and meets the conditions of paragraph (b) of this section.

(b) *Specific conditions.* (1) Before any delegation, the MCO evaluates the prospective subcontractor's ability to perform the activities to be delegated.

(2) There is a written agreement that specifies the delegated activities and reporting responsibilities of the subcontractor and provides for revocation of the delegation or imposition of other sanctions if the subcontractor's performance is inadequate.

(3) The MCO monitors the subcontractor's performance on an ongoing basis and subjects it to formal review at least once a year.

(4) If the MCO identifies deficiencies or areas for improvement, the MCO and the subcontractor take corrective action.

Measurement and Improvement Standards

§ 438.336 Practice guidelines.

The State must ensure that each MCO develops (or adopts) and disseminates practice guidelines in accordance with this section.

(a) *Development of guidelines.* Guidelines——

(1) Are based on reasonable medical evidence or a consensus of health care professionals in the particular field;

(2) Consider the needs of the MCO's enrolles;

(3) Are developed in consultation with contracting health professionals; and

(4) Are reviewed and updated periodically.

(b) *Dissemination of guidelines.* The MCO disseminates the guidelines to all providers, to all enrollees as appropriate, and to individual enrollees when they request them.

(c) *Application of guidelines.* Decisions with respect to utilization management, enrollee education, coverage of services, and other areas to which the guidelines apply are consistent with the guidelines.

§ 438.340 Quality assessment and performance improvement program.

(a) *General rules.* (1) The State must require, through its contracts, that each MCO has an ongoing quality assessment and performance improvement program for the services it furnishes to its enrollees.

(2) Paragraphs (b) through (d) of this section set forth the basic elements, minimum performance levels, and performance improvement projects required for MCOs.

(b) *Basic elements of an MCO quality assessment and performance improvement program.* At a minimum, the State must require that the MCO——

(1) Achieve required minimum performance levels on standardized quality measures, in accordance with paragraph (c) of this section;

(2) Conduct performance improvement projects as described in paragraph (d) of this section. These projects must achieve, through ongoing measurements and intervention, demonstrable and sustained improvement in significant aspects of clinical care and non-clinical care areas that can be expected to have a favorable effect on health outcomes and enrollee satisfaction; and

(3) Have in effect mechanisms to detect both underutilization and overutilization of services.

(c) *Minimum performance levels.* (1) The MCO must meet the following requirements:

(i) Measure its performance, using standard measures required by the State, and report its performance to the State.

(ii) Achieve any minimum performance levels that the State establishes with respect to the standard measures.

(2) The State——

(i) May specify the standard measures in uniform data collection and reporting instruments; and

(ii) Must, in establishing minimum performance levels for the MCO—

(A) Consider data and trends for both the MCO and fee-for-service Medicaid in that State; and

(B) Establish the minimum performance levels prospectively upon contract initiation and renewal.

(d) *Performance improvement projects.* (1) Performance improvement projects are MCO initiatives that focus on clinical and non-clinical areas, and that involve the following:

(i) Measurement of performance using objective quality indicators.

(ii) Implementation of system interventions to achieve improvement in quality.

(iii) Evaluation of the effectiveness of the interventions.

(iv) Planning and initiation of activities for increasing or sustaining improvement.

(2) Each project must represent the entire population to which the measurement specified in paragraph (d)(1)(i) of this section is relevant.

(3) The State must establish MCO obligations for the number and distribution of projects among the required clinical and non-clinical areas specified in paragraphs (d)(4) and (d)(5) of this section, to ensure that the projects are representative of the entire spectrum of clinical and non-clinical areas associated with the MCO.

(4) Clinical areas include—

(i) Prevention and care of acute and chronic conditions;

(ii) High-volume services;

(iii) High-risk services; and

(iv) Continuity and coordination of care.

(5) Non-clinical areas include—

(i) Appeals, grievances, and complaints; and

(ii) Access to, and availability of, services.

(6) In addition to requiring that the MCO initiate its own performance improvement projects, the State may require that the MCO—

(i) Conduct particular performance improvement projects that are specific to the MCO; and

(ii) Participate annually in at least one Statewide performance improvement project.

(7) For each project, the MCO must assess its performance using quality indicators that are—

(i) Objective, clearly and unambiguously defined, and based on current clinical knowledge or health services research; and

(ii) Capable of measuring outcomes such as changes in health status, functional status, and enrollee satisfaction, or valid proxies of these outcomes.

(8) Performance assessment on the selected indicators must be based on

systematic ongoing collection and analysis of valid and reliable data.

(9) The MCO's interventions must achieve improvement that is significant and sustained over time.

(10) The MCO must report the status and results of each project to the State as requested.

(e) *Program review by the State.* (1) The State must review, at least annually, the impact and effectiveness of the MCO's quality assessment and performance improvement program. The review must include—

(i) The MCO's performance on the standard measures on which it is required to report; and

(ii) The results of the MCO's performance improvement projects.

(2) The State may require that the MCO have in effect a process for its own evaluation of the impact and effectiveness of its quality assessment and performance improvement program.

§ 438.342 Health information systems.

(a) *General rule.* The State must ensure that each MCO maintains a health information system that collects, analyzes, integrates, and reports data and can achieve the objectives of this subpart. The system should provide information on areas including, but not limited to, utilization, grievances, disenrollments, and solvency.

(b) *Basic elements of a health information system.* The State must require, at a minimum, that the MCO comply with the following:

(1) Collect data on enrollee and provider characteristics as specified by the State, and on services furnished to enrollees through an encounter data system or such other methods as may be specified by the State.

(2) Ensure that data received from providers is accurate and complete by—

(i) Verifying the accuracy and timeliness of reported data;

(ii) Screening the data for completeness, logic, and consistency; and

(iii) Collecting service information in standardized formats to the extent feasible and appropriate.

(3) Make all collected data available to the State and to HCFA, as required in this subpart, or upon request.

Subpart F—Grievance System

§ 438.400 Statutory basis and definitions.

(a) *Statutory basis.* This subpart is based on sections 1902(a)(3), 1902(a)(4), and 1932(b)(4) of the Act.

(1) Section 1902(a)(3) requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly.

(2) Section 1902(a)(4) requires that the State plan provide for methods of administration that the Secretary finds necessary for proper and efficient operation of the plan.

(3) Section 1932(b)(4) requires Medicaid managed care organizations to establish internal grievance procedures under which Medicaid enrollees, or providers acting on their behalf, may challenge the denial of coverage of, or payment for, medical assistance.

(b) *Definitions.* As used in this subpart, the following terms have the indicated meanings.

Complaint means any oral or written communication, made by or on behalf of an enrollee, to any employee of the MCO or of its providers, or to the State, expressing dissatisfaction with any aspect of the MCO's or provider's operations, activities, or behavior, regardless of whether the communication requests any remedial action.

Enrollee means an enrollee or his or her authorized representative.

Governing body means the MCO's Board of Directors or a designated committee of its senior management.

Grievance means a written communication, submitted by or on behalf of a Medicaid enrollee, expressing dissatisfaction with any aspect of the MCO's or provider's operations, activities, or behavior that pertains to—

(1) The availability, delivery, or quality of health care services, including utilization review decisions that are adverse to the enrollee;

(2) Payment, treatment, or reimbursement of claims for health care services; or

(3) Issues unresolved through the complaint process.

§ 438.402 General requirements.

(a) *The grievance system.* Each MCO must provide for a grievance system that includes a complaint process, a grievance process, and a link to the State's fair hearing system.

(b) *Complaint and grievance process requirements.* The MCO must—

(1) Base its complaint and grievance processes on written policies and procedures that, at a minimum, meet the conditions set forth in this subpart;

(2) Obtain the State's written approval of the complaint and grievance processes before implementation;

(3) Require that its governing body approve and be responsible for the effective operation of complaint and grievance processes; and

(4) Require that its governing body review and resolve complaints and grievances, unless it delegates this responsibility in writing to a grievance committee.

(c) *Grievance process requirements.* Each MCO grievance process must meet the following requirements:

(1) Consist of clearly explained steps that—

(i) Permit the enrollee to appeal to the MCO and to the State; and

(ii) Allow the enrollee a reasonable time to request grievance resolution and fair hearing. (The minimum time is 90 days from the date the MCO mails the notice of action, as provided under the fair hearing process at § 431.221 of this chapter.)

(2) Include, for each step, time frames that take into consideration the enrollee's health condition and provide for expedited resolution of grievances in accordance with § 438.410.

(3) Permit enrollees to appear before the MCO personnel responsible for resolving the grievance.

(4) Provide that, if the grievance resolution decision is wholly or partly adverse to the enrollee, the MCO submits the decision and all supporting documentation to the State as expeditiously as the enrollee's health condition requires but no later than the following:

(i) For a standard resolution, no later than 30 days after receipt of the grievance or the expiration of any extension.

(ii) For an expedited resolution, no later than 24 hours after reaching the decision.

(5) Not substitute for the State's fair hearing system.

(d) *State fair hearing.* The State must either permit the enrollee to request a State fair hearing on a grievance at any time, or provide for a State fair hearing following an MCO adverse decision on the grievance under paragraph (c)(4) of this section.

§ 438.404 Notice of intended action.

If an MCO intends to deny, limit, reduce, delay, or terminate a service or deny payment for a service, the MCO must give the enrollee timely written notice, within time-frames specified in § 438.310, to explain the following:

(a) The action the MCO intends to take.

(b) The reasons for the intended action.

(c) Any laws and rules that support the action.

(d) The enrollee's right to file a complaint or grievance with the MCO and to request a State fair hearing.

(e) The circumstances under which expedited grievance review is available and how to request it.

(f) How to file complaints, grievances, and State fair hearing requests.

(g) That if the enrollee files a grievance, he or she has a right to appear in person before the MCO personnel assigned to resolve the grievance.

(h) The circumstances under which benefits will continue pending resolution of the grievance or issuance of a State fair hearing decision.

(i) How to contact the designated office described in § 438.406(a).

(j) How to obtain copies of enrollee's records, not limited to medical records.

§ 438.406 Handling of complaints and grievances.

Each MCO must comply with the following requirements in handling complaints and grievances:

(a) Have an adequately staffed office that is designated as the central point for enrollee issues, including complaints and grievances.

(b) Acknowledge receipt of each complaint and grievance.

(c) Give enrollees any assistance they need in completing forms or taking other steps necessary to obtain resolution of the complaint or grievance at the MCO level.

(d) Conduct the grievance process using impartial individuals who were not involved in any previous level of review or decision making. In the case of a denial based on lack of medical necessity, the individual must be a physician with appropriate expertise in the field of medicine that encompasses the enrollee's condition or disease.

(e) Resolve all grievances in accordance § 438.408.

§ 438.408 Grievance resolution and notification.

(a) *Resolution.* The MCO must take the following actions and comply with the following requirements:

(1) Investigate the grievance.

(2) For a grievance that requires standard resolution, resolve the grievance as expeditiously as the enrollee's health condition requires, within time frames established by the State, but no later than 30 calendar days after it receives the grievance. The MCO may extend the 30-day time frame by up to 14 calendar days if—

(i) The enrollee requests the extension; or

(ii) The MCO justifies (upon request, to the State agency) a need for additional information and how the delay is in the interest of the enrollee.

(3) For a grievance that requires expedited resolution under § 438.410, resolve the grievance as expeditiously as the enrollee's health condition requires, within time frames established by the State, but no later than 72 hours after it receives the grievance. The MCO may extend the time frame by up to 14 calendar days if—

(i) The enrollee requests the extension; or

(ii) The MCO justifies (upon request, to the State agency) a need for additional information and how the delay is in the interest of the enrollee;

(4) Base the decision on the record of the case, including any MCO hearing provided under § 438.402(c)(3), and relevant program laws, regulations, and policies.

(b) *Notification.* (1) *Timing.* Within the time frames specified in paragraphs (a)(2) and (a)(3) of this section, the MCO must—

(i) Give the affected parties written notice of a standard resolution decision and oral and written notice of an expedited resolution decision; and

(ii) If the decision is wholly or partially adverse to the enrollee, submit the decision and all supporting documentation to the State as expeditiously as the enrollee's health condition requires, but no later than the following:

(A) For a standard resolution, no later than 30 days after it receives the grievance.

(B) For an expedited resolution, no later than 24 hours after it reaches the decision.

(2) *Content of notice.* The notice of grievance resolution must include the following:

(i) The name of the MCO contact for the grievance.

(ii) The results of the grievance process and the date it was completed.

(iii) A summary of the steps taken on behalf of the enrollee to resolve the issue.

(iv) A clear explanation of the right to a State fair hearing, if the enrollee is dissatisfied with the decision, and how to timely file for a fair hearing.

(v) For a grievance decision that is wholly or partly adverse to the enrollee, an explanation of the circumstances under which—

(A) Benefits will continue if the enrollee files a fair hearing request timely; and

(B) The enrollee may be required to pay the cost of any services furnished during the pendency of the appeal, if the final decision is adverse to him or her.

§ 438.410 Expedited resolution of grievances.

Each MCO must establish and maintain an expedited grievance review process under which the MCO—

(a) Provides an enrollee with expedited resolution of a grievance in response to a written request, or an oral request confirmed in writing within 24 hours, under the following circumstances:

(1) An enrollee makes the request, and the MCO determines that taking the time for a standard non-expedited resolution could seriously jeopardize the enrollee's life or health or the enrollee's ability to regain maximum function.

(2) A physician makes the request or supports an enrollee's request and indicates that taking the time for standard, non-expedited resolution could seriously jeopardize the enrollee's life or health or the enrollee's ability to regain maximum function.

(b) Issues the decision of the expedited resolution, including the information specified in § 438.408(b)—

(1) As expeditiously as the enrollee's health condition requires;

(2) Within the time frame established by the State agency, but no later than 72 hours after it receives the grievance, or the date of expiration of any extension specified in § 438.408(a)(3).

(c) Notifies the State of each decision that is wholly or partly adverse to the enrollee, and submits, for further review by the State, the records and documentation that support the decision—

(1) As expeditiously as the enrollee's health condition requires; but

(2) No later than 24 hours after the expedited decision,

(d) Continues the enrollee's benefits, pending final resolution, in accordance with § 438.420.

(e) Neither takes nor threatens to take any punitive action against a physician who requests an expedited resolution or supports an enrollee's request for expedited resolution.

(f) If it denies a request for expedited resolution of a grievance, takes the following actions:

(1) Automatically transfers the request to the time frame for standard resolution established under § 438.408(a)(2). The time frame begins with the day that the MCO receives the request for expedited resolution.

(2) Gives the enrollee prompt oral notice of the denial of the request and follows up, within 2 working days, with a written letter that —

(i) Explains that the MCO will process the request using the 30-day time frame for standard resolutions;

(ii) Informs the enrollee of the right to file a grievance if he or she disagrees with the MCO's decision not to expedite; and (iii) Provides instructions about the grievance process and its time frames.

§ 438.414 Information about the grievance system.

(a) *To whom information must be provided.* Each MCO must provide information about the grievance system, as required under § 438.10 and specified in paragraph (b) of this section to—

(1) Enrollees;

(2) Potential enrollees (as permitted by the State); and

(3) All providers, at the time of subcontracting.

(b) *Information content.* The information must explain the grievance system through a State-developed or State-approved description and must include the following:

(1) Specification of what constitutes grounds for a complaint, grievance, or State fair hearing request.

(2) An explanation of how to file complaints, grievances and State fair hearing requests, and the time frames for doing so.

(3) An explanation of the availability of assistance with the grievance process and State fair hearings.

(4) Toll-free numbers that the enrollee can use to register a complaint or complete a grievance form by telephone. The toll-free numbers must have adequate TTY and interpreter capability.

(5) The specific titles and telephone numbers of the persons who have responsibility for the proper functioning of the grievance process and the authority to require corrective action.

(6) Assurance that filing a grievance or requesting a State fair hearing will not negatively affect or impact the way the MCO and its providers, or the State agency treat the enrollee.

(7) Information on how to obtain care or services during the grievance and fair hearing processes as specified in § 438.420.

(c) *Aggregate information.* Upon request, the MCO must provide enrollees and potential enrollees with aggregate information, derived from the information collected under § 438.416(e), regarding the nature of enrollee grievances and their resolution.

§ 438.416 Recordkeeping and reporting requirements.

Each MCO must comply with the following requirements, and in so doing, must comply with the confidentiality requirements of § 438.324:

(a) Maintain a log of all complaints and grievances and their resolution.

(b) Track each grievance until its final resolution.

(c) Record any disenrollment and the reason for it, even if it occurs before the grievance process is completed.

(d) Retain the records of complaints, grievances (including their resolution) and disenrollments for three years, in a central location, and make them accessible to the State. If any litigation, claim negotiation, audit, or other action involving the documents or records is started before the expiration of the three-year period, the MCO must retain the records until completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

(e) As often as the State requests, but at least once a year, analyze the collected information and prepare and send to the State a summary that includes the following information:

(1) The number and nature of all complaints and grievances.

(2) The time frames within which they were resolved, and the decisions.

(3) A listing of all grievances that have not been resolved to the satisfaction of the affected enrollee.

(4) The number and nature of grievances for which the MCO provided expedited resolution, and the decisions.

(5) Any trends relating to a particular provider or a particular service.

§ 438.420 Continuation of benefits pending grievance resolution or State fair hearing decision.

(a) *Terminology.* (1) As used in this section, ''timely'', as it pertains to the filing of a grievance, or a request for expedited grievance resolution or State fair hearing, means filing—

(i) On or before the time limit specified by the State and communicated in the notice of intended action; or

(ii) Before the effective date of the MCO's proposed action, whichever is later.

(2) The State-specified time limit may not be less than the 5-day or 10-day time-frames specified in §§ 431.230 and 431.231 of this chapter for advance notice to Medicaid beneficiaries.

(b) *Basic rule.* If an enrollee timely files a grievance or requests expedited grievance resolution or a State fair hearing, the MCO must continue the enrollee's benefits until issuance of the final grievance decision or State fair hearing decision if the following conditions are met:

(1) The current level of services was ordered by the MCO treating physician or another MCO physician.

(2) The physician is authorized to order the services under the MCO contract.

(3) The enrollee requests continuation.

§ 438.421 Effectuation of reversed grievance resolutions.

(a) *Reversal by the MCO.* If the MCO reconsiders and reverses a grievance resolution decision to deny service, the MCO must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 30 calendar days after reversal.

(b) *Reversal by State fair hearing decision.* If an MCO grievance resolution decision to deny service is reversed by a State fair hearing decision, the MCO must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days after receipt of the State's notice of reversal.

§ 438.422 Monitoring of the grievance system.

(a) The records that MCOs are required to maintain and summarize under § 438.416 provide the basis for monitoring by the MCO and by the State.

(b) If the summaries required under paragraph (e) of § 438.416 reveal undesirable trends by a particular provider or involving a particular service, the MCO must conduct an in-depth review, report the results to the State, and take corrective action.

§ 438.424 Consequences of noncompliance.

If an MCO (or its providers) fails to comply with the provisions of this subpart—

(a) The State may terminate the MCO's contract, in accordance with § 438.718; and

(b) HCFA may deny FFP to the State, in accordance with §§ 438.802 and 438.804.

Subpart G—[Reserved]

Subpart H—Certifications and Program Integrity Protections

§ 438.600 Statutory basis.

This subpart is based on sections 1902(a)(4) and 1902(a)(19) of the Act.

(a) Section 1902(a)(4) requires that the State plan provide for methods of administration that the Secretary finds necessary for the proper and efficient operation of the plan.

(b) Section 1902(a)(19) requires that the State plan provide the safeguards necessary to ensure that eligibility will be determined, and services will be provided in a manner consistent with simplicity of administration and the best interests of the recipients.

§ 438.602 Certification of data that determine payment.

When State payments to MCOs are based on data submitted by the MCO—

(a) The data includes but is not limited to enrollment information, encounter data, and other information required by the State; and

(b) As a condition for receiving payment, the MCO must, concurrent with the submission of the data, attest to its accuracy, completeness, and truthfulness.

§ 438.606 Conditions necessary to contract as an MCO.

(a) Any entity seeking to contract as an MCO must have administrative and management arrangements or procedures designed to guard against fraud and abuse. Unless otherwise provided for by State law, the arrangements or procedures must include reporting to the State, and to HCFA or the OIG (or both) credible information on violations of law by the MCO or its subcontractors or enrollees.

(b) With respect to enrollees, this reporting requirement applies only to credible information on violations of law that pertain to enrollment in the plan, or the provision of, or payment for, health services.

§ 438.608 Certification for contracts and proposals.

MCOs must certify the accuracy, completeness, and truthfulness of information in contracts, requests for proposals, and other related documents specified by the State.

Subpart I—Sanctions

§ 438.700 Basis for imposition of sanctions.

(a) Each State that contracts with an MCO must establish intermediate sanctions, as specified in § 438.702, that it may impose if it makes a determination that an MCO acts or fails to act as follows:

(1) Fails substantially to provide medically necessary services that the MCO is required to provide, under law or under its contract with the State, to an enrollee covered under the contract.

(2) Imposes on enrollees premiums or charges that are in excess of the premiums or charges permitted under the Medicaid program.

(3) Acts to discriminate among enrollees on the basis of their health status or requirements for health care services. This includes termination of enrollment or refusal to reenroll a recipient, except as permitted under the Medicaid program, or any practice that would reasonably be expected to discourage enrollment by recipients whose medical condition or history indicates probable need for substantial future medical services.

(4) Misrepresents or falsifies information that it furnishes to HCFA or to the State, or to an enrollee, potential enrollee, or health care provider.

(5) Fails to comply with the requirements for physician incentive plans, as set forth in § 422.208 of this chapter.

(6) Distributes directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved by the State or contain false or materially misleading information.

(b) Each State that contracts with a primary care case manager may establish intermediate sanctions that it may impose if it determines that the case manager has distributed directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved by the State or contain false or materially misleading information in violation of § 438.104(b).

§ 438.702 Types of intermediate sanctions.

(a) The types of intermediate sanctions that a State may impose under this subpart include any of the following:

(1) Civil money penalties in the amounts specified in § 438.704.

(2) Appointment of temporary management as provided in § 438.706. (The State may not impose this sanction on a primary care case manager.)

(3) Granting enrollees of MCEs the right to terminate enrollment without cause. (The State must notify the affected recipients of their right to disenroll.)

(4) Suspension of all new enrollment, including default enrollment, after the date HCFA or the State notifies the MCE of a determination under § 438.700.

(5) Suspension of payment to the MCE for recipients enrolled after the date HCFA or the State notifies the MCE of a determination under § 438.700, and until HCFA or the State is satisfied that the reason for imposition of sanction no longer exists and is not likely to recur.

(b) The State may also impose the sanctions specified in paragraphs (a)(4) and (a)(5) of this section on entities that have been determined by the State or by HCFA to have committed violations as follows:

(1) On an MCO that has violated any of the requirements in section 1903)(m) of the Act or implementing regulations; and

(2) On an MCE that has violated any of the requirements in section 1932 of the Act or implementing regulations.

§ 438.704 Amounts of civil money penalties.

The limit on the amount of a civil money penalty the State may impose varies depending on the nature of the MCE's action or failure to act, as provided in this section.

(a) The limit is $25,000 for each determination of either of the following:

(1) A failure to act described in paragraph (a)(1), (a)(5), (a)(6), or (b) of § 438.700.

(2) A misrepresentation or falsification of information furnished to an enrollee, potential enrollee, or health care provider.

(b) The limit is $100,000 for each determination of either of the following:

(1) Discriminatory action as described in paragraph (a)(3) of § 438.700.

(2) A misrepresentation or falsification of information furnished to HCFA or to the State.

(c) The limit is $15,000 (subject to the $100,000 limit of paragraph (b) of this section) for each recipient the State determines was not enrolled because of the discriminatory practice determined under paragraph (b) of this section.

(d) For premiums or charges in excess of the amounts permitted under the Medicaid program, the limit is double the amount of the excess charges. The State must deduct from the penalty the amount of overcharge and return it to the affected enrollee.

§ 438.706 Special rules for temporary management.

(a) *Basis for imposition of sanction.* The State may impose temporary management if it finds (through onsite survey, enrollee complaints, financial audits, or any other means) that—

(1) There is continued egregious behavior by the MCO, including but not limited to behavior that is described in § 438.700 or § 434.67(a) of this chapter, or that is contrary to any requirements of sections 1903(m) or 1932 of the Act;

(2) There is substantial risk to enrollees' health; or

(3) The sanction is necessary to ensure the health of the MCO's enrollees—

(i) While improvements are made to remedy violations under § 438.700; or

(ii) Until there is an orderly termination or reorganization of the MCO.

(b) *Duration of sanction.* The State may not terminate temporary management until it determines that the MCO can ensure that the sanctioned behavior will not recur.

§ 438.708 Required imposition of temporary management for chronic substandard MCOs.

For an MCO that the State finds has repeatedly substantially failed to meet requirements in sections 1903(m) and 1932 of the Act and implementing regulations, the State must (regardless of any other sanctions that may be provided) impose temporary management and grant enrollees the right to terminate enrollment without cause, as described in § 438.702(a)(3).

§ 438.710 Notice of sanction; due process.

(a) *General rule.* Except as provided in paragraph (b) of this section, before imposing any of the sanctions specified in this subpart, the State must give the affected MCE timely written notice that explains——

(1) The basis and nature of the sanction; and

(2) Any other due process protections that the State elects to provide.

(b) *Exception.* The State may not delay imposition of temporary management during the time required for due process procedures, and may not provide a hearing before imposition of temporary management.

§ 438.718 Termination of an MCE contract.

A State has the authority to terminate an MCE's contract, and enroll that entity's enrollees in other MCEs or provide their Medicaid benefits through other options included in the State plan if the State determines that the MCE—

(a) Has failed substantially to carry out the terms of its contract; or

(b) Has failed to meet applicable requirements in sections 1932, 1903(m), or 1905(t) of the Act.

§ 438.720 Hearing on contract termination.

(a) *Requirement.* Before terminating an MCE contract under § 438.718, the State must provide the MCE a pre-termination hearing.

(b) *Procedure.* The State must—

(1) Within 30 days after reaching the determination to terminate, give the MCE written notice of its intent to terminate, the reason for termination, and the time and place of the hearing; and

(2) Provide the hearing not less than 30 nor more than 60 days after the notice, unless the State and the MCE reach written agreement on a different date.

(c) *Decision following a hearing.* (1) After the hearing, the State must give the MCE a written decision affirming or reversing the proposed determination to terminate the contract.

(2) If the hearing decision affirms the proposed determination to terminate, the State must indicate the date the termination is effective.

§ 438.722 Disenrollment during termination hearing process.

After a State has notified an MCE of its intention to terminate the MCE's contract, the State may——

(a) Give the MCE's enrollees written notice of the State's intent to terminate the MCE's contract; and

(b) Allow enrollees to disenroll immediately without cause.

§ 438.724 Notice to HCFA.

(a) The State must give the HCFA Regional Office written notice whenever it imposes or lifts a sanction.

(b) The notice must——

(1) Be given no later than 30 days after the State imposes or lifts the sanction; and

(2) Specify the affected MCE, the kind of sanction, and the reason for the State's decision to impose or lift the sanction.

§ 438.730 Sanction by HCFA.

(a) *Nature of sanction.* If the conditions of this section are met, HCFA may impose on an MCO the sanction of denial of payment for new enrollees, that is, for recipients enrolled after the effective date of the sanction.

(b) *Basis for sanction.* (1) A State agency may recommend that HCFA impose the denial of payment sanction on an MCO with a comprehensive risk contract if the MCO——

(i) Has failed to comply with the requirement of § 438.700(a)(1);

(ii) Has acted as specified in paragraph (a)(2), (a)(3), or (a)(4) of § 438.700.

(iii) Has failed to meet the physician incentive plan requirements specified in § 438.700(a)(5), or has failed to submit information on the incentive plan as required by § 417.479 of this chapter.

(2) The State agency's recommendation becomes HCFA's decision unless HCFA rejects it within 15 days.

(c) *Notice of sanction.* If HCFA accepts the recommendation, HCFA and the State agency take the following actions:

(1) HCFA conveys the determination to the OIG for consideration of possible imposition of civil money penalties under part 1003 or 1005 of this title.

(2) The State agency——

(i) Gives the MCO written notice of the proposed sanction;

(ii) Allows the MCO 15 days from date of receipt of the notice to provide evidence that it has not acted or failed to act in the manner that is the basis for the recommended sanction;

(iii) May extend the original 15-day period for an additional 15 days if, before the end of that period, the MCO submits a written request that includes a credible explanation of why it needs additional time; and

(iv) May not grant an extension if HCFA determines that the MCO's conduct poses a threat to an enrollee's health and safety.

(d) *Informal reconsideration.* (1) If the MCO submits a timely response to the notice of sanction, the State agency conducts an informal reconsideration that includes——

(i) Review of the evidence by an State agency official who did not participate in the original recommendation; and

(ii) A concise written decision setting forth the factual and legal basis for the decision.

(2) The State agency decision under paragraph (d)(1)(ii) of this section is forwarded to HCFA and becomes HCFA's decision unless HCFA reverses or modifies the decision with 15 days from date of receipt.

(3) If HCFA reverses or modifies the State agency decision, the agency sends the MCO a copy of HCFA's decision.

(e) *Effect of HCFA sanction.* HCFA's denial of payment for new enrollees automatically results in denial of State agency payments to the MCO for the same enrollees.

(f) *Effective date of sanction.* (1) If the MCO does not seek reconsideration, a sanction is effective 15 days after the date of the notice of sanction under paragraph (c) of this section.

(2) If the MCO seeks reconsideration, the following rules apply: (i) Except as specified in paragraph (f)(2)(ii) of this section, the sanction is effective on the date specified in HCFA's reconsideration notice.

(ii) If HCFA, in consultation with the State agency, determines that the MCO's conduct poses a serious threat to an enrollee's health and safety, HCFA may make the sanction effective earlier than the date of HCFA's reconsideration decision under paragraph (d) of this section.

(g) *State plan requirement.* The State plan must provide that the State will monitor for violations of the actions or failures to act specified in this section and will implement the provisions of this section.

(h) *HCFA's role.* HCFA retains the right to independently perform the functions assigned to the State agency under this section.

Subpart J—Conditions for Federal Financial Participation

§ 438.802 Basic requirements.

FFP is available in expenditures for payments under an MCO contract only for the periods during which the following conditions are met:

(a) The contract—

(1) Meets the requirements of this part; and

(2) Is in effect.

(b) The MCO and its subcontractors are in compliance with the physician incentive plan requirements set forth in §§ 422.208 and 422.210 of this chapter.

(c) The MCO and the State are in compliance with the requirements of the MCO contract and of this part.

§ 438.806 Prior approval.

(a) *Comprehensive risk contracts.* FFP is available under a comprehensive risk contract only if—

(1) The Regional Office has confirmed that the contractor meets the definition of MCO or is one of the entities described in paragraphs (a)(2) through (a)(5) of § 438.6; and

(2) The contract meets all the requirements of section 1903(m)(2)(A) of the Act, the applicable requirements of section 1932 of the Act, and the implementing regulations in this part.

(b) *MCO contracts.* Prior approval by HCFA is a condition for FFP under any MCO contract that extends for less than one full year or that has a value equal to, or greater than, the following threshold amounts:

(1) For 1998, the threshold is $1,000,000.

(2) For subsequent years, the amount is increased by the percentage increase in the consumer price index for all urban consumers.

(c) FFP is not available in an MCO contract that does not have prior approval from HCFA under paragraph (b) of this section.

§ 438.808 Exclusion of entities.

(a) *General rule.* FFP is available in payments under MCO contracts only if the State excludes from such contracts any entities described in paragraph (b) of this section.

(b) *Entities that must be excluded.* (1) An entity that could be excluded under section 1128(b)(8) of the Act as being controlled by a sanctioned individual.

(2) An entity that has a substantial contractual relationship as defined in § 431.55(h)(3), either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Act.

(3) An entity that employs or contracts, directly or indirectly, for the furnishing of health care, utilization review, medical social work, or administrative services, with one of the following:

(i) Any individual or entity excluded from Medicaid participation under section 1128 or section 1128(a) of the Act.

(ii) Any entity that would provide those services through an excluded individual or entity.

§ 438.810 Expenditures for enrollment broker services.

State expenditures for the use of enrollment brokers are considered necessary for the proper and efficient operation of the State plan only if the following conditions are met:

(a) The broker is independent of any managed care entity or health care provider that furnishes services in the State in which the broker provides enrollment services.

(b) No person who is the owner, employee, or consultant of the broker or has any contract with the broker—

(1) Has any direct or indirect financial interest in any entity or health care provider that furnishes services in the State in which the broker provides enrollment services;

(2) Has been excluded from participation under title XVIII or XIX of the Act;

(3) Has been debarred by any Federal agency; or

(4) Has been, or is now, subject to civil money penalties under the Act.

(c) The initial contract or memorandum of agreement (MOA) for services performed by the broker has been reviewed and approved by HCFA before the effective date of the contract or MOA.

§ 438.812 Costs under risk and nonrisk contracts.

(a) Under a risk contract, the total amount the State agency pays for carrying out the contract provisions is a medical assistance cost.

(b) Under a nonrisk contract—

(1) The amount the State agency pays for the furnishing of medical services to eligible recipients is a medical assistance cost; and

(2) The amount the State agency pays for the contractor's performance of other functions is an administrative cost.

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In subpart A, a new § 440.168 is added, to read as follows:

§ 440.168 Primary care case management services.

(a) Primary care case management services means case management related services that—

(1) Include location, coordination, and monitoring of primary health care services; and

(2) Are provided under a contract between the State and either of the following:

(i) A primary care case manager who is a physician or may, at State option, be a physician assistant, nurse practitioner, or certified nurse-midwife.

(ii) A physician group practice, or an entity that employs or arranges with physicians to furnish the services.

(b) Primary care case management services may be offered by the State—

(1) As a voluntary option under the regular State plan program; or

(2) On a mandatory basis under section 1932 (a)(1) of the Act or under a section 1915(b) or 1115 waiver authority.

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 447.46 is added, to read as follows:

§ 447.46 Timely claims payment by managed care organizations.

(a) *Basis and scope.* This section implements section 1932 (f) of the Act by specifying the rules and exceptions for prompt payment of claims by managed care organizations.

(b) *Definitions.* ''Claim'' and ''clean claim'' have the same meaning as those terms have in § 447.45.

(c) *Contract requirements.* (1) *Basic rule.* A contract with a managed care organization must provide that the organization will meet the requirements of § 447.45 (d)(2), (d)(3), (d)(5), and (d)(6).

(2) *Exception.* The managed care organization and its providers may, by mutual agreement, establish an alternative payment schedule.

(3) Any alternative schedule must be stipulated in the contract.

§ 447.53 [Amended]

3. In § 447.53(b), the following changes are made:

a. In paragraph (b) introductory text, the parenthetical phrase is removed.

b. Paragraph (b)(6) is removed.

§ 447.58 [Amended]

4. In § 447.58, ''Except for HMO services subject to the copayment

exclusion in § 447.53(b)(6), if'' is removed and ''If'' is inserted in its place.

5. A new § 447.60 is added to subpart A to read as follows:

§ 447.60 Cost-sharing requirements for services furnished by MCOs.

Contracts with MCOs must provide that any cost-sharing charges the MCO imposes on Medicaid enrollees are in accordance with the requirements set forth in §§ 447.50 and 447.53 through 447.58 for cost sharing charges imposed by the State agency.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 22, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: September 23, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–26068 Filed 9–25–98; 8:45 am]

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Tuesday
September 29, 1998

Part IV

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuel and Fuel Additives: Modification of the Covered Areas Provision for Reformulated Gasoline; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6169–5]

RIN 2060–AG77

Regulation of Fuels and Fuel Additives: Modification of the Covered Areas Provision for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action modifies § 80.70(k) of the reformulated gasoline (RFG) regulations to allow states to opt into the RFG program for any area currently or previously designated as an ozone nonattainment area under the national one-hour ozone standard, as of November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990 (1990 Amendments), or any time later. This final action encompasses all nonattainment areas including Marginal, Moderate, Serious and Severe ozone nonattainment areas, as well as those areas classified as transitional, sub-marginal, no data or incomplete data areas. Section 80.70(k) currently provides that any area classified as a Marginal, Moderate, Serious or Severe ozone nonattainment area may be included in the RFG program on petition by the Governor of the State in which the area is located. Today's final action will expand this provision to allow states to opt into the RFG program for areas which had been previously classified as Marginal, Moderate, Serious or Severe for ozone, but were subsequently redesignated to attainment. This final rule will also allow opt in to RFG for those areas designated nonattainment that do not fit into Section 181(a)'s classification scheme and therefore were classified as transitional, sub-marginal or areas with incomplete data. This will provide states an additional option for all areas currently or previously designated nonattainment since the 1990 amendments to the Clean Air Act that may be used to avoid the air quality problems that can lead to a violation of air quality standards. Allowing states to opt into the RFG program for these areas will help to ensure that these areas have options available to continue to achieve and maintain compliance with the ozone standard.

EFFECTIVE DATE: This final rule is effective upon September 29, 2998.

ADDRESSES: Materials relevant to the final rule have been placed in Public Docket A–96–30 at the address below. A reasonable fee may be charged by EPA for copying docket materials. Documents may be inspected at the Air Docket Section between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. The Air Division Docket is located at the U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460 (telephone 202/260–7540, fax 202/260–4400).

FOR FURTHER INFORMATION CONTACT: Karen Smith, Policy Analyst, Fuels and Energy Division, US EPA, 401 M Street, S.W. (6406J), Washington, D.C. 20460. (202) 564–9674.

SUPPLEMENTARY INFORMATION:

Availability on the TTNBSS

Copies of this final rule are available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. The official **Federal Register** version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

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(K) Rulemaking and Reporting

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Regulated entities. Entities regulated by this action are those which produce, import or distribute gasoline for sale in areas formerly classified as ozone nonattainment areas which opt into the RFG program, and retail gasoline stations located in those areas. Regulated categories and entities include:

Category	Examples of regulated entities
Industry ...	Refiners, importers, oxygenate blenders, terminal operators, distributors, retail gasoline stations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. This table lists the types of entities that EPA is now aware could be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company or facility may be regulated by this action, you should carefully examine the applicability criteria of Part 80, Subpart D, of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The remainder of this final rulemaking is organized in the following sections:

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A. Public Participation
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I. Background

Section 107(d) of the Clean Air Act, as amended in 1990 (the Act), requires states to identify all areas that do not meet the national ambient air quality standards (NAAQS) for ozone, and directs EPA to designate these areas as ozone nonattainment areas. Section 181(a) of the Act requires EPA to classify each area designated as an ozone nonattainment area pursuant to section 107(d) as a Marginal, Moderate, Serious, Severe or Extreme area, based on the design value for the area, and using methodology developed by the Agency. EPA used this scheme to classify all areas that were designated as in nonattainment for ozone at the time of the enactment of the 1990 Amendments, except for certain ''nonclassifiable'' areas. Some of these nonclassifiable areas were designated nonattainment prior to the 1990 amendments and others were designated attainment before November 15, 1990. All of these areas were designated nonattainment at the time of the enactment of the 1990 amendments. Those in the former category would be required to attain by November 15, 1995, while those in the latter group would have an attainment date five years from the effective date of the nonattainment designation. *See* 57 FR 13524–13527 (April 16, 1992).

Section 211(k)(5) of the Act prohibits the sale or dispensing by any person of conventional gasoline to ultimate consumers in any RFG covered area. Section 211(k)(6) of the Act, as amended in 1990, provides that, upon the application of the Governor of a State, the Administrator shall apply the prohibition contained in section 211(k)(5) in any area in the State classified under Section 181 of the Act as a Marginal, Moderate, Serious or Severe area (the ''opt-in'' provision).[1] In any such case, the Administrator must establish an appropriate effective date for such prohibition that is not later than one year after such application is received, and publish the application and effective date in the **Federal Register**.

EPA's current regulation, 40 CFR 80.70(k), provides that any area classified under 40 CFR part 81, subpart C, as a Marginal, Moderate, Serious or Severe ozone nonattainment area may be included as a RFG covered area on petition of the Governor of the State in which the area is located. EPA published proposed changes to this regulation on March 28, 1997 (62 FR 15074).

II. Description of Final Rule

The rule finalized today revises the opt-in provision of § 80.70(k) to apply it to any area designated as nonattainment for the one-hour ozone standard as of November 15, 1990, the date the 1990 Amendments were enacted, or any time later. This action will allow states to opt into the RFG program for areas which previously had been classified as Marginal, Moderate, Serious or Severe ozone nonattainment areas or those nonattainment areas classified as transitional, sub-marginal, no data or incomplete data areas, but which have been redesignated to attainment since 1990. This will provide additional flexibility to the states to ensure continued compliance with the NAAQS for ozone. States with such redesignated areas will have the flexibility to include the RFG program in their maintenance plans or use RFG as a contingency measure for these areas. This final action also permits any current nonattainment area classified as transitional, sub-marginal, or no data or incomplete data areas to participate in the RFG program through the opt-in provision in section 211(k)(6).

EPA is revising its opt-in rule in two ways. First, an area that is currently designated attainment may also opt in if it was previously designated as nonattainment for ozone under the one-hour standard, as of November 15, 1990 or at any time later. Second, any area designated as nonattainment for ozone under the one-hour standard will be allowed to opt into the federal RFG program. This includes areas classified as transitional, sub-marginal, and no data or incomplete data areas. EPA's authority to adopt these revisions is discussed in the response to comments section of the notice. The revisions are appropriate because any nonattainment area, including the submarginal and other areas, will benefit from the ozone reduction and other air quality benefits provided by the federal RFG program. RFG has been shown to be an important, cost-effective measure to reduce the air pollution from motor vehicles that contributes to ozone levels. This rule will provide additional ozone nonattainment areas with an effective option in solving the air quality problems faced in the area. For similar reasons, areas that previously were designated nonattainment will have federal RFG as an additional option that may be used to keep air quality from degrading and leading to noncompliance. It will provide an additional option for states that will help them to ensure that these areas continue to achieve and maintain compliance with the ozone NAAQS. Many of the areas recently redesignated as attainment for ozone have ozone levels which are relatively close to the NAAQS, and are concerned about experiencing violations in the future. This rule will provide an additional, cost effective measure for states to use in avoiding this result.

The air quality benefits that may be achieved in the additional areas that may opt in under this rule can be achieved without placing an unreasonable burden on the refining and distribution industry. Analysis of the distribution systems shows that RFG is already in the major distribution systems, pipelines and terminals, and is being handled without any additional problems. In some instances, the areas which are interested in using RFG in the near term are contiguous to areas currently using RFG so the fuel is already on distribution systems which handle RFG. Increasing the use of RFG should not adversely affect the system.

EPA also believes no excessive burden exists for areas that are not contiguous to current RFG areas. Section 211(k)(6)(A) of the Act gives the Administrator discretion to ''establish an effective date * * * as he deems appropriate * * *'' EPA interprets this provision to mean that it has broad discretion to consider any factors reasonably relevant to the timing of the effective date. This would include factors that affect industry and the distribution systems in the potential opt-in area. The Phoenix, Arizona opt-in is a recent example of a non-contiguous area which successfully completed the opt-in process without disruption to supply or excessive burden to industry. EPA's analysis in Phoenix showed that the capacity to supply federal RFG to the opt-in area exceeded the estimated gasoline demand. *See* 62 FR 30260 (June 3, 1997). Refiners were able to adequately supply federal RFG for Phoenix within 30 days of the publication of the final rule. RFG was available at the retail level 60 days after publication of the

[1] Extreme areas are not listed in section 211(k)(6) for purposes of opt-in to the federal RFG program. The Los Angeles area is the only area classified as extreme for ozone, and it is a mandatory RFG covered area under the Act. *See* section 211(k)(10)(D).

final rule. Each opt-in request will involve potential regulatory burdens that are unique to that area. Therefore, EPA will review each opt-in request and the particular facts pertaining to the potential opt-in area and the suppliers for that area to determine the appropriate implementation date.

EPA requested comment on whether a minimum lead-time of up to one year should be used in setting the effective date and whether this should apply to former non-attainment areas that opt in and/or areas that are designated as non-attainment at the time they opt in. EPA has decided not to adopt a mandatory minimum lead-time of one year for the effective date of an opt-in at this time. Instead, EPA retains the discretion to set an effective date on a case-by-case basis, as the Administrator deems appropriate, subject to the limit in Section 211(k)(6) of one year after the application is received. This issue and the responses to comments received are discussed further in Section III of this final rule.

EPA requested comment on whether or not the Agency should require that the Governor consider the costs of other ozone control programs in making the determination to adopt RFG. EPA requested comment on the approach, including whether EPA would have authority to impose such a requirement and whether it would be appropriate to do so. After consideration of the comments, EPA has decided not to adopt such a requirement, for the reasons described in Section III. C of this document.

Any area that opts into the RFG program under section 80.70(k), whether currently or previously designated as nonattainment for the one-hour ozone NAAQS, will be subject to all rules promulgated by the Agency for opting out of the RFG program. On October 20, 1997, EPA revised the opt-out procedures for areas that opt into RFG. *See* 62 FR 54552. The agency revised its opt-out rules to ensure a smooth transition between Phase I and Phase II of the reformulated gasoline program. Under these rules, if a state or area chooses to opt out of this program, the effective date of the opt-out will be no earlier than January 1, 2004. States which previously had opted into the program must remain in the RFG program until December 31, 2003 unless an opt-out petition was submitted to the EPA by December 31, 1997. Under the revised rules, opt-out petitions received on or after January 1, 2004 will be subject to the same procedures that applied prior to December 31, 1997. These procedures generally provide that opt-out petitions become effective 90 days from approval.

III. Response to Comments

EPA received comments from three associations representing the oil industry, gasoline producers, and distributors. Eight domestic gasoline producers individually submitted statements supporting the comments submitted by their representing associations. Of the domestic gasoline producers who commented on the NPRM, only one offered support for promulgation of the NPRM. Five state environmental departments submitted favorable comments on the NPRM. One private citizen commented on the NPRM. One futures and trading organization offered comments on the proposed rulemaking.

The issues discussed in the public comments include: EPA's legal authority to expand the reformulated gasoline (RFG) program and EPA's interpretation of section 211(k)(6)(A); the intent of Congress regarding ''former nonattainment areas''; required lead-in period for the opt-in process; the inclusion of sub-marginal areas as former nonattainment areas allowed to opt into the RFG program; inclusion of all areas, attainment and nonattainment for opt into the RFG program; and the consideration of local supply and distribution systems when approving a Governor's petition to opt into the RFG program. This is not intended to be an exhaustive list of comments. A complete set of comments is available from the Air Docket (A–96–30). The issues and comments are addressed below.

A. Legal Authority

1. EPA's Proposal

EPA proposed to modify 40 CFR 80.70(k) of the reformulated gasoline (RFG) regulations to allow states to opt into the RFG program for any area classified as a Marginal, Moderate, Serious or Severe ozone nonattainment area as of November 15, 1990 or any time later. The proposed rule would expand the provision to allow states to opt into the RFG program for areas which had been previously classified as Marginal, Moderate, Serious or Severe for ozone but were subsequently redesignated to attainment. Under this approach, states would be provided with an additional cost-effective way to ensure achievement and maintenance of compliance with the ozone standard.

2. Comments

EPA received several comments questioning the Agency's legal authority for its proposal. Several parties from the oil industry commented that EPA's inclusion of former nonattainment areas into the RFG program is contrary to the plain language and structure of the Act. The commenters argued that under section 211 (k)(6)(A), the Administrator can only apply the prohibition set forth in paragraph (5) in any area in the state classified under subpart 2 of part D of title I as a Marginal, Moderate, Serious or Severe ozone nonattainment area. Areas that have been redesignated to attainment status for ozone under 107(d) of the Act are clearly not classified as Marginal, Moderate, Serious or Severe ozone nonattainment areas, and therefore, cannot opt into the RFG program under section 211 (k)(6)(A).

One commenter representing an independent oil petroleum refiner supported EPA's proposed rule. The commenter stated that EPA is within its legal authority to expand the RFG regulations to include former nonattainment areas because Congress did not indicate that states must exercise the opt-in option prior to redesignation of the area to attainment. The commenter argued that section 211(k)(6) establishes by operation of law a category of areas within states for which EPA has a nondiscretionary duty to bring into the federal RFG program upon submission of a state governor's application.

The commenter argued that EPA has discretion to clarify that the RFG opt-in alternative remains available as a state control strategy for redesignated areas. The commenter suggests that this discretionary authority is based on EPA's inherent regulatory powers to fill in statutory gaps left by Congress so long as it is implementing the federal RFG program in a manner consistent with general statutory scheme. The commenter argues that the continuation of the RFG control alternative for redesignated areas is clearly a permissible and reasonable interpretation of its statutory mandate for administering the federal RFG program pursuant to section 211(k), just as EPA has determined the appropriateness of establishing a mechanism for opting out of the RFG program.

All of the state environmental departments and agencies which commented on the rule supported the EPA's proposed approach. These state agencies strongly support the proposed rule to allow former nonattainment areas (current maintenance areas) to opt into the RFG program. Some of these state commenters suggested that the agency include transitional and sub-marginal areas in the final rule. Another suggested that the agency provide guidance to allow any area whether it be designated as attainment or nonattainment to be included in the

RFG program to maintain air quality. None of the state agencies commented on EPA's legal authority to modify the reformulated gasoline rule.

Several of the commenters representing the oil industry argued that the fact that Congress did not mention ''former nonattainment areas'' in section 211(k)(6)(A) must be presumed to be an intentional policy choice made by Congress, particularly since both section 211(h) and (m) expressly provide for such areas. The commenters argued that the Congress had no intention of offering the opt-in right to areas after they achieved attainment status. One commenter stated that the proposal would circumvent the clear geographic limitations that Congress established for the RFG program. Another stated that the agency cannot ascribe to itself new authority simply because the Congress failed to anticipate this rulemaking and did not expressly prohibit the EPA from expanding opt-in rights. This commenter stated that the nonattainment threshold specified by Congress must be crossed for the right to opt into the RFG program.

One commenter in support of the proposed rule stated that the proposed rule implements the fundamental approach taken by Congress in enacting the Clean Air Act. This commenter stated that the proposed approach demonstrates a clear commitment to allowing states the flexibility to determine the appropriate mix of measures needed to meet their goals for controlling air pollution. The commenter stated that EPA's action is consistent with Congress' intention to allow states to select from numerous optional control strategies.

One commenter noted that the proposed rule contradicts the agency's Regulatory Impact Analysis (RIA) for the RFG regulations. This commenter said that in the 1993 RIA, EPA stated that the opt-in language of section 211 clearly limits opt-in to areas in a State classified as Marginal, Moderate, Serious, or Severe for ozone nonattainment. The commenter added that EPA's interpretation of section 211(k) in 1993 found no distinction between areas designated attainment before and after enactment of the Act, because no distinction exists.

Commenters representing the oil industry argued that section 211(k)(6)(A) is a clear exception to the general procedures of section 211(c). Although the procedures in section 211(k)(6)(A) establish an expedited process for states to initiate the imposition of federal fuel controls, commenters argued, the procedures in section 211(k)(6)(A) are not available everywhere. Commenters stated that Congress chose to limit the RFG program and the expedited procedures in section 211(k)(6)(A) to areas classified as Marginal, Moderate, Serious and Severe ozone nonattainment areas. For all other areas, including those areas that had the opportunity to use section 211(k)(6)(A) but did not exercise that option while it existed, Congress left in place the general procedures of section 211(c). The commenter concluded that under section 211(c)(1), EPA could attempt to promulgate regulations imposing RFG control in ozone attainment areas, provided that EPA meets all the substantive and procedural requirements set forth in section 211(c). The commenter also suggested that EPA utilize section 211(c)(4)(c) which would allow the agency to approve state fuel controls in the state's SIP, provided that the state fuel controls are necessary to achieve the NAAQS. Several other independent oil and petroleum companies submitted comments in support of these claims.

Five state environmental agencies and one private citizen commented that the proposed rule did not go far enough to allow states the flexibility they require to attain their clean air goals. One state environmental agency commented that they should have the flexibility to consider all possible options should the need arise for additional reductions in the levels of ozone-producing pollutants. Another state agency stated that the option to opt into the RFG program should also explicitly extend to former ''submarginal'' ozone nonattainment areas that have been redesignated since the date of the enactment of the 1990 Clean Air Act Amendments. The state agency argued that former ''submarginal'' ozone nonattainment areas should not be prohibited from implementing control measures that are available to current nonattainment areas, particularly when such measures may be needed to address violations that occur after redesignation. The state commented that all former ozone nonattainment areas subject to the maintenance plan provisions of Section 175A of the CAA should be allowed to voluntarily participate in the RFG program through the opt-in process. This flexibility, the state continued, is particularly important for maintenance areas where the ozone standard is threatened or where violations have already occurred.

Another state agency suggested that attainment areas be allowed to include RFG in their maintenance plans or as a contingency measure. Another agency commented that it is reasonable that any redesignated area operating under an approved maintenance plan be eligible to opt into RFG. The private citizen commented that the proposal should not be limited to former nonattainment areas but should allow states the option to opt into the RFG program in any area, including current attainment areas, where the Governor of the State applies for such coverage and certifies such coverage is necessary to maintain the attainment standard in the area. Such a provision, the commenter argues, would assist the States in maintaining air quality in attainment areas at risk of moving into a nonattainment status and would be consistent with the similar provision in the oxygenated fuels program which requires the program to remain in effect where necessary to maintain attainment with the standard.

3. EPA's Response

EPA's proposal and the comments received on it raise two basic questions of statutory authority. Under section 211(k)(6), may an area that was previously designated as nonattainment opt into the RFG program after it has been redesignated attainment? Under section 211(k)(6), may any ozone nonattainment area opt in, including transitional, sub-marginal and no data/incomplete data areas?

Congressional intent on this issue may be discerned from the text of section 211(k), its context in the Act, and the relevant legislative history. A review of these provisions leads to the conclusion that section 211(k)(6) may reasonably be interpreted as authorizing opt-in under both situations described above. For the reasons described earlier, concerning the benefits from expanding the current rules limits on opt-in, EPA is revising its opt-in regulation consistent with this interpretation.

The text of section 211(k)(6) is relatively brief regarding opt-ins. It states that a state may opt into the federal RFG program for ''any area in the State classified under subpart 2 of part D of title I as a Marginal, Moderate, Serious, or Severe Area.'' EPA shall by rule extend the effective date of the opt-in for ''Marginal, Moderate, Serious, or Severe Areas,'' if there is insufficient domestic capacity to produce RFG, and shall issue such extensions for ''areas with a lower ozone classification before issuing any such extension for areas with a higher classification.'' The specific issue of whether the opt-in provision includes former nonattainment areas is not addressed. Did Congress intend to only include areas currently designated as ozone nonattainment areas, or did it intend to cover all areas currently or previously

designated as nonattainment? Likewise, did Congress use the terms ''marginal, moderate, serious, or severe areas'' to identify only those ozone nonattainment areas with those classifications, or did Congress list these terms as a way to indicate that all ozone nonattainment areas could opt in?

On the latter issue, the classification scheme in Section 181 of the Act indicates that Congress did intend to allow all ozone nonattainment areas the opportunity to opt in to the federal RFG program. Section 181 provides for each ozone nonattainment area to be classified as Marginal, Moderate, Serious, Severe, or Extreme, depending on its design value. The provision indicates that Congress believed that ''[e]ach area designated nonattainment for ozone'' would be classified in one of these categories. The use of a list of these terms in section 211(k)(6) reasonably indicates that Congress' intent regarding state opt-in was to identify the universe of all ozone nonattainment areas, and not a subset comprising most but not all nonattainment areas.

The fact that EPA later was not able to classify all ozone nonattainment areas under this scheme does not change the reasonable implication from the text of section 211(k)(6) that Congress expected that all ozone nonattainment areas would have the opportunity to opt in. Certain ozone nonattainment areas could not be classified as Marginal or above because of incomplete monitoring data or because they were nonattainment pre-enactment but did not violate the standard during the primary data gathering years of 1987–1989.[2] However, all these areas were designated as nonattainment areas for ozone at the time of enactment of the 1990 amendments to the Act. The legislative history indicates that Congress did expect such areas to be designated as ozone nonattainment areas. For example, the Senate Environment and Public Works Committee Report accompanying S. 1630 contains a list of 102 expected nonattainment areas, all of which Congress expected would be classified under Section 181's classification scheme.[3] Some of the listed areas were ultimately classified as Submarginal (e.g., Kansas City) or Incomplete/no data nonattainment areas (e.g., Saginaw-Bay City-Midland, MI, Cheshire County, NH, Salem, OR, and several Pennsylvania counties). The House Energy and Commerce Committee Report on H.R. 3030 contains a similar list of expected ozone nonattainment areas ''indicating on a preliminary basis how areas will likely be classified under [Section 181].'' The House list contains 100 expected ozone nonattainment areas, and again lists each area under one of the Section 181 classification categories, including areas that were ultimately classified as Submarginal (e.g., Kansas City) or incomplete/no data (e.g., Saginaw-Bay City-Midland, MI, Cheshire County, NH, Salem, OR, and several Pennsylvania counties). *See* Leg. Hist. at 3254–55. This legislative history indicates that Congress expected that all areas designated nonattainment for ozone would be classified under one of the Section 181 classifications, and that Congress' failure to mention the classifications such as submarginal, and no data/incomplete data areas does not represent an intent to exclude these nonattainment areas from the scope of section 211(k)(6).

The legislative history of the opt-in provision clearly indicates that Congress did intend to provide this option to all ozone nonattainment areas. It also supports the view that former nonattainment areas do not lose their opportunity to opt in once they are redesignated as an attainment area.

H.R. 3030, as reported out of the House Committee on Energy and Commerce, required that EPA establish a federal RFG program, and require the sale of RFG in all ozone nonattainment areas with a 1988 design value at or above 0.18 ppm. (Leg. Hist. at 3021). This would cover areas classified as Severe or Extreme. (Leg. Hist. at 3253) There was no provision in the Committee's bill for opt-in by any other nonattainment areas. However, an opt-in provision was considered and adopted by the House during the floor debate on H.R. 3030. This opt-in provision was almost identical to the provision eventually enacted as section 211(k)(6). It provided for opt-in by any area ''classified under subpart 2 of part D of title I as a Marginal, Moderate, or Serious Area. * * *''[4] (Leg. Hist. at 2063). Rep. Richardson, one of the authors of this opt-in amendment, was questioned about the geographic scope of the RFG requirements and stated that the opt-in provision ''allows any other nonattainment area to adopt these standards of its own free will, and subject to any domestic capacity, any State or locality may, in order to maintain attainment or just as a matter of general public policy,'' adopt the RFG standards. (Leg. Hist. at 2690, emphasis added). Rep. McMillan described the RFG provision in the Richardson-Madigan opt-in amendment to H.R. 3030 as having a ''much needed degree of flexibility in it—specifically, cities in the future that fall below their ambient air quality requirements can opt into the system, provided that the EPA judges that doing so would not create a dramatic gas supply problem.'' (Leg. Hist. at 2762). As noted later, these views were repeated in the floor debate on the bill reported out of the Conference Committee.

In the Senate, S. 1630 as introduced would have required that EPA adopt national fuel standards to reduce motor vehicle pollutants, and authorized EPA to require the sale of gasoline in nonattainment areas to achieve and maintain the NAAQS. (Leg. Hist. at 9169 (as introduced) and 8053 (as reported out of the Committee on the Environment and Public Works)) The Committee bill was amended during floor debate, and a provision was added establishing a mandatory RFG program in ozone nonattainment areas with a design value of 0.18 or higher. States with a moderate or serious ozone nonattainment area could propose to revise their SIP to include a requirement that RFG be sold in the area. (Leg. Hist. at 6817, 4387)[5] As in the House, the Senate moved from a program with specified areas where RFG was mandatory to a program where RFG was mandatory in certain areas but could be expanded at a state's request to more nonattainment areas. In the floor debate leading to the passage of S. 1630, Sen. Baucus described the opt-in provision as ''if a city wishes to have the RFG standards provided for in this amendment, a city could choose to do so. Not only the nine cities that are the Severest in nonattainment but the Serious or even the Moderate areas could opt in.'' (Leg. Hist. at 6834) Sen. Nickles described the RFG program as applying to the nine cities with the worst ozone levels, but allowing ''the

[2] For example, the submarginal classification, which is not identified in the classification scheme of the Act, was created by EPA to address areas that were designated nonattainment but had a design value lower than the threshold for Marginal areas due to an adjustment for missing data when calculating expected exceedances. These areas had violations of the ozone NAAQS in 1987–1989. *See* 57 FR 13524–13527 (April 16, 1992).

[3] Senate Committee on Environment and Public Works, 103d Cong, 1st Sess., 2 A Legislative History of the Clean Air Act Amendments of 1990 at 8375–77 (1993) (''Leg. Hist'').

[4] Severe and Extreme areas were mandatory RFG areas under H.R. 3030 as passed by the House. (Leg. Hist. at 2062).

[5] The classification system in S.1630 did not include a Marginal classification, so all ozone nonattainment areas were expected to be classified as Moderate, Serious, Severe, or Extreme, based on the percent amount by which the area exceeded the ozone NAAQS in the last calendar year before enactment (See Leg.Hist. at 4195).

other nonattainment cities'' to opt in (Leg. Hist. at 6826).

The opt-in provision in the Conference Committee bill closely followed the opt-in provision in the House bill. The Report of the Conference Committee describes the RFG provision as mandating RFG ''in the nine cities with the most Severe ozone pollution beginning in 1995. States could elect to have the requirements apply in other cities with ozone pollution problems.'' (Leg. Hist. at 336). Rep. Madigan, a co-author of the opt-in provision in the House bill, described the Conference Committee's bill opt-in provision as ''allow[ing] all other ozone nonattainment areas to opt in to the program * * * provided EPA is satisfied that sufficient supplies of reformulated gasolines could be made available. By encouraging other areas to opt into the program, the legislation will dramatically improve fuel quality nationwide.'' (Leg. Hist. at 1266, emphasis added) Sen. Baucus stated that ''[t]he language of the provision clearly allows any nonattainment area which wants to opt in to the RFG programs to do so. They should be afforded every opportunity, and at the earliest possible date, to opt in to the program subject to approval by EPA.'' (Leg. Hist. at 1024, emphasis added) Sen. Durenberger described the RFG provision in the conference agreement as applying to the nine cities with the worst ozone nonattainment problems, and stating that ''[o]ther cities may elect to join the program at any time beginning in 1995.'' (Leg. Hist. at 852)

The drafters of the final opt-in provision intended to provide an opportunity for all ozone nonattainment areas to opt into the federal program. The statements of various other members of Congress support this interpretation. Congress' intent was that all ozone nonattainment areas have the opportunity to opt into the federal RFG program. The use of the string of terms ''Marginal, Moderate, Serious, and Severe'' in Section 211(k)(6) is ambiguous. Under one reading, only the specifically mentioned areas would be able to opt in under this provision. Alternatively, the string of terms could be read to as a phrase intended to mean all areas designated nonattainment for ozone. EPA believes the latter reading of the string of terms is more reasonable, and is consistent with Congressional intent. Based on this, it is reasonable to interpret section 211(k)(6) as applying to all ozone nonattainment areas, including the transitional, sub-marginal, and no data/incomplete data areas that were not classified marginal or worse.

A literal interpretation of the string of terms would also lead to absurd results. A rigid, literal interpretation of the opt-in provision that would exclude ozone nonattainment areas not classified as Marginal, Moderate, Serious, or Severe should be rejected as it would frustrate Congressional intent. *See Environmental Defense Fund* v. *EPA,* 82 F.3d. 451 (D.C. Cir. 1996), where the court upheld EPA's interpretation of Section 176(c), permitting a state to change its SIP under certain conditions to account for a federal action despite the language of Section 176(c)(1) regarding conformity of federal actions to the SIP currently in place. The court stated that ''the literal terms of the statute would prevent the federal action from proceeding until such time as a full-fledged SIP revision could be developed, submitted, and approved. * * * This rigid application of the conformity rule would block a federal action that the state desires and promises to accommodate through the appropriate adjustments to levels of emissions from other sources. Because this literal reading of the statute would actually frustrate the congressional intent supporting it, we look to the EPA for an interpretation of the statute more true to the Congress's purposes.'' *EDF* v. *EPA,* 82 F.3d. at 468. EPA's interpretation of Section 211(k)(6) as applying to any area designated nonattainment since the enactment of the 1990 Clean Air Act amendments is also consistent with a recent decision from the D.C. Circuit Court of Appeals. In *Mova Pharmaceutical Corp.* v. *Shalala,* 140F. 3d 1060, 1069 (D.C. Cir. 1998), the court stated that ''[w]hen the agency concludes that a literal reading of a statute would thwart the purposes of Congress, it may deviate no further from the statute than is needed to protect congressional intent.'' In this action, EPA's interpretation of the Act serves to protect Congressional intent in enacting Section 211(k)(6), as evidenced by the legislative history and by the language of Section 181. The Agency's interpretation is narrowly drawn to match Congressional intent in adopting the opt-in provision.

The legislative history does not explicitly address the issue of opt-in by former nonattainment areas. However it does show that Congress carefully considered the geographic scope of the RFG program, considering several different mandatory programs as well as different opt-in provisions.[6] The opt-in provision that came out of this extensive deliberation reflects Congress' intention to allow every ozone nonattainment area, whether in existence at the time of enactment or designated nonattainment at a later time, the opportunity to opt in and gain the air quality benefits of the federal RFG program. Congress envisioned a program that could include a very large number of opt-in areas, and a federal program of this size was considered fully appropriate. Nowhere is there any indication that Congress intended this opportunity to expire at some point in the future, or any indication that the appropriate size of the program was expected to shrink over time as more areas reached attainment.

Congress also did not mandate that nonattainment areas opt out of the program after they reached attainment. Congress apparently expected that former nonattainment areas could and would continue to be part of the federal RFG program after redesignation as an attainment area. Allowing former nonattainment areas to opt in after redesignation is consistent with this intent. As discussed above, it is a reasonable way to expand the option available to states that need the air quality benefits provided by RFG.

Comments from the oil industry claim that EPA's reading of Section 211(k)(6)(A) is particularly inappropriate in light of the Agency's authority under Section 211(c). The commenter states that EPA is interpreting its authority under Section 211(k)(6)(A) broadly as a way to regulate fuel in attainment areas, and that EPA should properly attempt to impose RFG requirements in attainment areas under Section 211(c)(1), provided that the Agency meets the substantive and procedural requirements of that section, or that EPA could approve state fuel controls in SIPs under Section 211(c)(4)(C), provided that such controls are necessary to achieve a NAAQS.

In this action, EPA is not interpreting Section 211(k)(6)(A) as authorizing the Agency to impose RFG requirements broadly in ozone attainment areas. Rather, EPA is adopting an interpretation of states' opportunity to opt into the RFG program that is consistent with Congressional intent, as described above. Former nonattainment areas that are now attainment areas will

[6] For example, in the version of S.1630 that passed the Senate, the RFG program was mandated for all ozone nonattainment areas with a design value of 0.18 or higher, (Leg. Hist. at 4384), which would have resulted in 9 mandatory areas (Leg. Hist. at 8375), with an opt-in provision for the remaining 93 anticipated ozone nonattainment areas (Leg. Hist. at 4387). H.R. 3030, as introduced, contained a mandatory RFG requirement for the 9 worst ozone nonattainment areas, with no opt-in provision. (Leg. Hist. at 3084), but the House debated and finally adopted an opt-in provision almost identical to CAA Section 211(k)(6).

be able to opt in to federal RFG. This is based on their status as former nonattainment areas, not on their status as attainment areas. It is a reasonable interpretation of the Congressional intent behind Section 211(k)(6), and is therefore an appropriate interpretation.

For the same reason, EPA disagrees with the commenter's reference to *American Petroleum Institute* v. *EPA*, 52 F.3d. 1113 (D.C. Cir. 1984), where the court stated that ''EPA does not have an independent source of authority to control or prohibit nonrenewable oxygenates springing from the considerations enumerated in Section 211(k)(1).'' *API* v. *EPA*, 52 F.3d. at 1120–21. The issue addressed by the court in *API* v. *EPA* was whether EPA could include a fuel content requirement for federal RFG concerning renewable oxygenates that was not expressly specified in section 211(k)(1), based on the discretion to take various factors into consideration when establishing the requirements of reformulated gasoline specified in the section. That case did not address Section 211(k)(6), and did not address the geographic scope of the RFG program. Unlike *API* v. *EPA*, questions of the breadth of agency authority to establish a variety of new or additional RFG fuel content requirements are not involved here. The only question here is the reasonable interpretation of Congressional intent concerning a narrow issue involving geographic scope of this federal program. The *API* case is not relevant to this action.

Moreover, opting into RFG is distinct from a state's adoption of its own fuel controls under Section 211(c)(4), which generally preempts state fuel controls in certain circumstances, and authorizes EPA to grant a waiver of federal preemption if certain requirements are met. EPA agrees that a state's adoption of state regulations requiring the sale of RFG in areas within its jurisdiction would be subject to the provisions of Section 211(c)(4). However, Congress provided an opportunity for states to opt into the federal RFG program in Section 211(k)(6), separate and distinct from states' ability to adopt their own fuel programs under Section 211(c)(4), and these two provisions are not mutually exclusive. One involves the scope of the federal RFG program, the other involves when a state program is preempted. For example, even prior to today's action, a Marginal ozone nonattainment area could choose to opt into the RFG program under Section 211(k)(6), or could choose to adopt its own state fuel controls subject to the limitations and requirements of Section 211(c)(4). Today's action does not change this situation, but simply adopts an interpretation of the scope of the opportunity to opt in that is consistent with Congressional intent, as described in detail above.

As described in the NPRM, EPA's interpretation of Section 211(k)(6) as applying to all areas designated nonattainment for ozone is not inconsistent with EPA's response to comments received regarding ''unclassifiable/attainment'' areas in the prior RFG program rulemaking. Unclassifiable/attainment areas were not designated nonattainment at or since the time of enactment of the 1990 amendments to the Act. When EPA first adopted regulations for the RFG program, EPA stated that these *attainment areas* will not be able to opt into the RFG program, due to statutory limitations. *See* 59 FR 7809 (February 16, 1994). EPA did not specifically address former nonattainment areas redesignated to attainment. Today's action specifically addresses former nonattainment areas, and interprets Section 211(k)(6) consistent with Congress' intent to ensure that areas previously designated nonattainment have the option to opt into the federal RFG program. This will help to ensure that they do not fall back into nonattainment after having achieved air quality improvement.

Commenters point to EPA's statement in a **Federal Register** notice announcing a SIP approval action for the Detroit-Ann Arbor area as evidence that EPA's proposed interpretation of Section 211(k)(6) is inconsistent with EPA's previous interpretation. The Detroit-Ann Arbor SIP action did not articulate specific reasons that, as an area redesignated to attainment, the state could not request to opt in for this area under Section 211(k)(6). In fact, that SIP action did no more than reflect the then current status under EPA's national RFG regulations. This rulemaking is now revising those regulations, after notice and an opportunity for public comment. EPA's March 1997 proposal being finalized today presented the Agency's position on this particular question at the national level. To the extent that this is a change in approach the agency has provided a reasoned explanation. *See Motor Vehicle Mfrs. Assn.* v. *State Farm*, 463 U.S. 29 (1983). As described above, today's action is consistent with statements made in the record for the RFG rulemaking. The Agency has provided a reasoned analysis for its current interpretation.

EPA disagrees with commenters who stated that the inclusion of provisions for areas redesignated attainment in Sections 211(h) and 211(m), and the absence of any such provisions in Section 211(k)(6), indicate that Congress did not intend to include such redesignated areas in Section 211(k)(6). Section 211(h) directs EPA to adopt regulations requiring low RVP gasoline to be sold throughout the country. This provision also states that EPA's regulations ''shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure [RVP] of 9.0 pounds per square inch (psi) or lower in any area designated under Section 107 as an attainment area. Notwithstanding the previous sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone nonattainment area, which has been redesignated as an attainment area.'' Commenters claim that since Congress expressly authorized EPA to adopt a low RVP requirement in former ozone nonattainment areas under Section 211(h), the absence of such language in Section 211(k)(6) indicates that Congress intentionally chose not to address such areas in the RFG opt-in provision.

Sections 211(h) and 211(m) both specifically address what federal requirements apply in attainment areas, as well as nonattainment areas. Section 211(h) contains an express prohibition against federal RVP requirements lower than 9.0 psi in attainment areas. Section 211(m)(6) specifies that states are not required to adopt an oxygenated gasoline program in CO attainment areas. The provisions that commenters reference create an exception from these requirements. In Section 211(h), the exception is that EPA may impose an RVP requirement lower than 9.0 psi in former nonattainment areas. In Section 211(m), the exception is that the oxygenated gasoline requirements will continue to remain in effect in former CO nonattainment areas to the extent such requirements are needed to maintain the CO NAAQS in that area.

In Section 211(h) and (m) Congress addressed requirements for both attainment areas and nonattainment areas, and in this context it expressly addressed former nonattainment areas, to treat them differently from other attainment areas. Sections 211(k)(1) and (k)(6), however, only address nonattainment areas. Section 211(k)(1) and (k)(6), unlike Sections 211(h) and (m), do not address and prohibit attainment areas from opting into RFG. The absence of an exception for former nonattainment areas, as in sections 211(h) and (m), is not relevant because there is no general prohibition in Section 211(k)(6) regarding attainment

areas. The analysis of the language and legislative history of section 211(k)(6) indicates that EPA's interpretation is reasonable and consistent with Congressional intent.

As with any other opt-in area, any area that becomes an RFG covered area under the authority of today's final rule will be subject to all Agency regulations for opting out of the RFG program. EPA's opt-out regulations are found at 40 CFR 80.72. *See* 62 FR 54552 (October 20, 1997).

B. Opt-in under the Eight-Hour Ozone NAAQS

While the analysis and interpretation described above applies to areas designated nonattainment under the one-hour ozone NAAQS, EPA also believes that areas designated nonattainment under the recently adopted eight-hour ozone NAAQS may also opt into the federal RFG program based on the same analysis and interpretation. EPA is not, however, adopting that interpretation into the regulations at this time. EPA did not propose or discuss that interpretation in the NPRM. While EPA believes that it is the correct interpretation, EPA will take final agency action on this issue at a later time after notice and an opportunity for comment. This could occur, for example, in a rulemaking to set the effective date to opt in for an area that is designated nonattainment under the eight-hour NAAQS (and that had not previously been designated as a nonattainment area under the one-hour NAAQS.)[7] EPA believes that opt-in into RFG for such new nonattainment areas would be a cost effective way to obtain the significant ozone and toxic control benefits associated with the federal RFG program.

C. Mandatory One-Year Lead Time to Opt Into the RFG Program

1. EPA's Proposal

The proposal requested comment on whether a minimum lead-time of one year should be used in setting the effective date and whether this should apply to former nonattainment areas that opt-in and/or areas that are classified as nonattainment when they opt in.

2. Comments

One commenter stated that when establishing the effective date of an opt-in, EPA should take into account the particular circumstances in the opt-in area and natural transition points in the program to ensure that the petroleum industry is provided with adequate lead-time to meet the new demand for RFG.

One commenter representing a futures and trading organization commented that opt-ins should never be allowed without a minimum of 90 days prior notice to the public, and longer in appropriate circumstances, and that EPA should promulgate regulations that permit prior notice and public comment before such opt-ins are approved by the agency.

One commenter suggested that all RFG opt-in programs become effective at the first of the year. The commenter argued that since the RFG rule originally targeted January 1, 1995 as the original start-up date for the Federal program, many of the rules were designed for a calendar year program. The commenter also stated that the enforcement discretion EPA has had to exercise could be avoided by starting opt-ins on January 1.

3. EPA's Response

The Administrator has authority under section 211(k)(6) to establish an effective date for a state's entrance into the RFG program that is up to one year from the date of receipt of a petition to opt in from the Governor. The Administrator also has authority to delay the effective date of a state's opt-in to the program for an additional year, if after consultation with the Secretary of Energy, she determines that there is insufficient domestic capacity to produce certified reformulated gasoline, and may renew this delay for two more years. The Administrator will consider the result of any sudden and unexpected increase in the demand for RFG caused by opt-ins before setting an effective date that she deems appropriate. The Administrator will also consider whether the local supply and distribution system will be able to deliver adequate quantities of RFG to the opt-in area before making a final decision on the effective date of the program. As to the question of beginning all opt-ins on January 1, EPA believes that this would inappropriately limit the flexibility of the opt-in provision as it is outlined in section 211(k)(6). In addition, EPA's current opt-in process considers relevant enforcement factors and the industry's need for lead time when setting the effective opt-in date. For these reasons and after consideration of the comments, EPA has decided not to adopt regulations establishing a minimum one year lead time for the effective date of a state opt-in. EPA will continue to establish effective dates on a case-by-case basis, after consideration of all relevant factors through a notice and comment rulemaking process.

D. Cost Consideration for Other Programs Before Adopting RFG

1. EPA's Proposal

The proposal requested comment on whether or not EPA should require that the Governor consider the costs of other potential ozone control programs in making the determination to adopt RFG. EPA requested comment on the appropriateness of such an approach, including whether the Agency had the authority to impose such a requirement.

2. Comments

Several commenters representing the oil industry stated that a state's decision to opt into RFG should be based on need, good science, and a thorough analysis of the incremental cost-effectiveness relative to other control measures. The commenters argued that states should carefully consider these topics to avoid having to address the opt-out question. The commenters stated that EPA has the authority to require states to conduct a thorough cost-benefit analysis under section 211(k)(1) of the Act.

3. EPA's Response

States generally analyze cost effectiveness, even if informally, in deciding to request opt-in to RFG. EPA does not believe it is appropriate for the agency to second guess the states' analysis regarding the costs and benefits of opting into RFG. Section 211(k)(6) does not require the Governor to investigate the cost of the RFG program before submitting an application to the Administrator to opt into the program, and does not authorize EPA to deny a Governor's request because the Agency concludes that opt-in to RFG is not a cost effective ozone control option for a particular area. Rather, Section 211(k)(6) simply directs EPA to set an effective date for a state's opt in to RFG once a Governor's request is received. Moreover, EPA does not believe that the Agency's authority under Section 211(k)(1) to get the content and performance requirements of RFG is relevant to its action on state opt-ins under Section 211(k)(6). Section 211(k)(6) sets out the specific process for state opt-in, and Section 211(k)(1) provides authority for promulgation of the RFG standards. Therefore, the final rulemaking does not include any requirement that states demonstrate they have analyzed the cost-effectiveness of RFG and other ozone

[7] If the area had previously been designated as a nonattainment area under the one-hour NAAQS, then today's rule would allow it to opt-in.

control measures in order to opt into the RFG program.

Clearly, the costs of this final rulemaking will vary depending on the area that chooses to opt into the program. However, cost effectiveness estimates were prepared as part of the reformulated gasoline rule's regulatory impact analysis (RIA) completed in 1993. The table below depicts, by RVP region (Class B areas are southern RVP areas and Class C areas are northern RVP areas), estimated costs of the RFG program. These are averaged values. This does not reflect a new analysis of the costs and benefits of the RFG program, but simply an adjustment to reflect 1997 cost relative to 1990.

COST-EFFECTIVENESS OF THE RFG PROGRAM FOR VOC AND NO_X CONTROL IN 1990 AND 1997 DOLLARS

RVP region	$1990	$1990	$1997 PPI*	$1997 PPI*	$1997 GDP**	$1997 GDP**
	Class B	Class C	Class B	Class C	Class B	Class C
Phase I RFG–VOC	270	260	335	335	320	310
Phase II RFG–VOC	390	410	570	560	460	490
Phase II RFG–NO_X	3240	3250	3620	3640	3860	3870

* Adjusted based on the producers price index for capital prices (+11.2%) (to adjust refinery capital costs), and gasoline prices (−8.6%) (for operating costs).

** Adjusted based on the gross domestic product implicit price deflator, which is 1.192.

Note that the GDP implicit price deflator is a generic price indicator and does not necessarily reflect specific factors relevant to the refining industry.

IV. Administrative Designation and Regulatory Analysis

A. Public Participation

EPA published the proposed rule on March 28, 1997 (62 FR 15074), and no public hearing was requested. Twenty-two comments were received from various stakeholders during the 30 day comment period that followed publication of the proposed rule. EPA reviewed and considered all written comments submitted on this proposal. These comments have been presented and addressed in the preamble above. (See Response to Comments, Section IV). All comments received by the Agency are located in the EPA Air Docket A–96–30.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a significant regulatory action; as such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. 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.

D. 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. Today's final rule does not create a mandate for any tribal governments. The rule does not impose any enforceable duties on these entities. Today's final rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the former nonattainment area that chooses

to participate in the program, and gasoline distributors and retail stations in those areas. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, for the reasons described below and in the NPRM. Today's action codifies in regulatory text EPA's interpretation of states' ability to opt into the federal RFG program under Section 211(k)(6). This action does not mandate the RFG program for any areas, but rather clarifies which areas qualify for opt-in under Section 211(k)(6). This provision of the Act grants to states broad discretion to decide whether to opt into the RFG program. Upon receipt of a governor's request to opt in, EPA would conduct a rulemaking process to set the effective date for the opt in. In that rulemaking, EPA would determine whether that particular opt in would have a significant economic impact on a substantial number of small entities. *See* 62 FR 30260 (June 3, 1997). Such determination is more appropriately made in the context of a specific opt-in request, because impacts on small entities will depend on factors such as the number of small entities affected by a particular area's opting into RFG, whether small refiners provide gasoline to the area opting in, the local gasoline distribution network, the timing of the opt-in, and other case-specific facts.

F. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1951.08).

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.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

H. 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. 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 publication of the rule. The rule is not a major rule as defined by 5 U.S.C. 804(2).

I. Children's Health Protection

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

J. National Technology Transfer and Advancement Act of 1995 (NTTAA)

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., materials 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 final rulemaking does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

K. Statutory Authority

The statutory authority for the rules finalized today is granted to EPA by sections 211(c) and (k), and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545(c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: September 22, 1998.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.70 is amended by revising paragraph (k) to read as follows:

§ 80.70 Covered areas.

* * * * * *

(k) Any other area currently or previously designated as a nonattainment area for ozone under 40 CFR 50.9 and part D of Title I of the Clean Air Act, as of November 15, 1990, or any time later, may be included on petition of the governor of the state in which the area is located. Effective one year after an area has been reclassified as a severe ozone nonattainment area, such severe area shall also be a covered area for purposes of this subpart D.

* * * * *

[FR Doc. 98–26006 Filed 9–28–98; 8:45 am]

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federal register

Tuesday
September 29, 1998

Part V

Federal Reserve System

12 CFR Parts 205, 213 and 230

Truth in Savings; Consumer Leasing; Electronic Fund Transfers; Final Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation DD, which implements the Truth in Savings Act. The rule implements amendments to the Truth in Savings Act enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The law modifies the rules for indoor lobby signs, eliminates subsequent disclosure requirements for automatically renewable time accounts with terms of one month or less, and repeals the civil liability provisions as of September 30, 2001.

DATES: This rule is effective September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412. For the hearing impaired *only,* Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) is implemented by the Board's Regulation DD (12 CFR Part 230). The act and regulation require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening. The regulation also includes rules about advertising of deposit accounts. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration. The act was amended by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (1996 Act).

II. Regulatory Revisions

On March 25, 1998, the Board published proposed amendments to Regulation DD to implement statutory amendments that eliminate the requirement that institutions provide disclosures in advance of maturity for automatically renewable (rollover) time accounts with a term of 30 days or less, expand an exemption from certain advertising provisions for signs on the premises of a depository institution, and repeal TISA's civil liability provisions, effective September 30, 2001 (63 FR 14533). Commenters on the proposal—all financial institutions or their trade associations—unanimously supported the proposed amendments.

In March 1998, the Board also published a proposal to allow institutions to provide Regulation DD disclosures electronically (63 FR 14533, March 25, 1998). Similar proposals were made under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending); an interim rule was issued under Regulation E. The Board anticipates further action on these proposals by year-end.

III. Section-by-Section Analysis

Section 230.5 Subsequent Disclosures

5(c) Notice for Time Accounts One Month or Less That Renew Automatically

Section 266(a)(3) of TISA requires institutions to provide certain disclosures for rollover time accounts at least 30 days before maturity. In implementing this provision, the Board determined in 1992 that the purposes of the legislation would not be served by requiring advance disclosures for rollover time accounts with maturities of one month or less. Regulation DD therefore does not require disclosures to be provided in advance of maturity for such time accounts. However, under § 230.5(c) of the regulation, if a term disclosed when the account was opened is changed at renewal, institutions were required to send a notice describing the change within a reasonable time after the renewal of the account.

The 1996 Act eliminates the requirement that institutions provide subsequent disclosures (that is, disclosures in advance of maturity) for automatically renewable time accounts with a term of 30 days or less. (Institutions will continue to provide disclosures when these accounts are opened.) Accordingly, § 230.5(c) and the corresponding provision in the official staff commentary, comment 5(c)–1, are deleted.

Technically, the statute could be read to require subsequent disclosures for rollover time accounts with a maturity of 31 days. For ease of compliance, the Board has eliminated these disclosures for rollover time accounts with a maturity of ''one month or less.'' Subsequent disclosures for accounts with a maturity of 31 days are not required under this approach, which is consistent with other provisions of Regulation DD that interpret one month to include 31 days.

Section 230.8 Advertising

8(e) Exemption for Certain Advertisements

8(e)(2) Indoor Signs

Section 263(a) of TISA provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. In 1994, the Congress amended section 263(c) of the advertising rules to provide that if a rate is displayed on a sign (including a rate board) designed to be viewed only from the interior of an institution, the disclosure requirements of section 263 do not apply.

A further amendment to section 263(c) contained in the 1996 Act expands the exemption for signs on the premises of the depository institution. All signs inside the premises of an institution are now exempt from certain advertising disclosures (including signs that are intended to be viewed from outside the premises). Accordingly, the reference in § 230.8(e) to signs that face outside the premises and the corresponding provision in the official staff commentary, comment 8(e)(2)(I)–2, are deleted. Any sign posted outside a depository institution remains covered by the advertising provisions unless the sign qualifies for some other exemption, such as the exemption for electronic media.

Section 230.9 Enforcement and Record Retention

9(b) Civil Liability

Section 271 of TISA, which provides for civil liability for violations of the act's provisions, was repealed by the 1996 Act, effective September 30, 2001. The regulation refers to TISA's civil liability provisions in § 230.9(b), and has been revised to reflect the effective date of the repeal of Section 271.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604), the Board has reviewed the final amendments to Regulation DD. Two of the three requirements of a final regulatory flexibility analysis under this section are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis calls for a description of significant alternatives to the rule that would

minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The final amendments will apply to all financial institutions subject to Regulation DD, including small institutions. The amendments represent minor changes to the existing regulation; in some cases, the amendments reduce economic burden. Accordingly, the amendments should not have a negative economic impact on small institutions, and, therefore, there were no significant alternatives that would have further minimized the economic impact on those institutions.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

The collection of information that is revised by this rulemaking is found in 12 CFR 230—Regulation DD, including Appendices A and B and Supplement I. This information collection is mandatory under the Truth in Savings Act (12 U.S.C. 4308) and the Board's Regulation DD, which requires that consumers be given certain account disclosures. The disclosures assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, APY, interest rates, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. The respondents are for-profit financial institutions, including small businesses. Institutions are also required to retain records for twenty-four months as evidence of compliance. No comments specifically addressing the burden estimate were received.

The Board also extended the recordkeeping and disclosure requirements in connection with Regulation DD for three years. The current total annual burden for this information collection is an estimated 1,478,395 hours. This amount reflects the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. The modified rules for indoor lobby signs and elimination of subsequent disclosure requirements for automatically renewable time accounts with terms less than one month will decrease the frequency of response slightly. The estimated total annual burden after the revisions will be about 1,476,071 hours, a decrease of 2,324 hours. There is estimated to be no associated capital or start up cost and no annual cost burden.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Board has a continuing interest in the public's opinions of Federal Reserve collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Revisions

For the reasons set forth in the preamble, the Board amends 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

§ 230.5 [Amended]

2. Section 230.5 is amended by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c).

3. Section 230.8 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 230.8 Advertising.

* * * * *

(e) *Exemption for certain advertisements.* * * *

(2) *Indoor signs.* (i) Signs inside the premises of a depository institution (or the premises of a deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

* * * * *

4. Section 230.9 is amended by revising paragraph (b) to read as follows:

§ 230.9 Enforcement and record retention.

* * * * *

(b) *Civil liability.* Section 271 of the Act contains the provisions relating to civil liability for failure to comply with the requirements of the act and this part; Section 271 is repealed effective September 30, 2001.

* * * * *

SUPPLEMENT I to PART 230—OFFICIAL STAFF INTERPRETATION

PART 230—SUPPLEMENT I [AMENDED]

5. In Supplement I to Part 230, in Section 230.5—Subsequent disclosures, under paragraph (c), paragraph 1. is removed.

6. In Supplement I to Part 230, in Section 230.8—Advertising, under paragraph (e)(2)(i), paragraph 2. is removed.

By order of the Board of Governors of the Federal Reserve System, September 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–26010 Filed 9–28–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1004]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The final rule adopts several technical amendments to the regulation and commentary concerning lease payments, advertisements, and the treatment of taxes.

DATES: This rule is effective September 24, 1998. Compliance is optional until October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, is implemented by the Board's Regulation M (12 CFR 213). The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

II. Regulatory Revisions

On March 25, 1998, the Board published several technical amendments to Regulation M (63 FR 14538). Seventeen commenters, representing major leasing companies and a consumer representative, submitted comments on the proposed amendments; most generally supported the revisions.

In the same rulemaking, the Board proposed to allow lessors to provide Regulation M disclosures electronically. Similar proposals were made under Regulations B (Equal Credit Opportunity), DD (Truth in Savings), and Z (Truth in Lending); an interim rule was issued under Regulation E. The Board anticipates further action on these proposals by year-end.

III. Section-by-Section Analysis

Section 213.4—Content of Disclosures

4(f)(8) Lease term

In September 1996, Regulation M was revised to require, among other things, that lessors show consumers a mathematical progression of how a scheduled payment is derived in a motor vehicle lease. In deriving a scheduled payment, the ''total of base periodic payments'' is divided by the number of lease payments. The caption in the regulation and on the model forms refers to the number of lease payments as the ''lease term.''

To avoid confusion, references to the ''lease term'' in § 213.4(f)(8) have been changed to ''lease payments'' with corresponding changes to the model forms in appendix A of Regulation M. For example, in reflecting the consumer's legal obligation to make one payment under a single-payment lease, the figure disclosed under § 213.4(f)(8) should be one (not the lease term such as 24 months or 36 months).

Despite the revision to the model forms, lessors may continue to use the existing form until supplies are exhausted. If properly completed, those forms comply with the requirements of the act and regulation, protecting lessors from civil liability under sections 130 of the Truth in Lending Act and 185 of the Consumer Leasing Act.

The term of the lease (such as 24 months or 36 months) is not a required disclosure. Lessors may, however, disclose the lease term among the segregated disclosures if they choose. This guidance, included in the preamble to the proposed change, has been incorporated into the commentary, replacing existing comment 4(f)(8)–1. Lessors should note, however, that the calculation under § 213.4(f)(8) calls for the number of payments.

Section 213.7—Advertising

On April 1, 1997, the Board revised Regulation M to implement amendments to the act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which streamlined the advertising disclosures for lease transactions (62 FR 15364). Under the act, certain terms in an advertisement will trigger the disclosure of additional information. A statement in a lease advertisement that no initial payment is required is a ''triggering'' term that has been added to § 213.7(d)(1)(ii). It had been inadvertently omitted previously.

Appendix A—Model Forms

Several technical changes have been made to the model forms in appendix A. The model forms for open- and closed-end leases in appendix A–1 and A–2 have been revised to change the reference under the payment calculation (from ''Lease term. The number of months in your lease.'' to ''Lease payments. The number of payments in your lease''). Page 2 of the open-end model form has been revised; in the ''end of term liability,'' the second line of the paragraph following item 3 has been corrected by changing ''actual'' to read ''actual value.'' Model form A–3 for a furniture lease has been revised by adding ''or delivery '' in the heading ''Amount due at lease signing.''

IV. Commentary Provisions

Section 213.4—Content of Disclosures

4(f) Payment Calculation

4(f)(7) Total of Base Periodic Payments

For motor vehicle leases, lessors are required under § 213.4(f) to provide a mathematical progression of how scheduled lease payments are derived. Some lessors have expressed concern about exposure to civil liability if one divides the total of the base periodic payments disclosed under § 213.4(f)(7) by the number of payments in the lease disclosed under § 213.4(f)(8) and then multiplies the base periodic payment disclosed under § 213.4(f)(9) by the number of payments in the lease disclosed under § 213.4(f)(8); the results are different because of rounding.

Comment 4(f)(7)–1 has been added to respond to this concern. The comment has been revised from the proposed language for clarity, without substantive change. The anomaly also could be avoided by making adjustments to the rent charge.

4(f)(8) Lease Payment.

Current comment 4(f)(8)–1 has been deleted as unnecessary, and has been replaced by a new comment 4(f)(8)–1 that allows lessors to include the lease term among the segregated disclosures. (Generally, lessors may not add information to the segregated disclosures unless required by regulation in § 213.3(a)(2) or permitted to be included among the segregated disclosures. See comment 3(a)(2)–2 and comments 1 and 2 to appendix A.)

4(n) Fees and Taxes

Several examples are provided in comment 4(n)–1 to illustrate when taxes are disclosed under this section. This comment has been revised to clarify that taxes which are part of the scheduled payments are required to be disclosed under § 213.4(n).

Appendix A—Model Forms

Comment 2 to appendix A provides examples of acceptable changes that may be made to the model forms. At the request of commenters, the comment has been revised to clarify that inapplicable disclosures may be deleted.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604), the Board has reviewed the final amendments to Regulation M. Two of the three requirements of a final regulatory flexibility analysis under this section are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis calls for a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The final amendments will apply to all lessors subject to Regulation M, including small entities. The amendments represent relatively small changes to the existing

regulation; in some cases, the amendments clarify rights and duties of covered lessors or reduce economic burden. Accordingly, the amendments should not have a negative economic impact on small entities, and, therefore, there were no significant alternatives that would have minimized further the economic impact on those entities.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

The collection of information that is revised by this rulemaking is found in 12 CFR 213— Regulation M, including Appendices A, B, C, and D and Supplement I. This information collection is mandatory under the Consumer Leasing Act (CLA) (15 U.S.C. 1667 *et seq.*) and the Board's Regulation M. The purpose of the disclosures associated with Regulation M is to ensure that lessees of personal property receive meaningful information that enables them to compare lease terms with other leases and, where appropriate, with credit transactions. The respondents/recordkeepers are individuals or businesses that regularly lease, offer to lease, or arrange for the lease of personal property under a consumer lease, including small businesses. Institutions are also required to retain records for twenty-four months as evidence of compliance. No comments specifically addressing the burden estimate were received.

The Board also extended the recordkeeping and disclosure requirements in connection with Regulation M for three years. The current estimated annual burden for this information collection is 11,179 hours. It is estimated that there are 310 disclosure respondents and 15 advertising respondents with an average frequency of 120 and 3 responses per respondent each year, respectively. The technical amendments clarifying the rules on lease payments, advertisements and rounding calculations are estimated to have no effect on burden. There is estimated to be no annual cost burden and no associated capital or start up cost.

Consumer lease information in or referred to by advertisements is available to the public. Disclosures of the costs, liabilities, and terms of consumer lease transactions relating to specific leases are not publicly available. Because the Federal Reserve does not collect any of the information, no issue of confidentiality under the Freedom of Information Act normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6), and (8)).

The Board has a continued interest in the public's opinions of Federal Reserve collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR Part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 is revised to read as follows:

Authority: 15 U.S.C. 1604; 1667f.

2. Section 213.4 is amended by revising paragraph (f)(8) to read as follows:

§ 213.4 Content of disclosures.

* * * * *

(f) *Payment calculation.* * * *

(8) *Lease payments.* The lease payments with a description such as ''the number of payments in your lease.''

* * * * *

3. Section 213.7 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 213.7 Advertising.

* * * * *

(d) *Advertising of terms that require additional disclosure.*—(1) *Triggering terms.* * * *

(ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

* * * * *

4. Appendix A to part 213 is amended by revising Appendix A–1, Appendix A–2, and Appendix A–3 to read as follows:

BILLING CODE 6210–01–P

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Amount Due at Lease Signing or Delivery (Itemized below)* $ _____	**Monthly Payments** Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	**Other Charges** (not part of your monthly payment) Disposition fee (if you do not purchase the vehicle) $ _____ _____ _____ Total $ _____	**Total of Payments** (The amount you will have paid by the end of the lease) $ _____ You will owe an additional amount if the actual value of the vehicle is less than the residual value.

*** Itemization of Amount Due at Lease Signing or Delivery**

Amount Due At Lease Signing or Delivery:		**How the Amount Due at Lease Signing or Delivery will be paid:**	
Capitalized cost reduction	$ _____	Net trade-in allowance	$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____	_____	_____
Registration fees	_____		
_____	_____		
Total	$ _____	Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost ..... – _____

Adjusted capitalized cost. The amount used in calculating your base monthly payment ..... = _____

Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment ..... – _____

Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term ..... = _____

Rent charge. The amount charged in addition to the depreciation and any amortized amounts ..... + _____

Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge ..... = _____

Lease payments. The number of payments in your lease ..... ÷ _____

Base monthly payment ..... = _____

Monthly sales/use tax ..... + _____

_____ ..... + _____

Total monthly payment ..... =$ _____

Rent and other charges. The total amount of rent and other charges imposed in connection with your lease $ _____ .

Early Termination. You may have to pay a substantial charge if you end this lease early. <u>The charge may be up to several thousand dollars</u>. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

End of Term Liability. (a) The residual value ($ _____) of the vehicle is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the residual value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus.] If the actual value of the vehicle is less than the residual value, you will be liable for any difference up to $ _____ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if:

1. Excessive use or damage [as described in paragraph ____] [representing more than normal wear and use] resulted in an unusually low value at the end of the term.
2. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.
3. You voluntarily agree with us after the end of the lease term to make a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. We must also pay your attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____ .

Maintenance.

[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____ .

Late Payments. The charge for late payments is: _____ .

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Amount Due at Lease Signing or Delivery (Itemized below)* $ _____	**Monthly Payments** Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	**Other Charges** (not part of your monthly payment) Disposition fee (if you do not purchase the vehicle) $ _____ _____ _____ Total $ _____	**Total of Payments** (The amount you will have paid by the end of the lease) $ _____

*** Itemization of Amount Due at Lease Signing or Delivery**

Amount Due At Lease Signing or Delivery:

Capitalized cost reduction	$ _____
First monthly payment	_____
Refundable security deposit	_____
Title fees	_____
Registration fees	_____
_____	_____
Total	$ _____

How the Amount Due at Lease Signing or Delivery will be paid:

Net trade-in allowance	$ _____
Rebates and noncash credits	_____
Amount to be paid in cash	_____
_____	_____
Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost ..... - _____

Adjusted capitalized cost. The amount used in calculating your base monthly payment ..... = _____

Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment ..... - _____

Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term ..... = _____

Rent charge. The amount charged in addition to the depreciation and any amortized amounts ..... + _____

Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge ..... = _____

Lease payments. The number of payments in your lease ..... ÷ _____

Base monthly payment ..... = _____

Monthly sales/use tax ..... + _____

_____ ..... + _____

Total monthly payment ..... =$ _____

Early Termination. You may have to pay a substantial charge if you end this lease early. <u>The charge may be up to several thousand dollars</u>. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____

Late Payments. The charge for late payments is: _____

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-3 Model Furniture Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Description of Leased Property				
Item	Color	Stock #	Mfg.	Quantity

Amount Due at Lease Signing or Delivery	**Monthly Payments**	**Other Charges** (not part of your monthly payment)	**Total of Payments** (The amount you will have paid by the end of the lease)
First monthly payment $ _____ Refundable security deposit $ _____ Delivery/Installation fee $ _____ _____ $ _____ Total $ _____	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Pick-up fee $ _____ _____ $ _____ Total $ _____	$ _____

Purchase Option at End of Lease Term. [You have an option to purchase the leased property at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the leased property at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Official Fees and Taxes. The total amount you will pay for official fees, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease: _____
_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____ .

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased property:
_____

Maintenance.

[You are responsible for the following maintenance and servicing of the leased property:
_____.]

[We are responsible for the following maintenance and servicing of the leased property:
_____.]

Warranties. The leased property is subject to the following express warranties:
_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:
_____ .

The charge for such early termination is: _____ .

(b) We may terminate this lease before the end of the lease term under the following conditions: _____ .

Upon such termination we shall be entitled to the following charge(s) for: _____ .

Early Termination and Default. (continued)

(c) To the extent these charges take into account the value of the leased property at termination, if you disagree with the value we assign to the property, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the property which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____ .

Late Payments. The charge for late payments is: _____ .

Purchase Option Prior to the End of the Lease Term.

[You have an option to purchase the leased property prior to the end of the term. The price will be [$ _____]/the method of determining the price].]

[You do not have an option to purchase the leased property.]

BILLING CODE 6210–01–C

5. In Supplement I to Part 213—Official Staff Commentary to Regulation M, under Section 213.4—Content of Disclosures, the following amendments are made:

a. A new paragraph *4(f)(7) Total of Base Periodic Payments* is added in numerical order.

b. The heading to paragraph *4(f)(8)* and paragraph 1. are revised.

c. Under paragraph *4(n) Fees and taxes,* paragraph 1.ii. is revised.

d. Under *Appendix A—Model Forms,* paragraph 2.v. is revised.

The addition and revisions read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 213.4—Content of Disclosures

* * * * *

4(f)(7) Total of Base Periodic Payment

1. *Accuracy of disclosure.* If the periodic payment calculation under § 213.4(f) has been calculated correctly, the amount disclosed under § 213.4(f)(7)—the total of base periodic payments—is correct for disclosure purposes even if that amount differs from the base periodic payment disclosed under § 213.4(f)(9) multiplied by the number of lease payments disclosed under § 213.4(f)(8), when the difference is due to rounding.

* * * * *

4(f)(8) Lease Payment

1. *Lease Term.* The lease term may be disclosed among the segregated disclosures.

* * * * *

4(n) Fees and taxes.

1. *Treatment of certain taxes.* * * *

ii. Taxes that are part of the scheduled payments are reflected in the disclosure under § 213.4(c), (f), and (n).

* * * * *

Appendix A—Model Forms

* * * * *

2. *Examples of acceptable changes.*

* * *

v. Deleting or blocking out inapplicable disclosures, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms).

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–26011 Filed 9–28–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1007]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board is publishing a final rule under Regulation E revising the time periods for investigating alleged errors involving point-of-sale and foreign-initiated transactions. The former rule extended the statutory time periods for these transactions to allow financial institutions a longer period to investigate before they must provisionally credit an account and a longer period to complete an investigation. The final rule requires financial institutions to provisionally credit an account within 10 business days (rather than 20) and leaves in place the 90 calendar day period to complete the investigation of an alleged error.

At the same time, the Board is extending the time periods to provisionally credit funds and investigate claims involving new accounts. The rule applies to claims made within 30 calendar days after an account is opened. The rule allows 20 business days for resolving an alleged error and up to 90 calendar days for completing the investigation.

DATES: This rule is effective September 24, 1998. Compliance is optional until April 1, 1999.

FOR FURTHER INFORMATION CONTACT: John C. Wood or Jane Jensen Gell, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693–1693r, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR Part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices;

disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

II. Regulatory Revisions

Error Resolution—POS and Foreign Transactions

The EFTA requires a financial institution to investigate and resolve a consumer's claim of error—for an unauthorized EFT, for example—within specified time limits. Within 10 business days after receiving notice of an alleged error, an institution must either resolve the claim or provisionally credit the consumer's account while continuing to investigate. In the latter case, the institution must resolve the claim no later than 45 calendar days after receiving notice.

For foreign-initiated and POS transactions, Regulation E provides longer time periods adopted in 1982 and 1984, respectively. The regulation allows 20 business days to resolve a claim of error (or to provisionally credit an account if additional time is needed to investigate), and up to 90 calendar days to complete the investigation. The longer time periods generally allow issuers to avoid provisionally crediting an account before the investigation is complete.

In March 1998, the Board proposed to eliminate the extended time periods for investigating and resolving alleged errors in foreign-initiated transactions and POS transactions (63 FR 14555, March 25, 1998). The impetus for the proposal was the increased use of off-line debit cards that can be used without a personal identification number (PIN), often referred to as ''check cards.'' The cards are used by signing a sales slip (much like a credit card), and may increase the risk of unauthorized access to a consumer's asset account.

In September 1997, a House Banking Subcommittee held a hearing on whether additional consumer protections are needed for off-line debit cards. At that hearing, the Board testified that it would reexamine its extended timing rules for resolving claims of errors for POS transactions. The Board noted that the importance of more prompt recrediting of consumers' funds pending investigation may outweigh any related compliance burden, especially in the case of an account that can be accessed without PIN protection. The Board noted that technological advances allow financial institutions to investigate claims of error more quickly than in the past, and thus the extended time periods may no longer be needed.

The Board received 55 comments on the proposal to reduce the extended time periods for POS and foreign transactions, primarily from financial institutions and their trade associations. About 45 commenters addressed the proposed reduction from 90 to 45 days in the time allowed for completing an investigation; the majority opposed the reduction. Those commenters stated that financial institutions still need the additional time to research claims, get information from the consumer, and obtain documentation such as receipts from the merchant. Commenters noted that institutions may need additional time to investigate foreign-initiated transactions because of differences in technological capabilities, business customs, and language barriers. Several commenters believed that reducing the time to complete the investigation from 90 to 45 days would result in losses where financial institutions provide final credit only to later discover that the claim was not valid.

Many of those commenters did not object, however, to reducing the time period for providing provisional credit to 10 days. They recognized that in some situations it may be a hardship for a consumer to wait 20 business days before receiving credit for the amount of the alleged error. These commenters suggested that the Board consider reducing the time period for provisional crediting while retaining the extended time period for completing the investigation.

In response to comments and upon further analysis, the Board is revising the time periods for claims involving POS and foreign-initiated transactions to require institutions to provide provisional credit within 10, rather than 20 business days. The Board believes that the change will benefit consumers because they now will have access to their funds through provisional crediting sooner. The 90-day time period to complete the investigation remains unchanged. By leaving in place the 90-day time period, financial institutions will continue to have adequate time to complete the investigation and resolve the alleged error. Because POS and foreign transactions are more likely to involve occasional difficulty and delay in obtaining necessary information for the reasons discussed above, the Board believes that this extended time frame remains appropriate.

To take advantage of the longer time period (90 days) for resolving claims involving POS and foreign-initiated transactions, a financial institution must have disclosed these longer time periods. Financial institutions may disclose the time periods by making appropriate alterations to the error resolution notice in appendix A.

Error Resolution—New Accounts

In May 1996, the Board proposed to amend Regulation E to extend the error resolution time periods for new accounts, to address concerns of financial institutions (61 FR 19696, May 2, 1996). The problem arises when an individual opens an account with the intent to defraud. Such individuals may open an account, withdraw all or a large portion of the deposited funds through ATMs, and file a claim with the financial institution disputing the ATM transactions. Often the individual receives provisional credit because the financial institution is unable to conclude research of the claim (such as by obtaining photographic evidence from a nonproprietary ATM) within 10 business days of a claim. Once provisional credit is provided, the individual immediately withdraws those funds and abandons the account. Institutions believe that having more time to investigate errors involving new accounts would enable them to limit their losses and better control this type of fraud.

The Board proposed to allow 20 business days (rather than 10) for investigating an error before an institution must provisionally credit, and up to 90 calendar days (rather than 45) for resolving the claim. The Board solicited comment on the proposed extensions of time and on whether consumer protections relating to error resolution would be adversely affected. The Board also proposed a definition of a new account, consistent with the definition in Regulation CC, which implements the Expedited Funds Availability Act. Under Regulation CC, an account is considered a new account during the first 30 calendar days after the account is established.

Comments on the proposed rule, primarily from financial institutions and their trade associations, were generally favorable. But in light of the Board's commitment to reconsider the time periods applicable to POS and foreign-initiated transactions, the Board deferred final action on the new-account proposal.

The majority of commenters supported the extension of time for resolving errors involving new accounts. They believed that the additional time

would not adversely affect consumers and would help financial institutions limit fraud.

Several commenters expressed concern with the proposed time frame. Commenters suggested that the Board allow an institution up to 30 business days to provide provisional credit so that financial institutions have enough time to obtain information from nonlocal banks. Some commenters urged the Board to revise the definition of a new account to apply to EFTs that occur 45 or up to 120 calendar days after the account is opened (instead of 30). These commenters believed that financial institutions need the longer time to establish the consumer's transaction pattern.

Other commenters believed that the outside limit for resolving claims should be between 45 and 60 days rather than 90 days. They believed it should not take financial institutions 90 days to receive the information necessary to resolve a claim.

Upon further analysis, the Board believes the time frames that were proposed are appropriate. Therefore, Regulation E is amended, pursuant to the Board's section 904(c) authority under the EFTA to provide for adjustments and exceptions in the regulation, to extend the time periods for resolving errors that involve new accounts. An institution must provisionally credit a new account if it takes longer than 20 business days to resolve an error, and it has up to 90 calendar days to complete the investigation and resolve the claim.

To provide consistency and ease regulatory compliance, the rule tracks the definition of ''new account'' in Regulation CC (12 CFR 229.13(a)(2)). Thus, the rule applies to EFTs made during the first 30 calendar days after the first deposit to the account is made. The rules in Regulation E also parallel the interpretations of ''new account'' in Regulation CC. For example, an account is not considered a new account if a customer had another account at the financial institution for at least 30 calendar days.

The extended time periods apply to all EFTs that occur within this 30-day time period, including those for POS or foreign transactions. Therefore, if an alleged error concerns a POS or foreign EFT to or from a new account, financial institutions may take up to 20 business days to resolve the claim (or to provisionally credit an account if additional time is needed to investigate), and up to 90 calendar days to complete the investigation. The Board believes these time periods strike the appropriate balance between the need for consumers to have access to their funds and the need of financial institutions to combat fraud.

To use the longer time periods for resolving errors for new accounts, a financial institution must disclose these longer time periods. Financial institutions may disclose the time periods by making appropriate alterations to the error resolution notice in appendix A.

Technical Amendment to Error Resolution Notice

In 1996, the Board amended the error resolution procedures (§ 205.11) to allow institutions three days to notify the consumer about the outcome of its investigation in all cases. Before that time, the three-day rule applied only if the institution found that an error had not occurred. The Board has revised the text of the model error resolution notice (Appendix A, paragraph A–3) to conform the notice to § 205.11 as amended.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604), the Board has reviewed the final amendments to Regulation E. Two of the three requirements of a final regulatory flexibility analysis under this section are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The final amendments will apply to all financial institutions subject to Regulation E, including small institutions. The amendments represent relatively minor changes to the existing regulation; in some cases, the amendments clarify rights and duties of covered institutions or reduce economic burden. Accordingly, the amendments should not have a negative economic impact on small institutions, and, therefore, there were no significant alternatives that would have further minimized the economic impact on those institutions.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required or respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0200.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E, Electronic Funds Transfer (EFT). The information is used to ensure adequate disclosure of basic terms, costs and rights relating to EFT services provided to consumers. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for twenty-four months as evidence of compliance. No comments specifically addressing the burden estimate were received.

The Board also extended the recordkeeping and disclosure requirements in connection with Regulation E for three years. It is estimated that there are 851 respondent/recordkeepers with an annual burden of 462,839 hours, as shown in the table below. The final rule will reduce the time periods allowed for investigating alleged errors involving point-of-sale (POS) and foreign-initiated transactions. The Board is also amending its rule to permit longer time periods to investigate claims involving new accounts. These changes are estimated to have no effect, on average, on reporting burden.

	Number of respondents	Estimated annual frequency	Estimated response time (minutes)	Estimated annual burden hours
Initial Disclosure:				
Initial terms	851	250	2.50	8,865
Change in terms	851	340	1.00	4,822

	Number of respondents	Estimated annual frequency	Estimated response time (minutes)	Estimated annual burden hours
Transaction disclosures:				
Terminal receipts	851	71,990	0.25	255,265
Deposit verifications	851	420	1.50	8,936
Periodic disclosures	851	12,800	1.00	181,547
Error resolution rules	851	8	30.00	3,404
Total	.....	.....	.....	462,839

Since the Federal Reserve does not collect any of the information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6), and (8)). The disclosures and information about error allegations are confidential between the institutions and the consumer.

The Board has a continuing interest in the public's opinions of Federal Reserve collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Final Rule

Pursuant to the authority granted in sections 904 (a) and (c) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b (a) and (c), and for the reasons set forth in the preamble, the Board amends Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.11 is amended by revising paragraph (c)(3) as follows:

§ 205.11 Procedures for resolving errors.

* * * * *

(c) * * *

(3) *Extension of time periods.* The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (c)(2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;

(B) Resulted from a point-of-sale debit card transaction; or

(C) Occurred within 30 days after the first deposit to the account was made.

* * * * *

3. In Appendix A to Part 205, in A–3 MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b)), the undesignated second and third paragraphs following paragraph (a)(3) are revised to read as follows:

Appendix A To Part 205—Model Disclosure Clauses and Forms

* * * * *

A–3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b)).*

* * * * *

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–26012 Filed 9–28–98; 8:45 am]

BILLING CODE 6210–01–P

federal register

Tuesday
September 29, 1998

Part VI

Department of Agriculture

Food Safety and Inspection Service

Department of Health and Human Services

Centers for Disease Control and Prevention
Food and Drug Administration

Environmental Protection Agency

President's National Food Safety Initiative; Notice

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–045N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

[Docket No. 97N–0074]

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OPP–00550A; FRL–6034–3]

Food Safety Initiative Strategic Plan

AGENCY: Food Safety and Inspection Service, USDA; Research, Education, and Economics, USDA; Centers for Disease Control and Prevention, HHS; Food and Drug Administration, HHS; Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The United States Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) are announcing additional public meetings, under the auspices of the President's Council on Food Safety, to discuss and begin development of a comprehensive strategic Federal food safety plan. The purpose of the strategic plan is to reduce the annual incidence of acute and chronic foodborne and waterborne illness by further enhancing the safety of the nation's food supply. The Council is also soliciting comments on the recent National Academy of Sciences' report, ''Ensuring Safe Food from Production to Consumption.'' The USDA, the Food and Drug Administration (FDA), and the EPA have established public dockets to receive comments about the Food Safety Initiative's strategic planning process, the strategic plan and the NAS report.

DATES: The meetings will be held on October 20, 1998, November 10, 1998 and December 8, 1998. Comments should be submitted by January 7, 1999.

ADDRESSES: The meetings will be held at:

Meeting Address	Date and Time
Radisson Hotel Sacramento 500 Leisure Lane Sacramento, CA 95815 Telephone: (916) 922–2020	Tuesday, October 20, 1998, 9:30 a.m.—4:30 p.m. PST
Schaumburg Marriott 50 North Martingale Rd. Schaumburg, IL 60173 Telephone: (847) 240–0100	Tuesday, November 10, 1998, 9:30 a.m.—4:30 p.m. CST
Holiday Inn Select L.B.J. Northeast 11350 L.B.J. Freeway @ Jupiter Rd. Dallas, TX 75238 Telephone: (214) 341–5400	Tuesday, December 8, 1998, 9:30 a.m.—4:30 p.m. CST

For instructions on the submission of written and electronic comments, refer to Unit II. of this document.

FOR FURTHER INFORMATION CONTACT: To register for the meetings, contact Ms. Traci Phebus, of USDA, at (202) 501–7136, fax: (202) 501–7642, e-mail: foodsafetymeeting@usda.gov. Participants may reserve time for public comments when they register. Space will be allocated on a first come, first served basis. Participants are encouraged to submit a disk along with their written statements in Wordperfect 5.1/6.1 or ASCII file format.

Questions regarding general arrangements and logistical matters should be addressed to Ms. Jennifer Callahan. Additionally, participants who require a sign language interpreter or other special accommodations should contact Ms. Jennifer Callahan, of USDA, no later than 10 days prior to the meeting, at (202) 501–7136, fax: (202) 501–7642, e-mail: Jennifer.Callahan@usda.gov.

Information about the National Academy of Sciences' report on ''Ensuring Safe Food from Production to Consumption'' can be found at the following web site: http://www.nas.edu.

For questions about the meeting or to obtain copies of the report, ''Food Safety From Farm to Table: A National Food Safety Initiative,'' contact Ms. Karen Carson, of FDA, at (202) 205–5140, fax: (202) 205–5025, e-mail: kcarson@Bangate.fda.gov. Copies of the report also are available from the following web sites:

FDA at http://www.cfsan.fda.gov/~dms/fsreport.html

CDC at http://www.cdc.gov/ncidod/foodsafe/report.htm

EPA at http://www.epa.gov/opptsfrs/home/nfssuppt.htm

Food Safety and Inspection Service (FSIS) at http://www.fsis.usda.gov

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1997, the President issued a directive to the Secretaries of USDA and HHS and the Administrator of EPA to work with consumers, producers, industry, States, Tribes, universities, and the public to identify ways to further improve the safety of our food supply, and to report back to him in 90 days. The Federal food safety agencies, working with their colleagues in the States, in the food industries, in academia, and with consumers, initially focused on the goal of reducing illness caused by microbial contamination of food and water. This goal was to be reached through systematic improvements in six key components of the food safety system: foodborne outbreak response coordination, surveillance, inspections, research, risk assessment, and education. The plan for meeting this goal was presented to the President in May 1997, in ''Food Safety From Farm to Table: A National Food Safety Initiative.'' In October 1997, the President issued an additional directive to ensure the safety of domestic and imported fresh produce and other imported foods. This second directive was incorporated into the National Food Safety Initiative (NFSI).

In less than 2 years, the agencies have taken significant strides forward in building a strengthened national food safety system. Building blocks for the infrastructure are in place: increased and targeted surveillance through FoodNet and PulseNet; coordination of Federal, State and local responses to outbreaks by the Foodborne Outbreak Response Coordinating Group (FORCG); expanded reliance on preventive controls (such as the Hazard Analysis and Critical Control Points (HACCP) based inspection systems for meat, poultry and seafood, and Good Agricultural and Good Manufacturing Practices guidance for produce); coordination of Federal food safety research; cooperation on risk assessment through the interagency Risk Assessment Consortium; leveraging inspection resources; and innovative public/private education partnerships. These efforts provide a common ground for moving forward.

On July 3, 1998, the President created a Joint Institute for Food Safety

Research (JIFSR) to coordinate Federal food safety research efforts. On August 25, 1998, the President issued an Executive Order establishing a President's Council on Food Safety to develop a comprehensive strategic plan for Federal food safety activities, ensure the most effective use of Federal resources through the development and submission of coordinated food safety budgets, and oversee the Joint Institute for Food Safety Research. At the same time, the President directed the Council to, after providing opportunity for public comment, report back to him within 180 days with its views on the recommendations of the NAS report.

The food safety agencies had already made a commitment to prepare a 5–year comprehensive strategic plan, with the participation of all concerned parties. The President's Council on Food Safety will now be responsible for the development of this strategic Federal food safety plan. A coordinated food safety strategic planning effort is needed to build on the common ground, and to tackle some of the difficult public health, resource, and management questions facing Federal food safety agencies. The strategic plan will focus on not just microbial contamination, but the full range of issues (e.g., chemical hazards) and actions necessary to ensure the safety of the food and water Americans use and consume. The charge is to develop a strategic long-range plan that can be used to help set priorities, improve coordination and efficiency, identify gaps in the current system and mechanisms to fill those gaps, continue to enhance and strengthen prevention and intervention strategies, and identify measures to show progress. In developing the plan, the Council will consider the conclusions and recommendations of the NAS report on ''Ensuring Safe Food from Production to Consumption'' and the review of Federal food safety research currently being developed by an interagency working group under the auspices of the National Science and Technology Council.

The food safety agencies have already taken the first steps to lay the groundwork for development of the strategic plan, which the Council will now develop, by participating in interagency strategic planning sessions. The result is the following draft statement encompassing the agencies' vision for the U.S. food safety system and the roles of all those involved in food safety.

Draft Vision Statement

Consumers can be confident that food is safe, healthy, and affordable. We work within a seamless food safety system that uses farm-to-table preventive strategies and integrated research, surveillance, inspection, and enforcement. We are vigilant to new and emergent threats and consider the needs of vulnerable populations. We use science-and risk-based approaches along with public/private partnerships. Food is safe because everyone understands and accepts their responsibilities.

The next step is to engage consumers, producers, industry, food service providers, retailers, health professionals, State and local governments, Tribes, academia, and the public in the strategic planning process. The first public meeting on the strategic plan will be held on October 2, 1998, in Arlington, VA and was announced in the **Federal Register** of August 27, 1998 (63 FR 45922) (FRL–6019–9). The series of meetings announced today, in addition to the October 2nd meeting, will assist the Council with development of a long-term strategic plan that addresses the important food safety challenges and makes the best use of the agencies' limited resources. They will also assist the Council in responding to the President on the NAS recommendations. Additional public meetings may be held later in the strategic planning process and will be announced in the **Federal Register** prior to the date of each meeting.

The purpose of these meetings, along with the October 2nd meeting, is to obtain the public's view on a long-term vision for food safety in the U.S. and to identify a strategic planning process, goals, and critical steps as well as potential barriers to achieving that vision. The Council is interested in comments on the draft vision statement, suggestions for goals and how they might be achieved, and comments on how to best structure a strategic planning process that involves all interested parties. The Council is also soliciting comments on the conclusions and recommendations of the NAS report, ''Ensuring Safe Food from Production to Consumption.'' Some questions to help frame the discussion follow.

1. Does the vision statement accurately depict an achievable food safety system vision? What modifications, if any, would you make?

2. What are the barriers to pursuing this vision? What gaps currently exist in the food safety system that impede achievement of this vision?

3. To make the vision a reality, what changes are needed for: (a) government agencies at the Federal, State, and local level; (b) industry; (c) public health professionals; (d) consumers; and (e) others?

4. What should be the short-term goals and critical steps to realize this vision? What should be the long-term goals and steps?

5. What is the best way to involve the public in development of a long-term food safety strategic plan? What additional steps besides public meetings would be beneficial?

6. What are your comments on the conclusions and recommendations of the NAS report ''Ensuring Safe Food from Production to Consumption''?

II. Public Dockets and Submission of Comments

The agencies have established public dockets about the Food Safety Initiative Strategic Plan and the NAS report, ''Ensuring Safe Food from Production to Consumption.'' Comments submitted to the dockets are to be identified with the appropriate docket number. For those comments directed to USDA, use Docket No. 98–045N, and for comments directed to FDA, use Docket No. 97N–0074. Commenters are encouraged to submit a disk along with their written comments in Wordperfect 5.1/6.1 or ASCII file format. Submit written comments (in triplicate) to either:

USDA/FSIS

USDA/FSIS Hearing Clerk, 300 12th St., SW., Rm. 102 Cotton Annex, Washington, DC 20250–3700

FDA

Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Drive, Rm. 1–23, Rockville, MD 20857

Electronic Comments

Comments may also be submitted electronically to: oppts.homepage@epa.gov. All comments and data in electronic form must be identified by the docket number ''OPP–00550.'' Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Transcripts

Transcripts of the public meetings may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcripts of the public meetings will be available for public examination at the FDA Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Transcripts of the meetings will also be available on the internet at: http://www.fda.gov/ohrms/dockets/default.htm and http://www.epa.gov/opptsfrs/home/nfssuppt.htm.

Electronic Docket

The public docket in its entirety will be available on the internet at: http://www.epa.gov/opptsfrs/home/rules.htm docket.

List of Subjects

Environmental protection, Food safety.

Dated: September 24, 1998.

Catherine E. Woteki,

Undersecretary for Food Safety, United States Department of Agriculture.

Dated: September 24, 1998.

James A. O'Hara,

Deputy Assistant Secretary for Health, Department of Health and Human Services.

Dated: September 24, 1998.

Lynn R. Goldman

Assistant Administrator for Prevention, Pesticides and Toxic Substances, Environmental Protection Agency.

[FR Doc. 98–26199 Filed 9–25–98; 2:52 pm]

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federal register

Tuesday
September 29, 1998

Part VII

The President

Executive Order 13102—Further Amendment to Executive Order 13038, Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

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Vol. 63, No. 188
Tuesday, September 29, 1998

Presidential Documents

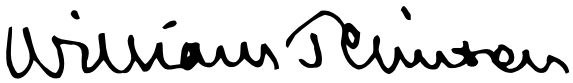
Title 3—

The President

Executive Order 13102 of September 25, 1998

Further Amendment to Executive Order 13038, Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the reporting deadline of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, it is hereby ordered that Executive Order 13038, as previously amended, is further amended by deleting ''October 1, 1998'' in section 2 and inserting ''December 31, 1998'' in lieu thereof.



THE WHITE HOUSE,
September 25, 1998.

[FR Doc. 98–26250
Filed 9–28–98; 9:43 am]
Billing code 3195–01–P

federal register

Tuesday
September 29, 1998

Part VIII

The President

Proclamation 7127—Gold Star Mother's Day, 1998

Federal Register
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Tuesday, September 29, 1998

Presidential Documents

Title 3—

The President

Proclamation 7127 of September 25, 1998

Gold Star Mother's Day, 1998

By the President of the United States of America

A Proclamation

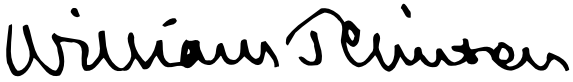
Throughout our Nation's history, brave Americans have put on the uniforms of our Armed Services and placed themselves in harm's way to preserve our cherished freedoms and advance the ideals of democracy. In the brutality of war, many have sacrificed their lives, bringing devastating pain and grief to their families and friends. No one feels such a loss more acutely than do the mothers and fathers of these patriots who have paid so dearly to serve our country. To bear and nurture children, to give them life and unbounded love, to raise them with care to adulthood, only to lose them to the fatal grip of war, brings an abiding sorrow.

Yet, with strength and determination, a group of extraordinary women has transformed sorrow into service to others. Since 1928, America's Gold Star Mothers have worked together to serve their communities and our Nation. They bring comfort and hope to disabled veterans and their families, to keep alive the memory of all Americans who have paid the ultimate price for our freedom, and to promote harmony among all the peoples of the world. Their quest for peace is especially poignant because they know better than most the cruel costs of war. Every Gold Star Mother has faced the inevitable and unyielding truth that the proud son or daughter who marched off to battle will never come home to her loving arms. Bound by sorrow yet filled with compassion, America's Gold Star Mothers are a noble example of love, dedication, and patriotism.

As a Nation, we have a sacred duty to remember those who have died in service to our country, but we have an important responsibility to the living as well. America's Gold Star Mothers deserve our unfailing gratitude and profound respect, not only for their courage and compassion in the face of great personal sadness, but also for their constant love for our country and their fellow Americans. That is why the Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as ''Gold Star Mother's Day'' and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 27, 1998, as Gold Star Mother's Day. I call on all government officials to display the United States flag on government buildings on this day. I also urge the American people to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places, as a public expression of the sympathy and the respect that our Nation holds for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 98–26255
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