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Presidential Documents

Title 3—

The President

Executive Order 13132 of August 4, 1999

Federalism

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) ''Policies that have federalism implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

(b) ''State'' or ''States'' refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) ''State and local officials'' means elected officials of State and local governments or their representative national organizations.

Sec. 2. *Fundamental Federalism Principles.* In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

Sec. 3. *Federalism Policymaking Criteria.* In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 (''Intergovernmental Review of Federal Programs'') remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:

(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;

(2) where possible, defer to the States to establish standards;

(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and

(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

Sec. 4. *Special Requirements for Preemption.* Agencies, in taking action that preempts State law, shall act in strict accordance with governing law.

(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

Sec. 5. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

Sec. 6. *Consultation.*

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

Sec. 7. *Increasing Flexibility for State and Local Waivers.*

(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 8. *Accountability.*

(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

Sec. 9. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

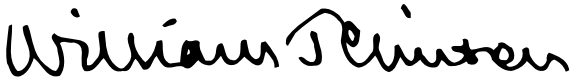
Sec. 10. *General Provisions.*

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 (''Intergovernmental Review of Federal Programs''), Executive Order 12866 (''Regulatory Planning and Review''), Executive Order 12988 (''Civil Justice Reform''), and OMB Circular A–19.

(b) Executive Order 12612 (''Federalism''), Executive Order 12875 (''Enhancing the Intergovernmental Partnership''), Executive Order 13083 (''Federalism''), and Executive Order 13095 (''Suspension of Executive Order 13083'') are revoked.

(c) This order shall be effective 90 days after the date of this order.

Sec. 11. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
August 4, 1999.

[FR Doc. 99–20729
Filed 8–9–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–23]

Amendment to Class E Airspace; Thedford, NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Thedford, NE, and corrects an error in the airspace designation for Thomas County Airport as published in the **Federal Register** June 10, 1999 (63 FR 31116), Airspace Docket No. 99–ACE–23.

DATES: The Direct final rule published at 64 FR 31116 is effective on 0901 UTC, September 9, 1999.

This correction is effective on September 9, 1999.

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: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Thedford, NE (FR document 99–14608, 64 FR 31116, Airspace Docket No. 99–ACE–23). An error was subsequently discovered in the airspace designation for Thomas County Airport. This action corrects that error. 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 adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the airspace designation and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Thomas County Airport, as published in the **Federal Register** on June 10, 1999 (64 FR 31116), (**Federal Register** Document 99–14608; page 31117, column two) is corrected as follows:

§ 71.1 [Corrected]

ACE NE E5 Thedford, NE [Corrected]

On page 31117, in the second column, line two, correct the airspace designation by removing ''6.3'' and adding ''6.4''

Issued in Kansas City, MO on July 30, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20525 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–21]

Modification of Class E Airspace; Kingman, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action modifies the Class E airspace area at Kingman, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 and GPS RWY 21 at Kingman Airport has made this action necessary. Additional controlled airspace extending upward form 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 3 SIAP to Kingman Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Kingman Airport, Kingman, AZ.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Kingman, AZ (64 FR 30260). Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 3 SIAP at Kingman Airport. This action will provide adequate controlled airspace for IFR operations at Kingman Airport, Kingman, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending 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 Rule

This amendment to 14 CRR part 71 modifies the Class E airspace area at Kingman, AZ. Controlled airspace

extending upward from 700 feet above the surface is required for aircraft executing the GPS RWY 3 and GPS RWS 21 SIAP at Kingman Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 3 SIAP at Kingman Airport, Kingman, AZ.

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. Therefore, this 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 his 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 E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 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

* * * * *

AWP AZ E5 Kingman, AZ [Revised]

Kingman Airport, AZ
(Lat. 35°15′34″N, long. 113°56′17″W)
Kingman VOR/DME
(Lat. 35°15′38″N, long. 113°56′03″)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Kingman Airport and that airspace within 4.3 miles each side of the Kingman VOR 025° radial, extending from the 4.3-mile radius to 16.5 miles northeast of the Kingman VOR and that airspace 1.7 miles each side of the Kingman VOR 226° radial, extending from the 4.3-mile radius to 9 miles southwest of the Kingman VOR. That airspace extending 1,200 feet above the surface within 4.3 miles southeast and 7.8 miles northwest of the Kingman VOR 025° and 205° radii, extending from 11.3 miles southwest to 33 miles northeast of the Kingman VOR and that airspace bounded by a line beginning at lat. 35°24′50″N, long. 114°01′20″W; to lat. 35°08′40″N, long. 114°10′29″W; to lat. 35°21′15″N, long. 114°13′28″W., thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on July 27, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–20523 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181

[T.D. 99–64]

Technical Corrections to the Customs Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessary to ensure that the regulations are as accurate and up-to-date as possible. Some of the corrections involve typographical and printing errors, some involve corrections to correlate with prior regulatory changes, some involve changes to regulatory language to more accurately reflect the underlying statutory language; however, none of the corrections involve changes in substantive legal requirements.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Regulations Branch (202) 927–2391.

SUPPLEMENTARY INFORMATION:

Background

It is Customs policy to periodically review its regulations to ensure that they are as accurate and up-to-date as possible, so that the importing and general public are aware of Customs programs, requirements, and procedures regarding import-related activities. As part of this review policy, Customs has determined that certain changes affecting Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181 of the Customs Regulations (19 CFR parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181) are necessary to correct typographical and citation-referencing errors, and to make certain conforming changes to the regulations. Many of these changes are being made to conform the language in the Customs Regulations to the language of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, Title VI) (''the Mod Act''). Following is a summary of these changes:

Discussion of Changes

Part 4

Section 4.9(f) provides that the master of a vessel who fails to make entry or presents any entry document which is forged, altered or false is liable for certain civil penalties, as provided in 19 U.S.C. 1436. This document amends § 4.9(f) to reflect the amendment to 19 U.S.C. 1436 by section 611 of the Mod Act that penalties are also applicable for electronically transmitting any forged, altered, or false document, paper, information, data or manifest to Customs.

Section 4.12(a)(5) provides that unless the vessel master provides the required notification of a manifest discrepancy and that the discrepancy was due to clerical error, applicable penalties will be assessed. Further, repeated manifest discrepancies may be deemed negligent and not clerical error. This document amends the definition of ''clerical error'' to match the definition provided in 19 U.S.C. 1584 as amended by section 619 of the Mod Act, to include electronic submissions. Accordingly, after the word ''submission'' the words ''(electronically or otherwise)'' are added.

Section 4.61(b) requires the port director to verify that a vessel is in compliance with certain requirements prior to granting clearance. Section 4.61(b)(3), concerning documentation, makes a reference to § 4.64, which is a ''reserved'' section. Therefore, this document deletes the reference to § 4.64.

Section 4.82 concerns vessels touching at a foreign port while in

coastwise trade. In § 4.82(a) and (d), footnotes 112, and 113, respectively contain requirements pertaining to manifests of cargo and whether a duty is payable by reason of a vessel taken in at one port of the United States and touching at a foreign port during the voyage. Changes made to 19 U.S.C. 293 and 294, as amended by section 686 of the Mod Act, necessitate the removal of footnotes 112 and 113, respectively. Further, in § 4.82(a), there is a reference to Great Lakes license endorsements which were repealed by Pub. L. 104–324, Title XI, § 1115(a), 110 Stat. 3972 (October 19, 1996). Accordingly, the language referring to Great Lakes license endorsements in § 4.82(a) is deleted.

Part 10

In § 10.41b(b)(1), concerning receiving permission from the port director for release of certain shipping devices in international traffic without entry or duty and without the shipping devices being serially numbered or marked, the number ''13'' inadvertently appears between the words ''serially'' and ''numbered''. The number ''13'' is, therefore, deleted.

In § 10.41b(b)(2)(iv), concerning the reporting period for the clearance of serially numbered substantial holders or outer containers, the number ''14'' inadvertently appears between the word ''tendered'' and an open parenthesis mark. The number ''14'' is, therefore, deleted.

In § 10.41b(b)(4), concerning the port director's actions on the application for exemption from serial numbering or marking requirements, the number ''15'' inadvertently appears between the words ''the'' and ''application''. The number 15 is, therefore, deleted.

Part 12

In § 12.8(b), concerning liquidated damages assessed for breach of a bond on imported meat, meat-food products, horse meat, and horse meat-food products, the monetary cap of $20,000 for cancellation of liquidated damages by a port director is referenced. However, § 172.21 provides that a Fines, Penalties, and Forfeiture Officer may cancel claims for liquidated damages when the claim is $100,000 or less. Accordingly, for consistency, § 12.8(b) is revised to replace the $20,000 with $100,000.

Part 24

In § 24.21(b)(9), concerning the fees charged for administrative overhead costs, the reference to ''§ 111.12(a)(2)'' is revised to read ''§ 111.12(a)''.

In § 24.24(g), concerning the maintenance of records for the harbor maintenance fee, the last sentence references ''§§ 162.1a through 162.1i''; however, effective July 16, 1998, the adoption of new Part 163 replaces the reference for those sections. Accordingly, the reference is revised to ''part 163''.

Part 102

Section 102.20 lists for specific North American Free Trade Agreement purposes specific tariff shift rules and other requirements for determining the country of origin of imported goods other than textiles and apparel products covered by § 102.21. In § 102.20(p), Section XVII: Chapters 86 through 89, the entry under ''Tariff shift and/or other requirements'' for 8716.10–8716.80 is grammatically unclear and is revised to read ''A change to subheading 8716.10 through 8716.80 from any other heading, or from subheading 8716.90 except when that change is pursuant to General Rule of Interpretation 2(a).''

Part 112

In § 112.41, concerning identification cards for a licensed cartman or lighterman and their employees, the title ''the Bureau of Customs'' is used. Customs is officially a ''Service'', not a ''Bureau''. Accordingly, the words ''the Bureau of'' are deleted.

Part 113

In § 113.38(c)(4), concerning Customs review of a submission by a delinquent surety before determining whether to not accept further bonds from the surety, there is a reference to ''(c)(4)''. Due to the deletion of a prior paragraph the numbering for this reference should read ''(c)(3)''. Accordingly, the reference to ''(c)(4)'' is revised to read ''(c)(3)''.

Part 118

In § 118.12, concerning a port director's actions on an application for a centralized examination station (CES), the second sentence is amended by deleting the word ''imported'' to conform to changes made in T.D. 98–29.

Part 122

In § 122.162(b), concerning the failure to notify the port director and explain differences in an air cargo manifest, the definition of ''clerical error'' is being changed to match the definition provided in 19 U.S.C. 1584 as amended by section 619 of the Mod Act, to include electronic submissions and correspond to the identical definition appearing at § 4.12(a)(5).

Part 133

In §§ 133.26 and 133.46, involving the demand for redelivery of released merchandise and the demand for redelivery of released articles, respectively, the reference to § 141.113(g) should read § 141.113(h). The reference is accordingly revised.

Part 141

Sections 141.64, 141.90(a) and 141.103 are amended in light of the amendment of 19 U.S.C. 1484 by section 637 of the Mod Act which shifted to the importer of record the burden to use reasonable care in providing to Customs the correct classification, appraisement and rate of duty applicable to merchandise in entry documentation, and furnishing at the time of entry sufficient information to enable Customs to determine admissibility, assess proper duties, collect accurate statistics and to determine compliance with any other legal requirement. Accordingly, Customs believes that the regulations should no longer provide that Customs has the burden to review entry and entry summary documentation before acceptance to ensure that all entry and statistical requirements are complied with and that indicated values and rates of duty appear to be correct; § 141.64 currently provides that Customs has that burden. Section 141.64 is being amended to reflect that while it is not Customs burden to review entry and entry summary documentation, Customs may still in its discretion return documentation in which errors are found prior to acceptance. Further, in accordance with 19 U.S.C. 1484, the entered tariff classification, rate of duty, value and estimated duties no longer need to be approved by the port director; § 141.90(a) now provides that the port director has this responsibility. Also, as a result of the above amendment to section 1484, it is not the port director's responsibility to determine the amount of estimated duties ''deemed necessary'' to be deposited; § 141.103 now states that this is the port director's responsibility. Accordingly, as it is now the responsibility of the importer of record to use ''reasonable care'' in submitting proper information and documentation with Customs, pursuant to 19 U.S.C. 1484, these responsibilities of Customs regarding acceptance of entry documentation are removed from the regulations. To effect this, § 141.64 is amended by removing the word ''shall'' in the first sentence and inserting the word ''may'' in its place; § 141.90 is amended by removing and reserving paragraph (a); and § 141.103 is amended by removing the words ''deemed necessary by the port director''.

In § 141.68(b), concerning when an entry summary serves as both the entry documentation and entry summary, there is a reference to § 142.13(c). Pursuant to a realignment of the paragraphs of § 142.13 by T.D. 95–77, the correct reference should be ''§ 142.13(b)''. The reference is accordingly revised.

In § 141.113(b), concerning the recall of textiles and textile products released from Customs custody, the reference to § 113.62(k)(1) should read § 113.62(l)(1). The reference is accordingly revised.

Part 143

In § 143.21(j), concerning merchandise determined to be unique in character or design so as to be eligible for informal entry, the language is clarified by deleting the word ''so'' before the word ''unique'' and adding '', such'' after the word ''design''.

Part 144

Section 144.37(h)(2)(vi) concerns a Class 9 warehouse withdrawal for exportation using a sales ticket for goods purchased in a duty-free store. This section is corrected to reflect that the importer's personal exemption is available as to goods purchased in a duty-free store, should such goods later be returned to the United States. This conforms the section with 19 U.S.C. 1555(b)(6)(B) and § 19.35(e)(2).

Part 148

In § 148.51(a)(1), concerning the application for exemption from duty and internal revenue tax by a nonresident arriving in the U.S. who is not entitled to an exemption for gifts, the reference to subheading ''9804.00.39'', HTSUS is incorrect. This reference is amended to read subheading ''9804.00.30'', HTSUS.

Part 162

In § 162.65(c), concerning the notice and demand for payment of a penalty for cargo or baggage containing unmanifested narcotic drugs or marihuana, the last word of the first sentence ''responsiblie'' is misspelled. This document corrects the misspelled word.

Section 162.72(b), concerning the penalties for violation of section 584(a)(1), Tariff Act of 1930 (19 U.S.C. 1584(a)(1)), as amended, states that the penalty for lack of or discrepancy in a manifest is $500. Pursuant to 19 U.S.C. 1584, the penalty amount of $500 has been increased to $1000. This document corrects the regulation to reflect the correct statutory penalty.

In § 162.73, concerning penalties under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), the language is revised to reflect that pursuant to Pub. L. 104–295, the penalty is applicable to taxes and fees as well as duties.

In § 162.74(c), as amended by T.D. 98–49 published in the **Federal Register** (63 FR 29126) on May 28, 1998, concerning the tender of actual loss of duties under a prior disclosure by a person of a violation of law committed by that person involving the filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise in the United States by fraud, gross negligence, or negligence, the words ''his or her'' in the second sentence are misleading regarding the fact that Customs calculates the actual loss of duties. This document clarifies the matter.

In § 162.79b, concerning the recovery of the actual loss of duties resulting from a violation of 19 U.S.C. 1592, the language is revised to reflect that there is liability for taxes and fees as well as duties.

Part 173

Section 173.6 provides that where there is probable cause to believe there is fraud in a case, a port director may reliquidate an entry within two years after the date of liquidation or last reliquidation. This section is being removed from the regulations. The authority for § 173.6 was 19 U.S.C. 1521 which was repealed by section 618 of the Mod Act.

Part 174

In § 174.13(a), concerning the contents of a protest, there are nine paragraphs detailing the types of information required. The connective word ''and'' should be set forth between paragraphs (a)(8) and (a)(9), rather than between paragraphs (a)(7) and (a)(8) as is currently printed. Also, in (a)(9), the word ''declaration'' is misspelled as ''delcaration''. This document corrects these errors.

Part 181

In § 181.82(b)(1)(ii), concerning ''voluntarily'' correcting a declaration in connection with a claim for preferential tariff treatment for a good under NAFTA so as to not be subject to a penalty, the reference to ''§ 162.74(g)'' is revised to read § 162.74(i)''. This reflects the restructuring of § 162.74 set forth in T.D. 98–49.

In § 181.93(b)(5)(i)(B)(*4*), concerning whether the requester for a NAFTA advance ruling has knowledge that the issue is already subject of a request for an advance ruling, there is a reference to § 181.76(d)(1). However, because a new section (b) was added to § 181.76 by T.D. 95–68, the original § 181.76(d)(1) was redesignated as § 181.76(e)(1). Therefore, the reference to § 181.76(d)(1)'' is revised to read ''§ 181.76(e)(1)''.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely correct certain typographical, technical and printing errors in the regulations and otherwise conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(a)(2) and (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a ''significant regulatory action'' as defined in E.O. 12866.

Drafting Information. The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Bonds, Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Drug traffic control, Entry, Exports, Fees, Foreign commerce and trade statistics, Freight, Harbors, Imports, Inspection, Merchandise, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Animals, Bonds, Customs duties and inspection, Economic sanctions, Entry of merchandise, Fees assessment, Imports, Meats, Reporting and recordkeeping requirements, Sanctions.

19 CFR Part 24

Accounting, Customs duties and inspection, Fee, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Taxes, User Fees.

19 CFR Part 102

Customs duties and inspection, Customs ports of entry, Imports, Shipments, Sureties.

19 CFR Part 112

Administrative practice and procedure, Customs duties and inspection, Exports, Freight forwarders, Imports, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 118

Administrative practice and procedure, Bonds, Customs duties and inspection, Drug traffic control, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 122

Administrative practice and procedure, Bonds, Customs duties and inspection, Freight, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 133

Customs duties and inspection, Fees assessment, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated Broker Interface (ABI), Customs duties and inspection, Electronic entry filing, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 148

Aliens, Customs duties and inspection, Declarations, Foreign officials, Privileges and immunities, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Inspection, Law enforcement, Penalties, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free-Trade Agreement).

Amendment to the Regulations

In accordance with the preamble, Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181 of the Customs Regulations (19 CFR Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific relevant authority citations for §§ 4.9, 4.12, and 4.82 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.9 also issued under 42 U.S.C. 269; 46 U.S.C. App. 677;

* * * * *

Section 4.12 also issued under 19 U.S.C. 1584;

* * * * *

Section 4.82 also issued under 19 U.S.C. 293, 294, 46 U.S.C. App. 123;

* * * * *

§ 4.9 [Amended]

2. Section 4.9(f) is amended by removing in the first sentence the language ''any document required by this section which is forged, altered, or false,'' and adding in its place the words ''or transmits, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest,''.

§ 4.12 [Amended]

3. Section 4.12(a)(5) is amended by adding in the second sentence after the word ''submission'' the words ''(electronically or otherwise)''.

§ 4.61 [Amended]

4. Section 4.61(b)(3) is amended by removing the parenthetical reference ''(§ 4.64)''.

§ 4.82 [Amended]

5. Section 4.82(a) is amended to add in the first sentence after the first word ''A'' the words ''United States'', and to remove the words '', where appropriate, a Great Lakes license endorsement'' and add in their place the words ''coastwise endorsement, or both'.

6. Part 4 is amended by removing and reserving footnotes 112 and 113; and removing the superscript footnote referencing designations 112 and 113 from the text.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific relevant authority citation for § 10.41b continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

* * * * *

§ 10.41b [Amended]

2. Section 10.41b(b)(1) is amended by removing in the first sentence the number ''13'' which appears between the words ''serially'' and ''numbered'.

3. Section 10.41b(b)(2)(iv) is amended by removing the number ''14'' which appears between the word ''tendered'' and a parenthetical clause.

4. In § 10.41b(b)(4), the third sentence is amended by removing the number ''15'' which appears between the words ''the'' and ''application''.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

§ 12.8 [Amended]

2. Section 12.8(b) is amended in the first sentence by removing the monetary cap of ''$20,000'' and adding in its place the monetary cap of ''$100,000''.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 and the specific relevant authority for § 24.24 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624, 31 U.S.C. 9701.

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

§ 24.21 [Amended]

2. Section 24.21(b)(9) is amended by removing the citation ''111.12(a)(2)'' and adding in its place the citation ''§ 111.12(a)''.

§ 24.24 [Amended]

3. ''In § 24.24(g), the last sentence is amended by removing the citations §§ 162.1a through 162.1i'' and adding in their place the citation ''part 163''.

PART 102—RULES OF ORIGIN

1. The general authority citation for Part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 3314, 3592.

* * * * *

§ 102.20 [Amended]

2. Section 102.20(p), ''Section XVII: Chapters 86 through 89'', is amended by revising the entry in the ''Tariff shift and/or other requirements'' column adjacent to 8716.10–8716.80 in the ''HTSUS'' column, to read ''A change to subheading 8716.10 through 8716.80 from any other heading, or from subheading 8716.90 except when that change is pursuant to General Rule of Interpretation 2(a).''

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The general authority citation for Part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

* * * * *

§ 112.41 [Amended]

2. Section 112.41 is amended by removing in the first sentence the words ''the Bureau of''.

PART 113—CUSTOMS BONDS

1. The general authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.38 [Amended]

2. Section 113.38(c)(4) is amended by removing in the first sentence the reference to ''(c)(4)'' and adding in its place ''(c)(3)''.

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The general authority citation for Part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

* * * * *

§ 118.12 [Amended]

2. Section 118.12 is amended by removing the word ''imported'' from the last sentence.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

* * * * *

§ 112.162 [Amended]

2. Section 122.162(b) is amended by removing the words ',made when the manifest is prepared, assembled or submitted'' and adding in their place the words ''in the preparation, assembly, or submission (electronically or otherwise) of the manifest''.

PART 133—TRADEMARKS, TRADE NAMES AND COPYRIGHTS

1. The general authority citation for Part 133 and the specific relevant authority citation for §§ 133.26 and 133.46 continue to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Sections 133.26 and 133.46 also issued under 19 U.S.C. 1623.

* * * * *

§ 133.26 and 133.46 [Amended]

2. Sections 133.26 and 133.46 are amended by removing the citation § 141.113(g)'' and adding in its place the citation ''§ 141.113(h)''.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 and the specific relevant authority citations for §§ 141.68, 141.90, and 141.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

Section 141.90 also issued under 19 U.S.C. 1487;

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.64 [Amended]

2. Section 141.64 is amended by removing the word ''shall'' in the first sentence and adding in its place the word ''may''.

§ 141.68 [Amended]

3. Section 141.68(b) is amended by removing the citation ''§ 142.13(c)'' and adding in its place ''§ 142.13(b)''.

§ 141.90 [Amended]

4. Section 141.90 is amended by removing and reserving paragraph (a).

§ 141.103 [Amended]

5. Section 141.103 is amended by removing the words ''deemed necessary by the port director''.

§ 141.113 [Amended]

6. Section 141.113(b) is amended by removing the citation ''§ 113.62(k)(1)'' and adding in its place ''§ 113.62(l)(1)''.

PART 143—SPECIAL ENTRY PROCEDURES

1. The general authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

* * * * *

§ 143.21 [Amended]

2. Section 143.21(j) is amended by removing the word ''so'' which appears before the word ''unique'', and by adding, '', such'' after the word ''design''.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for Part 144 and the specific authority citation for § 144.37 continue to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

§ 144.37 [Amended]

2. In § 144.37(h)(2)(vi), the first sentence is amended by removing the phrase ''without personal exemption'' and adding in its place the phrase ''with personal exemption''.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 and the specific relevant

authority citation for § 148.51 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * *

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§ 148.51 [Amended]

2. Section 148.51(a)(1) is amended by removing the reference ''9804.00.39'' and adding in its place ''9804.00.30''.

PART 162—INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for Part 162 and the specific relevant authority citation for §§ 162.65 and 162.72 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.65 also issued under 19 U.S.C. 1584, 21 U.S.C. 960, 961;

Sections 162.65 and 162.72 also issued under 19 U.S.C. 1431(b) and 19 U.S.C. 1644.

§ 162.65 [Amended]

2. Section 162.65(c) is amended by removing the last word of the first sentence, ''responsiblie'', and adding in its place the word ''responsible''.

§ 162.72 [Amended]

3. Section 162.72 is amended by removing the amount ''$500'' in paragraphs (b)(1), (b)(2) and (b)(3)(ii) and by adding ''$1,000'' in its place.

§ 162.73 [Amended]

4. Section 162.73 is amended by adding after the word ''duties'' appears in paragraphs (a)(2)(i), (a)(2)(ii), (a)(3)(i), (a)(3)(ii), (b)(1)(i), (b)(1)(ii), and (b)(2), the words '', taxes and fees''.

§ 162.74 [Amended]

5. Section 162.74(c) is amended by removing in the second sentence the words ''his or her'' and adding in their place ''Customs''.

§ 162.79b [Amended]

6. Section 162.79b is amended by adding after each time the word ''duties'' appears in the heading and text, the words '', taxes and fees''.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

§ 173.6 [Removed]

2. Section 173.6 is removed.

PART 174—PROTESTS

1. The general authority citation for Part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

* * * * *

§ 174.13 [Amended]

2. Section 174.13(a)(7) is amended by removing the last word, ''and''.

3. Section 174.13(a)(8) is amended by removing the period at the end of the sentence and adding in its place ''; and''.

4. Section 174.13(a)(9) is amended by removing the word ''delcaration'' and adding in its place the word ''declaration''.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for Part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 3314.

* * * * *

§ 181.82 [Amended]

2. Section 181.82(b)(1)(ii) is amended by removing the reference ''§ 162.74(g)'' and adding in its place ''§ 162.74(i)''.

§ 181.93 [Amended]

3. Section 181.93(b)(5)(i)(B)(*4*) is amended by removing the reference § 181.76(d)(1)'' and adding in its place ''§ 181.76(e)(1)''.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 6, 1999.

John P. Simpson.

Deputy Assistant Secretary of the Treasury,

[FR Doc. 99–20506 Filed 8–9–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8831]

RIN 1545–AU90

Inbound Grantor Trusts With Foreign Grantors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations implementing sections 672(f) and 643(h) of the Internal Revenue Code, as amended by the Small Business Job Protection Act of 1996, which relate to the application of the grantor trust rules to certain trusts established by foreign persons. These regulations affect primarily U.S. persons who are beneficiaries of trusts established by foreign persons. This document also contains temporary regulations defining the term *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 10, 1999.

Applicability Dates: For dates of applicability of § 1.643(h)–1, see § 1.643(h)–1(h). For dates of applicability of § 1.671–2T(e), see § 1.671–2T(e)(7). For dates of applicability of §§ 1.672(f)–1 through 1.672(f)–5, see §§ 1.672(f)–1(c), 1.672(f)–2(e), 1.672(f)–3(e), 1.672(f)–4(h), and 1.672(f)–5(c).

FOR FURTHER INFORMATION CONTACT: M. Grace Fleeman (202) 622–3880 concerning the regulations generally, and James A. Quinn (202) 0622–3060 concerning § 1.671–2T(e) and § 1.672(f)–1 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1997 (62 FR 37819) Treasury and the IRS published a notice of proposed rulemaking (REG–252487–96) under sections 643(h), 671, 672(f), and 7701 of the Internal Revenue Code (Code). Comments responding to the notice were received and a public hearing was held on August 27, 1997. After consideration of the comments, the proposed regulations under sections 643(h) and 672(f) are adopted as final regulations as revised by this Treasury decision. The proposed regulations under section 671 are issued as revised by this Treasury decision as temporary regulations. The revisions are discussed below. The proposed regulations under section 7701 are withdrawn. The temporary regulations under section 671 are also being issued as proposed regulations published elsewhere in this issue of the **Federal Register.**

Explanation of Provisions and Revisions

1. Comments and Changes to § 1.643(h)–1: Distributions by Certain Foreign Trusts Through Intermediaries

Under the proposed regulations, any amount that was derived, directly or indirectly, by a U.S. person from a foreign trust through an intermediary generally was deemed to have been transferred directly by the foreign trust to the U.S. person if any one of three specified conditions was satisfied. In cases where the transfer from the intermediary to the U.S. person did not occur in the same taxable year of the U.S. person as the transfer from the foreign trust to the intermediary, the proposed regulations looked to generally applicable agency principles to determine when the transfer to the U.S. person was deemed to occur.

Commenters said the proposed rules were too broad and could reach virtually any transfer made to a U.S. person by any person who has received a distribution from a foreign trust. They suggested that the basic requirement for treating a transfer to a U.S. person as a transfer directly from a foreign trust should be the existence of an intention to avoid U.S. tax. Alternatively, they said there should at least be a time limitation so that the rule would not apply to a transfer of property received from a foreign trust more than, for example, one year before the transfer to the U.S. person. In addition, they said the proposed rule relying on generally applicable agency principles for determining whether an intermediary is the agent of the foreign trust or of the U.S. person would be difficult to apply because different countries have different laws and the U.S. person should be taxed prior to receipt only if the intermediary is clearly a nominee or agent for the U.S. person.

In response to the comments, the final regulations treat any property (including cash) that is transferred to a U.S. person by an intermediary who has received property from a foreign trust as property transferred directly by the foreign trust to the U.S. person if the intermediary received the property from the foreign trust pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax. A transfer of property will be deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax if all of certain specified factors are present. However, the Commissioner may find that a transfer was made pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax whether or not any of the specified factors is present.

The factors that will cause a transfer to be deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax are the following: (i) the U.S. person is related to a grantor of the foreign trust or has another relationship with a grantor of the foreign trust that establishes a reasonable basis for concluding that the grantor of the foreign trust would make a gratuitous transfer to the U.S. person; (ii) the U.S. person receives from the intermediary, within the period beginning twenty-four months before and ending twenty-four months after the intermediary's receipt of property from the foreign trust, either the property the intermediary received from the foreign trust, proceeds from such property, or property in substitution for such property; and (iii) the U.S. person cannot demonstrate to the satisfaction of the Commissioner that (A) the intermediary has a relationship with the U.S. person that establishes a reasonable basis for concluding that the intermediary would make a gratuitous transfer to the U.S. person, (B) the intermediary acted independently of the grantor and the trustee, (C) the intermediary is not an agent of the U.S. person under generally applicable U.S. agency principles, and (D) the U.S. person timely complied with the reporting requirement of section 6039F, if applicable, if the intermediary is a foreign person. See Notice 97–34 (1997–1 C.B. 422).

The final regulations also have been modified with respect to the application of generally applicable agency principles. Under the final regulations, property is treated as transferred to the U.S. person in the year it is actually transferred to the U.S. person by the intermediary unless the Commissioner determines, or the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the U.S. person under generally applicable agency principles, in which case the property will be treated as transferred to the U.S. person by the trust in the year the property was transferred to the intermediary by the trust. As a corollary, the final regulations provide that the fair market value of the property is determined as of the date of the transfer to the U.S. person, unless the intermediary is treated as an agent of the U.S. person, in which case the fair market value will be determined as of the date of the transfer to the intermediary. Examples illustrate the effect of changes in the fair market value between the date of the transfer to the intermediary and the date of the transfer to the U.S. person.

The final regulations clarify that they apply only to gratuitous transfers. They also clarify that if property is treated as transferred directly by a foreign trust to a U.S. person pursuant to the regulations, the same property will not be taken into account in computing the gross income of the intermediary (if such property would otherwise be required to be so taken into account).

The final regulations under section 643(h) are applicable to transfers made to U.S. persons after August 10, 1999.

2. Comments and Changes to § 1.671–2(e): Definition of Grantor

The proposed regulations provided a definition of grantor for purposes of part I of subchapter J, chapter 1 of the Code. This document replaces the proposed regulations with temporary regulations that are effective August 10, 1999. These temporary regulations are also being issued as proposed regulations published elsewhere in this issue of the **Federal Register**. In accordance with section 7805(e)(2), the temporary regulations will expire before August 12, 2002.

Under the original proposed regulations, a grantor was defined to include any person to the extent such person either (i) creates a trust or (ii) directly or indirectly makes a gratuitous transfer to a trust. Commenters questioned why a nominal creator who has made no transfer to a trust should be treated as a grantor and asked for an explanation of the tax significance of such treatment.

Treating a nominal creator as a grantor ensures that someone will be responsible for reporting the creation of a foreign trust by a U.S. person even if the trust is not immediately funded. See section 6048(a)(3)(A)(i) and (a)(4)(A). At the same time, Treasury and the IRS believe that an accommodation grantor, such as an attorney who creates a trust on behalf of a client, (although a grantor) should not be treated as an owner of the trust. Accordingly, the temporary regulations provide that a person who either creates a trust, or funds a trust with an amount that is directly repaid to such person within a reasonable period of time, but who makes no other transfers to the trust that constitute gratuitous transfers, will not be treated as an owner of any portion of the trust under sections 671 through 677 or 679.

Commenters also questioned a provision in the proposed regulations that treated a distribution from one trust to another trust that is a beneficiary of the first trust as a gratuitous transfer,

with the result that the first trust was a grantor of the second trust. Under the temporary regulations, if a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally is treated as the grantor of the transferee trust. However, if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, such person is treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust under subpart E of part I, subchapter J, chapter 1 of the Code. (These rules do not affect the determination of whether or not the gratuitous transfer from the transferor trust is a distribution subject to sections 651 or 661.)

The proposed regulations provided that a person who acquires an interest in a fixed investment trust from a grantor of the trust also will be treated as a grantor of the trust. In response to comments received, the temporary regulations extend the same treatment to persons who acquire an interest in a liquidating trust or an environmental remediation trust.

The temporary regulations include a new section that applies to gratuitous transfers to trusts by partnerships and corporations. If the transfer is entered into for a business purpose of the partnership or corporation, the partnership or corporation, as the case may be, generally is treated as the grantor of the trust. However, if the transfer is not entered into for a business purpose of the partnership or corporation—for example, if it is for the personal purposes of one or more of the partners or shareholders—the transfer is treated as a constructive distribution to such partners or shareholders under federal tax principles, and the partners or shareholders, as the case may be, are treated as the grantors of the trust. See, for example, *Epstein* v. *Commissioner*, 53 T.C. 459 (1969), acq. on another issue, 1970–2 C.B. xix.

Commenters asked for guidance concerning the identification of the grantor when the property contributed to the trust is jointly owned. These temporary regulations do not provide specific guidance on the treatment of joint owners that contribute property to a trust. Treasury and the IRS invite comments with specific examples of areas that may need clarification, such as, for example, the treatment of community property or the joint ownership of property by noncitizen spouses.

3. Comments and Changes to § 1.672(f)–1: Foreign Persons Not Treated as Owners

The proposed regulations prescribed a two-step analysis for implementing the general rule of section 672(f). First, the grantor trust rules other than section 672(f) (the basic grantor trust rules) were applied to determine the worldwide amount and the U.S. amount. Then, the trust was treated as partially or wholly owned by a foreign person based on an annual year-end comparison of the worldwide amount and the U.S. amount. Commenters suggested that the two-step analysis was unnecessarily complex and questioned whether it might produce results that were unintended or inconsistent with the statute.

In response to these concerns, the final regulations provide that the grantor trust rules other than section 672(f) must be applied first to determine whether, under such rules, any portion of the trust would be treated as owned by a person other than a U.S. citizen or resident or domestic corporation. The determination of the portion of the trust that is treated as owned by a grantor or other person is to be made based on the terms of the trust and the application of the grantor trust rules as found in § 1.671–1 *et seq.* If it is determined that any portion of the trust would be treated as owned by a person other than a U.S. citizen or resident or domestic corporation, such person will be treated as the owner of such portion only if such person is a foreign corporation described in § 1.672(f)–2(a) or if such portion of the trust qualifies for one of the exceptions in § 1.672(f)–3.

The final regulations under the general rule are generally applicable to taxable years of a trust beginning after August 10, 1999.

4. Comments and Changes to § 1.672(f)–2: Certain Foreign Corporations

Under the proposed regulations, a controlled foreign corporation (CFC) that created or funded a trust was treated as a domestic corporation for purposes of section 672(f) only to the extent the trust's income was subpart F income that was currently taken into account in computing the gross income of a U.S. citizen, U.S. resident, or domestic corporation. There were similar rules for passive foreign investment companies (PFICs) and foreign personal holding companies (FPHCs). Commenters questioned whether the proposed rules were consistent with the statutory antideferral regime and the legislative history. There also were suggestions that the proposed rules should not apply where a CFC is wholly owned, directly or indirectly, by U.S. shareholders. In addition, there were requests for simplification of the rules pertaining to annual fluctuations in the portion of a trust that is treated as owned by the grantor.

In response to the comments, Treasury and the IRS have developed rules that are narrowly targeted to potentially abusive situations and therefore are not inconsistent with the antideferral regime. Under the final regulations, if the owner of a trust upon application of the grantor trust rules without regard to section 672(f) is a CFC, PFIC, or FPHC, the CFC, PFIC, or FPHC, as the case may be, will be treated as a domestic corporation for purposes of applying the general rule of § 1.672(f)–1. Consequently, a CFC, PFIC, or FPHC generally will be treated as an owner of a trust if it would be so treated under sections 671 through 678 without regard to section 672(f). A CFC, PFIC, or FPHC will be treated as a domestic corporation solely for purposes of applying the general rule of § 1.672(f)–1. Thus, a CFC, PFIC, or FPHC will be treated as a foreign corporation for purposes of § 1.672(f)–4, which is discussed below in part 6 of this explanation.

If a trust to which a CFC, PFIC, or FPHC has made a gratuitous transfer makes a gratuitous transfer to a U.S. person, the CFC, PFIC, or FPHC, as the case may be, will be treated as a foreign corporation for purposes of determining how the transfer will be treated in the hands of the U.S. person, and the rules of § 1.672(f)–4(c) will apply. If a trust that a CFC, PFIC, or FPHC is treated as owning under section 678 makes a gratuitous transfer to a U.S. person, the rules of § 1.672(f)–4(c) will apply as if the CFC, PFIC, or FPHC had made a gratuitous transfer to the trust.

The final regulations for CFCs, PFICs, and FPHCs are generally applicable to taxable years of shareholders of CFCs, PFICs, and FPHCs beginning after August 10, 1999 and taxable years of CFCs, PFICs, and FPHCs ending with or within such taxable years of the shareholders.

5. Comments and Changes to § 1.672(f)–3: Exceptions To General Rule

A. Certain Revocable Trusts

Under the proposed regulations, the general rule of § 1.672(f)–1(a) did not apply to any portion of a trust if the power to revest absolutely in the grantor title to such portion was exercisable solely by the grantor without the approval or consent of any other person

for a period or periods aggregating 183 days or more during the taxable year of the trust. The 183-day rule is targeted at potentially abusive situations in which a power to revest is so limited that it is not likely to be exercised.

In response to comments received, the final regulations clarify that if the first or last taxable year of the trust is less than 183 days, the revocable trust exception will apply if the grantor has a power to revest on each day of the first or last taxable year (including the year of the grantor's death), as the case may be. The final regulations also clarify that, consistent with the principle that statutory exceptions should be construed narrowly, if a trust fails to qualify for the revocable trust exception in a particular year, the exception cannot apply in a later year even if the requirements would otherwise be satisfied in such later year.

Commenters asked whether the revocable trust exception continues to apply if the grantor becomes incapacitated. The final regulations provide that the exception will continue to apply if, but only if, there is a guardian or other person who has unrestricted authority to exercise the necessary power on the grantor's behalf.

Some commenters disagreed with the result in § 1.672(f)–3(a)(4) *Example 3* of the proposed regulations, which concluded that the revocable trust exception does not apply where the grantor of the trust can replace the trustee, who is not a related or subordinate party, at any time for any reason. They said the example was inconsistent with the existing grantor trust rules. See, e.g., § 1.674(d)–2(a). After careful consideration, Treasury and the IRS have concluded that Example 3 is consistent with the purposes of section 672(f) and should be retained.

Commenters raised a number of issues concerning the grandfather rules in § 1.672(f)–3 (a)(2) and (b)(4) of the proposed regulations for certain trusts that were in existence on September 19, 1995. In response to the comments, the final regulations confirm that physical separation of amounts that were gratuitously transferred to the trust after September 19, 1995, is not required. The final regulations further provide that initial separate accountings may be prepared at any time up until the due date (including extensions) for the tax return for the first taxable year of the trust beginning after August 10, 1999. In response to requests for more specific guidance, the final regulations provide that the grandfather rules apply only if any amounts that were gratuitously transferred to the trust after September 19, 1995, are treated as a separate portion of the trust that is accounted for under the rules of § 1.671–3(a)(2).

B. Certain Trusts That Can Distribute Only to the Grantor or the Spouse of the Grantor

Under the proposed regulations, the general rule of § 1.672(f)–1 did not apply if the only amounts distributable from a trust (or portion of a trust) during the lifetime of the grantor were amounts distributable to the grantor or the grantor's spouse. Treasury and the IRS contemplate that the fact that the grantor and his or her spouse might someday divorce or legally separate will be disregarded for purposes of determining whether the exception is applicable.

Under the proposed regulations, amounts distributable in discharge of a legal obligation of the grantor or the grantor's spouse generally were treated as amounts distributable to the grantor or the grantor's spouse. Commenters said these proposed rules were inconsistent with the manner in which distributions in discharge of obligations are treated in regulations promulgated under other provisions of the Code. For example, under sections 677(a) and 662(a)(2), there is no exception for obligations to family members that are not based on full and adequate consideration in money or money's worth. Commenters also said the proposed rules were likely to exclude most trusts from qualification for the exception because, in most jurisdictions, a trust provision that permits distributions to a particular person is construed to permit distributions to be made in satisfaction of that person's obligations, regardless of the source of the obligations.

Treasury and the IRS believe it is neither necessary nor appropriate for the regulations promulgated under the statutory exceptions to section 672(f) to be consistent with the regulations promulgated under other provisions of part I of subchapter J, chapter 1 of the Code. Section 672(f) reflects a policy determination that foreign persons should not be allowed ''to affirmatively use the domestic anti-abuse rules concerning grantor trusts'' to avoid U.S. tax on trust income distributed to U.S. beneficiaries. Dept. of the Treasury, General Explanations of the Administration's Revenue Proposals, at 12 (1995). Section 672(f) operates to implement that policy determination by providing that the grantor trust rules generally do not apply where their effect would be to treat a foreign person as the owner of any portion of a trust. S. Rep. No. 35, 104th Cong., 1st Sess. 161 (1995). The exceptions in section 672(f)(2) must be interpreted narrowly to preserve the primary operation of the general rule. See, for example, *Commissioner* v. *Clark*, 489 U.S. 726, 739 (1989) (''In construing provisions * * * in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision.'').

The final regulations continue to provide that a trust will not fail to qualify for the exception solely because amounts are distributable from the trust in discharge of a legal obligation of the grantor (or grantor's spouse). An obligation to a related person is not generally treated as a legal obligation unless it was contracted bona fide and for adequate and full consideration in money or money's worth. However, obligations to support certain individuals will be treated as legal obligations if the individual is either permanently and totally disabled or less than 19 years old. The final regulations expand the list of potentially eligible individuals to include certain individuals who are members of the grantor's (or grantor's spouse's) household and have as their principal place of abode the grantor's (or grantor's spouse's) home, but are not related to the grantor (or grantor's spouse) through one of the relationships listed in section 152(a)(1) through (8). The fact that amounts might become distributable from a trust to support an individual who is not described in the regulations will be disregarded if, at the time the applicability of the exception is being determined, the potential obligation is not reasonably expected to arise under the facts and circumstances.

Some commenters said the limitation in proposed § 1.672(f)-3(b)(2)(ii) for legal obligations to related persons is not needed in the case of reinsurance trusts because, regardless of the sufficiency of the consideration for the reinsurance, the funds in a reinsurance trust can be utilized only to satisfy the legal obligations of the reinsurer (or will be distributed to the reinsurer). In addition, commenters pointed out that there already are other provisions, such as sections 482 and 845, that apply to related-party reinsurance arrangements.

The final regulations reserve on the application of the related-party rule to reinsurance trusts. Treasury and the IRS are looking carefully at this area, and they invite additional comments.

Commenters raised a number of issues concerning the grandfather rules in § 1.672(f)–3(b)(4) of the proposed regulations. These issues are discussed above in connection with the

grandfather rules under § 1.672(f)–3(a)(2) of the proposed regulations.

C. Compensatory Trusts

The proposed regulations listed categories of trusts that constitute compensatory trusts, without regard to whether any portion of a particular trust would ever be treated as owned by the grantor or another person under the grantor trust rules. Treasury and the IRS are concerned that some taxpayers may find such a comprehensive list confusing. Accordingly, the final regulations provide that the trusts to which the compensatory trust exception applies are those to which the application of section 672(f) is likely to be relevant: (i) nonexempt employees' trusts described in section 402(b) and (ii) so-called ''rabbi'' trusts. Treasury and the IRS believe the issue of whether tax-exempt compensatory trusts can be treated as owned by a foreign person is moot because there are special statutory rules that govern those trusts.

Treasury and the IRS contemplate that a nonexempt employees' trust described in section 402(b) will be treated as owned by a beneficiary of the trust only to the extent provided in regulations section 1.402(b)–1(b)(6). See also proposed regulations § 1.671–1(g) and § 1.671–1(h), which were published in the **Federal Register** (61 FR 50778) on September 27, 1996, for proposed rules describing when an employer will be treated as an owner of any portion of a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan.

The final regulations also provide that the Commissioner may designate additional categories of trusts to which the compensatory trust exception applies.

6. Comments and Changes to § 1.672(f)–4: Recharacterization of Purported Gifts

The proposed regulations provided that a U.S. donee generally must treat a purported gift from a foreign corporation as a distribution from the foreign corporation unless the U.S. donee can establish that a U.S. citizen or resident alien is a shareholder of the transferor and that the U.S. citizen or resident took the amount into account for U.S. tax purposes and subsequently made a gift to the U.S. donee. Similar rules were proposed for purported gifts from partnerships (whether domestic or foreign). There were exceptions for charitable contributions to donees described in section 170(c) and for purported gifts that did not exceed $10,000.

Section 1.672(f)–4(c) of the proposed regulations provided rules for gratuitous transfers to U.S. donees from trusts created by partnerships or foreign corporations. Under the proposed regulations, if the partnership or foreign corporation was treated as the owner of the trust under the grantor trust rules, the transfer was treated as a purported gift from the partnership or foreign corporation. If the partnership or foreign corporation was not treated as the owner of the trust, the transfer was treated as an accumulation distribution from the trust unless the resulting U.S. tax liability was less than the U.S. tax that would be due if the transfer were treated as a purported gift from the partnership or foreign corporation.

Commenters said the proposed regulations were overly broad and exceeded the scope of the regulatory authority granted by Congress. They suggested that a purported gift from a partnership or foreign corporation should be treated as a deemed distribution to the partner or shareholder followed by a deemed transfer to the U.S. donee. Commenters also suggested that purported gifts should not be recharacterized as taxable distributions unless it appeared, based on all the facts and circumstances, that the partnership or foreign corporation was being used principally as a device to avoid U.S. tax.

Treasury and the IRS believe the basic approach taken by the proposed regulations is both necessary and appropriate to prevent the avoidance of the purposes of section 672(f). See Code section 672(f)(4) and (6). A rule that would recharacterize purported gifts only in situations where the partnership or foreign corporation was being used principally as a device to avoid U.S. tax would be unadministrable. It would place a nearly insurmountable burden on the IRS to obtain information, much of it outside the United States, and to establish that the partnership or foreign corporation was being used to avoid U.S. tax. Further, individuals do not normally receive gifts from partnerships and corporations. See, for example, *Commissioner* v. *Duberstein*, 363 U.S. 278 (1960).

The final regulations leave the basic approach essentially unaltered, but expand the number of exceptions to the general rule. They retain the exception for cases where the U.S. donee can establish that a U.S. citizen or resident alien treated (and reported) the purported gift for U.S. tax purposes as a distribution from the partnership or foreign corporation and a subsequent gift to the donee. In response to the commenters' concerns, they provide an additional exception for cases where the U.S. donee can establish that a nonresident alien individual treated and reported the purported gift for purposes of the tax laws of the country in which the nonresident alien is resident as a distribution from the partnership or foreign corporation and a subsequent gift to the donee, provided the U.S. donee timely complied with the filing requirements of section 6039F, if applicable. Finally, they provide another new exception for purported gifts from domestic partnerships that are beneficially owned (within the meaning of § 1.1441–1(c)(6)) exclusively by U.S. citizens or residents or domestic corporations.

In response to other comments, the final regulations clarify that a transfer to a U.S. donee that is a corporation will not be subject to the general rule of § 1.672(f)–4(a) to the extent the donee can establish that the transfer was a contribution to capital. The final regulations also expand the scope of the charitable contribution exception to include a transfer from a transferor that has received a ruling or determination letter from the Internal Revenue Service recognizing its exempt status under section 501(c)(3), provided that the transfer was made pursuant to the transferor's exempt purpose, the ruling or determination letter has not been revoked or modified, and there has been no material change, inconsistent with exemption, in the character, purpose, or method of operation of the organization.

The final regulations revise the rules for gratuitous transfers to U.S. donees from trusts to which partnerships or foreign corporations have made gratuitous transfers. The revisions reflect the fact that, under U.S. domestic law principles, the partners or shareholders might be treated as grantors of the trust. See § 1.671–2T(e)(4).

The final regulations also clarify that if the transferring partnership or foreign corporation receives some consideration from the U.S. donee, but the consideration is less than the fair market value of the property transferred, only the excess will be treated as a purported gift. Further, no portion will be treated as a purported gift if the U.S. donee can establish that the U.S. donee is neither related to a partner or shareholder of the transferor within the meaning of § 1.643(h)–1(e) nor has another relationship with a partner or shareholder of the transferor such that there is a reasonable basis for concluding that the partner or shareholder would make a gratuitous transfer to the U.S. donee.

Commenters said the proposed regulations overturned an early Supreme Court decision, *Bogardus* v.

Commissioner, 302 U.S. 34 (1937), which treated certain payments by an acquiring corporation in a reorganization that were paid at the instigation of former shareholders of the target corporation to employees and former employees of the target corporation as nontaxable gifts rather than as compensation. The result in *Bogardus* might well be different today under section 102(c)(1) (enacted in 1986), which provides that the exclusion from gross income for the value of property acquired by gift does not apply to any amount transferred by or for an employer to, or for the benefit of, an employee. Further, and more importantly, the payor corporation in *Bogardus* was a domestic corporation that did not treat the payments as a deductible expense and there was no avoidance of U.S. tax. Thus, *Bogardus* is distinguishable on its facts from a situation where a foreign corporation transfers property to a U.S. person who treats the transfer as a gift or bequest and there will be avoidance of U.S. tax if the purported gift is not recharacterized.

The final regulations for purported gifts are generally applicable to transfers made after August 10, 1999 by partnerships or foreign corporations, or by trusts to which partnerships or foreign corporations made gratuitous transfers after August 10, 1999.

7. Comments and Changes to § 1.672(f)–5: Special Rules

Section 1.672(f)–5(b) of the proposed regulations provided that, for purposes of § 1.672(f)–1, where the taxable year of a trust was different from the taxable year of a person who was taking an amount into account, the amount was taken into account for the taxable year of the person that included the last day of the taxable year of the trust. This rule was deleted from the final regulations, because it is no longer needed in light of the revisions to § 1.672(f)–1, which are described above in part 3 of this explanation.

Section 1.672(f)–5(c) of the proposed regulations provided that, for purposes of § 1.672(f)–4, a wholly owned business entity must be treated as a corporation, separate from its single owner. Absent this rule, an entity having a single owner could avoid the purported gift rule by electing to be disregarded, with the result that the purported gift would be received from the owner of the entity, rather than from the entity itself. The final regulations clarify that this special rule (renumbered as § 1.672(f)–5(b)) applies solely for purposes of § 1.672(f)–4. Thus, it does not apply for purposes of §§ 1.672(f)–1 through 1.672(f)–3 or § 1.672(f)–5 or for purposes of any other provision of the Code or regulations.

Section 301.7701–2(c)(2)(iii) of the proposed regulations provided that, solely for purposes of applying the rules of section 672(f)(4), a wholly owned business entity will be treated as a corporation, separate from its owner. This provision, which repeated the rule in § 1.672(f)–5(c) (renumbered as § 1.672(f)–5(b)), is not included in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on the regulation's impact on small business.

Drafting Information. The principal authors of these regulations are M. Grace Fleeman of the Office of Associate Chief Counsel (International) and James A. Quinn of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.643(h)–1 also issued under 26 U.S.C. 643(a)(7).

Section 1.671–2T also issued under 26 U.S.C. 643(a)(7) and 672(f)(6).

Section 1.672(f)–1 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6).

Section 1.672(f)–2 also issued under 26 U.S.C. 643(a)(7) and 672(f)(3) and (6).

Section 1.672(f)–3 also issued under 26 U.S.C. 643(a)(7) and 672(f)(2) and (6).

Section 1.672(f)–4 also issued under 26 U.S.C. 643(a)(7) and 672(f)(4) and (6).

Section 1.672(f)–5 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6). * * *

Par. 2. Section 1.643(h)–1 is added to read as follows:

§ 1.643(h)–1 Distributions by certain foreign trusts through intermediaries.

(a) *In general*—(1) *Principal purpose of tax avoidance.* Except as provided in paragraph (b) of this section, for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code, and section 6048, any property (within the meaning of paragraph (f) of this section) that is transferred to a United States person by another person (an intermediary) who has received property from a foreign trust will be treated as property transferred directly by the foreign trust to the United States person if the intermediary received the property from the foreign trust pursuant to a plan one of the principal purposes of which was the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (a)(1) of this section, a transfer will be deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if the United States person—

(i) Is related (within the meaning of paragraph (e) of this section) to a grantor of the foreign trust, or has another relationship with a grantor of the foreign trust that establishes a reasonable basis for concluding that the grantor of the foreign trust would make a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)) to the United States person;

(ii) Receives from the intermediary, within the period beginning twenty-four months before and ending twenty-four months after the intermediary's receipt of property from the foreign trust, either the property the intermediary received from the foreign trust, proceeds from such property, or property in substitution for such property; and

(iii) Cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with the United States person that establishes a reasonable basis for concluding that the intermediary would make a gratuitous transfer to the United States person;

(B) The intermediary acted independently of the grantor and the trustee of the foreign trust;

(C) The intermediary is not an agent of the United States person under generally applicable United States agency principles; and

(D) The United States person timely complied with the reporting requirements of section 6039F, if applicable, if the intermediary is a foreign person.

(b) *Exceptions*—(1) *Nongratuitous transfers.* Paragraph (a) of this section does not apply to the extent that either the transfer from the foreign trust to the intermediary or the transfer from the intermediary to the United States person is a transfer that is not a gratuitous transfer within the meaning of § 1.671–2T(e)(2).

(2) *Grantor as intermediary.* Paragraph (a) of this section does not apply if the intermediary is the grantor of the portion of the trust from which the property that is transferred is derived. For the definition of *grantor,* see § 1.671–2T(e).

(c) *Effect of disregarding intermediary*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the intermediary is treated as an agent of the foreign trust, and the property is treated as transferred to the United States person in the year the property is transferred, or made available, by the intermediary to the United States person. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the United States person. For purposes of section 665(d)(2), the term *taxes imposed on the trust* includes any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the intermediary with respect to the property transferred.

(2) *Exception.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the United States person under generally applicable United States agency principles, the property will be treated as transferred to the United States person in the year the intermediary receives the property from the foreign trust. The fair market value of the property transferred will be determined as of the date of the transfer by the foreign trust to the intermediary. For purposes of section 901(b), any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the intermediary with respect to the property transferred will be treated as having been imposed on the United States person.

(3) *Computation of gross income of intermediary.* If property is treated as transferred directly by the foreign trust to a United States person pursuant to this section, the fair market value of such property is not taken into account in computing the gross income of the intermediary (if otherwise required to be taken into account by the intermediary but for paragraph (a) of this section).

(d) *Transfers not in excess of $10,000.* This section does not apply if, during the taxable year of the United States person, the aggregate fair market value of all property transferred to such person from all foreign trusts either directly or through one or more intermediaries does not exceed $10,000.

(e) *Related parties.* For purposes of this section, a United States person is treated as related to a grantor of a foreign trust if the United States person and the grantor are related for purposes of section 643(i)(2)(B), with the following modifications—

(1) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), ''at least 10 percent'' is used instead of ''more than 50 percent'' each place it appears; and

(2) The principles of section 267(b)(10), using ''at least 10 percent'' instead of ''more than 50 percent,'' apply to determine whether two corporations are related.

(f) *Definition of property.* For purposes of this section, the term *property* includes cash.

(g) *Examples.* The following examples illustrate the rules of this section. In each example, FT is an irrevocable foreign trust that is not treated as owned by any other person and the fair market value of the property that is transferred exceeds $10,000. The examples are as follows:

Example 1. Principal purpose of tax avoidance. FT was created in 1980 by A, a nonresident alien, for the benefit of his children and their descendants. FT's trustee, T, determines that 1000X of accumulated income should be distributed to A's granddaughter, B, who is a resident alien. Pursuant to a plan with a principal purpose of avoiding the interest charge that would be imposed by section 668, T causes FT to make a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)) of 1000X to I, a foreign person. I subsequently makes a gratuitous transfer of 1000X to B. Under paragraph (a)(1) of this section, FT is deemed to have made an accumulation distribution of 1000X directly to B.

Example 2. United States person unable to demonstrate that intermediary acted independently. GM and her daughter, M, are both nonresident aliens. M's daughter, D, is a resident alien. GM creates and funds FT for the benefit of her children. On July 1, 2001, FT makes a gratuitous transfer of XYZ stock to M. M immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2002, M makes a gratuitous transfer of the ABC stock to D. D is unable to demonstrate that M acted independently of GM and the trustee of FT in making the transfer to D. Under paragraph (a)(2) of this section, FT is deemed to have distributed the ABC stock to D. Under paragraph (c)(1) of this section, M is treated as an agent of FT, and the distribution is deemed to have been made on January 1, 2002.

Example 3. United States person demonstrates that specified conditions are satisfied. Assume the same facts as in *Example 2,* except that M receives 1000X cash from FT instead of XYZ stock. M gives 1000X cash to D on January 1, 2002. Also assume that M receives annual income of 5000X from her own investments and that M has given D 1000X at the beginning of each year for the past ten years. Based on this and additional information provided by D, D demonstrates to the satisfaction of the Commissioner that M has a relationship with D that establishes a reasonable basis for concluding that M would make a gratuitous transfer to D, that M acted independently of GM and the trustee of FT, that M is not an agent of D under generally applicable United States agency principles, and that D timely complied with the reporting requirements of section 6039F. FT will not be deemed under paragraph (a)(2) of this section to have made a distribution to D.

Example 4. Transfer to United States person less than 24 months before transfer to intermediary. Several years ago, A, a nonresident alien, created and funded FT for the benefit of his children and their descendants. A has a close friend, C, who also is a nonresident alien. A's granddaughter, B, is a resident alien. On December 31, 2001, C makes a gratuitous transfer of 1000X to B. On January 15, 2002, FT makes a gratuitous transfer of 1000X to C. B is unable to demonstrate that C has a relationship with B that would establish a reasonable basis for concluding that C would make a gratuitous transfer to B or that C acted independently of A and the trustee of FT in making the transfer to B. Under paragraph (a)(2) of this section, FT is deemed to have distributed 1000X directly to B. Under paragraph (c)(1) of this section, C is treated as an agent of FT, and the distribution is deemed to have been made on December 31, 2001.

Example 5. United States person receives property in substitution for property transferred to intermediary. GM and her son, S, are both nonresident aliens. S's daughter, GD, is a resident alien. GM creates and funds FT for the benefit of her children and their descendants. On July 1, 2001, FT makes a gratuitous transfer of ABC stock with a fair market value of approximately 1000X to S. On January 1, 2002, S makes a gratuitous transfer of DEF stock with a fair market value of approximately 1000X to GD. GD is unable to demonstrate that S acted independently of GM and the trustee of FT in transferring the DEF stock to GD. Under paragraph (a)(2) of this section, FT is deemed to have distributed the DEF stock to GD. Under paragraph (c)(1) of this section, S is treated as an agent of FT, and the distribution is deemed to have been made on January 1, 2002.

Example 6. United States person receives indirect loan from foreign trust. Several years ago, A, a nonresident alien, created and funded FT for the benefit of her children and their descendants. A's daughter, B, is a

resident alien. B needs funds temporarily while she is starting up her own business. If FT were to loan money directly to B, section 643(i) would apply. FT deposits 500X with FB, a foreign bank, on June 30, 2001. On July 1, 2001, FB loans 400X to B. Repayment of the loan is guaranteed by FT's 500X deposit. B is unable to demonstrate to the satisfaction of the Commissioner that FB has a relationship with B that establishes a reasonable basis for concluding that FB would make a loan to B or that FB acted independently of A and the trustee of FT in making the loan. Under paragraph (a)(2) of this section, FT is deemed to have loaned 400X directly to B on July 1, 2001. Under paragraph (c)(1) of this section, FB is treated as an agent of FT. For the treatment of loans from foreign trusts, see section 643(i).

Example 7. United States person demonstrates that specified conditions are satisfied. GM, a nonresident alien, created and funded FT for the benefit of her children and their descendants. One of GM's children is M, who is a resident alien. During the year 2001, FT makes a gratuitous transfer of 500X to M. M reports the 500X on Form 3520 as a distribution received from a foreign trust. During the year 2002, M makes a gratuitous transfer of 400X to her son, S, who also is a resident alien. M files a Form 709 treating the gratuitous transfer to S as a gift. Based on this and additional information provided by S, S demonstrates to the satisfaction of the Commissioner that M has a relationship with S that establishes a reasonable basis for concluding that M would make a gratuitous transfer to S, that M acted independently of GM and the trustee of FT, and that M is not an agent of S under generally applicable United States agency principles. FT will not be deemed under paragraph (a)(2) of this section to have made a distribution to S.

Example 8. Intermediary as agent of trust; increase in FMV. A, a nonresident alien, created and funded FT for the benefit of his children and their descendants. On December 1, 2001, FT makes a gratuitous transfer of XYZ stock with a fair market value of 85X to B, a nonresident alien. On November 1, 2002, B sells the XYZ stock to a third party in an arm's length transaction for 100X in cash. On November 1, 2002, B makes a gratuitous transfer of 98X to A's grandson, C, a resident alien. C is unable to demonstrate to the satisfaction of the Commissioner that B acted independently of A and the trustee of FT in making the transfer. Under paragraph (a)(2) of this section, FT is deemed to have made a distribution directly to C. Under paragraph (c)(1) of this section, B is treated as an agent of FT, and FT is deemed to have distributed 98X to C on November 1, 2002.

Example 9. Intermediary as agent of United States person; increase in FMV. Assume the same facts as in *Example 8*, except that the Commissioner determines that B is an agent of C under generally applicable United States agency principles. Under paragraph (c)(2) of this section, FT is deemed to have distributed 85X to C on December 1, 2001. C must take the gain of 15X into account in the year 2002.

Example 10. Intermediary as agent of trust; decrease in FMV. Assume the same facts as in *Example 8*, except that the value of the XYZ stock on November 1, 2002, is only 80X. Instead of selling the XYZ stock to a third party and transferring cash to C, B transfers the XYZ stock to C in a gratuitous transfer. Under paragraph (c)(1) of this section, FT is deemed to have distributed XYZ stock with a value of 80X to C on November 1, 2002.

Example 11. Intermediary as agent of United States person; decrease in FMV. Assume the same facts as in *Example 10*, except that the Commissioner determines that B is an agent of C under generally applicable United States agency principles. Under paragraph (c)(2) of this section, FT is deemed to have distributed XYZ stock with a value of 85X to C on December 1, 2001.

(h) *Effective date.* The rules of this section are applicable to transfers made to United States persons after August 10, 1999.

Par. 3. In § 1.671–2, paragraph (e) is revised to read as follows:

§ 1.671–2 Applicable principles.

* * * * *

(e) [Reserved] For further guidance, see § 1.671–2T(e).

Par. 4. Section 1.671–2T is added to read as follows:

§ 1.671–2T Applicable principles (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.671–2(a) through (d).

(e)(1) For purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (within the meaning of paragraph (e)(2) of this section) of property to a trust. For purposes of this section, the term *property* includes cash. If a person creates or funds a trust on behalf of another person, both persons are treated as grantors of the trust. (See section 6048 for reporting requirements that apply to grantors of foreign trusts.) However, a person who creates a trust but makes no gratuitous transfers to the trust is not treated as an owner of any portion of the trust under sections 671 through 677 or 679. Also, a person who funds a trust with an amount that is directly reimbursed to such person within a reasonable period of time and who makes no other transfers to the trust that constitute gratuitous transfers is not treated as an owner of any portion of the trust under sections 671 through 677 or 679. See also § 1.672(f)–5(a).

(2)(i) A gratuitous transfer is any transfer other than a transfer for fair market value. A transfer of property to a trust may be considered a gratuitous transfer without regard to whether the transfer is treated as a gift for gift tax purposes.

(ii) For purposes of this paragraph (e), a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. In addition, a person will not be treated as making a transfer for fair market value merely because the transferor recognizes gain on the transaction. See, for example, section 684 regarding the recognition of gain on certain transfers to foreign trusts.

(iii) For purposes of this paragraph (e), a gratuitous transfer does not include a distribution to a trust with respect to an interest held by such trust in either a trust described in paragraph (e)(3) of this section or an entity other than a trust. For example, a distribution to a trust by a corporation with respect to its stock described in section 301 is not a gratuitous transfer.

(3) A grantor includes any person who acquires an interest in a trust from a grantor of the trust if the interest acquired is an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter.

(4) If a gratuitous transfer is made by a partnership or corporation to a trust and is for a business purpose of the partnership or corporation, the partnership or corporation will generally be treated as the grantor of the trust. For example, if a partnership makes a gratuitous transfer to a trust in order to secure a legal obligation of the partnership to a third party unrelated to the partnership, the partnership will be treated as the grantor of the trust. However, if a partnership or a corporation makes a gratuitous transfer to a trust that is not for a business purpose of the partnership or corporation but is, e.g., for the personal purposes of one or more of the partners or shareholders, the gratuitous transfer will be treated as a constructive distribution to such partners or shareholders under federal tax principles and the partners or the shareholders will be treated as the grantors of the trust. For example, if a partnership makes a gratuitous transfer to a trust that is for the benefit of a child of a partner, the gratuitous transfer will

be treated as a distribution to the partner under section 731 and a subsequent gratuitous transfer by the partner to the trust.

(5) If a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally will be treated as the grantor of the transferee trust. However, if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, then such person will be treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust under subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code.

(6) The following examples illustrate the rules of this paragraph (e). Unless otherwise indicated, all trusts are domestic trusts and all other persons are United States persons.

The examples are as follows:

Example 1. A creates and funds a trust, T, for the benefit of her children. B subsequently makes a gratuitous transfer to T. Under paragraph (e)(1) of this section, both A and B are grantors of T.

Example 2. A makes an investment in a fixed investment trust, T, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. A is a grantor of T. B subsequently acquires A's entire interest in T. Under paragraph (e)(3) of this section, B is a grantor of T with respect to such interest.

Example 3. A, an attorney, creates a foreign trust, FT, on behalf of A's client, B, and transfers $100 to FT out of A's funds. A is reimbursed by B for the $100 transferred to FT. The trust instrument states that the trustee has discretion to distribute the income or corpus of FT to B, and B's children. Both A and B are treated as grantors of FT under paragraph (e)(1) of this section. In addition, B is treated as the owner of the entire trust under section 677. Because A is reimbursed for the $100 transferred to FT on behalf of B, A is not treated as transferring any property to FT. Therefore, A is not an owner of any portion of T under sections 671 through 677 regardless of whether A retained any power over or interest in T described in sections 673 through 677. A also is not treated as an owner of any portion of T under section 679. Both A and B are responsible parties for purposes of the reporting requirements in section 6048.

Example 4. A creates and funds a trust, T. A is not treated as an owner of any portion of the trust under subpart E. B holds an unrestricted power, exercisable solely by B, to withdraw certain amounts contributed to the trust before the end of the calendar year and to vest those amounts in B. B is treated as an owner of the portion of T that is subject to the withdrawal power under section 678(a)(1). However, B is not a grantor of T under paragraph (e)(1) of this section because B neither created T nor made a gratuitous transfer to T.

Example 5. A transfers cash to a trust, T, through a broker, in exchange for units in T. The units in T are not property for purposes of determining whether A has received fair market value under paragraph (e)(2)(ii) of this section. Therefore, A has made a gratuitous transfer to T, and, under paragraph (e)(1) of this section, A is a grantor of T.

Example 6. A borrows cash from T, a trust. A has not made any gratuitous transfers to T. Arm's length interest payments by A to T will not be treated as gratuitous transfers under paragraph (e)(2)(ii) of this section. Therefore, under paragraph (e)(1) of this section, A is not a grantor of T with respect to the interest payments.

Example 7. A, B's brother, creates a trust, T, for B's benefit and contributes $50,000 to T. The trustee invests the $50,000 in stock of Company X. C, B's uncle, sells property with a fair market value of $1,000,000 to T in exchange for the stock when it has appreciated to a fair market value of $100,000. Under paragraph (e)(2)(ii) of this section, the $900,000 excess value is a gratuitous transfer by C. Therefore, under paragraph (e)(1) of this section, A is a grantor with respect to the portion of the trust valued at $100,000, and C is a grantor of T with respect to the portion of the trust valued at $900,000. In addition, A or C or both will be treated as the owners of the respective portions of the trust of which each person is a grantor if A or C or both retain powers over or interests in such portions under sections 673 through 677.

Example 8. G creates and funds a trust, T1, for the benefit of G's children and grandchildren. After G's death, under authority granted to the trustees in the trust instrument, the trustees of T1 transfer a portion of the assets of T1 to another trust, T2, and retain a power to revoke T2 and revest the assets of T2 in T1. Under paragraphs (e)(1) and (5) of this section, G is the grantor of T1 and T2. In addition, because the trustees of T1 have retained a power to revest the assets of T2 in T1, T1 is treated as the owner of T2 under section 678(a).

Example 9. G creates and funds a trust, T1, for the benefit of B. G retains a power to revest the assets of T1 in G within the meaning of section 676. Under the trust agreement, B is given a general power of appointment over the assets of T1. B exercises the general power of appointment with respect to one-half of the corpus of T1 in favor of a trust, T2, that is for the benefit of C, B's child. Under paragraph (e)(1) of this section, G is the grantor of T1, and under paragraphs (e)(1) and (5) of this section, B is the grantor of T2.

(7) The rules of this section are applicable to any transfer to a trust, or transfer of an interest in a trust, on or after August 10, 1999. In accordance with section 7805(e)(2), the rules of this section will expire before August 12, 2002.

Par. 5. Sections 1.672(f)–1, 1.672(f)–2, 1.672(f)–3, 1.672(f)–4, and 1.672(f)–5 are added to read as follows:

§ 1.672(f)–1 Foreign persons not treated as owners.

(a) *General rule*—(1) *Application of the general rule.* Section 672(f)(1) provides that subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code (the grantor trust rules) shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through one or more entities) in computing the income of a citizen or resident of the United States or a domestic corporation. Accordingly, the grantor trust rules apply to the extent that any portion of the trust, upon application of the grantor trust rules without regard to section 672(f), is treated as owned by a United States citizen or resident or domestic corporation. The grantor trust rules do not apply to any portion of the trust to the extent that, upon application of the grantor trust rules without regard to section 672(f), that portion is treated as owned by a person other than a United States citizen or resident or domestic corporation, unless the person is described in § 1.672(f)–2(a) (relating to certain foreign corporations treated as domestic corporations), or one of the exceptions set forth in § 1.672(f)–3 is met, (relating to: trusts where the grantor can revest trust assets; trusts where the only amounts distributable are to the grantor or the grantor's spouse; and compensatory trusts). Section 672(f) applies to domestic and foreign trusts. Any portion of the trust that is not treated as owned by a grantor or another person is subject to the rules of subparts A through D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code.

(2) *Determination of portion based on application of the grantor trust rules.* The determination of the portion of a trust treated as owned by the grantor or other person is to be made based on the terms of the trust and the application of the grantor trust rules and section 671 and the regulations thereunder.

(b) *Example.* The following example illustrates the rules of this section:

Example. (i) A, a nonresident alien, funds an irrevocable domestic trust, DT, for the benefit of his son, B, who is a United States citizen, with stock of Corporation X. A's brother, C, who also is a United States citizen, contributes stock of Corporation Y to the trust for the benefit of B. A has a reversionary interest within the meaning of section 673 in the X stock that would cause A to be treated as the owner of the X stock upon application of the grantor trust rules without regard to section 672(f). C has a reversionary interest within the meaning of section 673 in the Y stock that would cause C to be treated as the owner of the Y stock upon application of the grantor trust rules without regard to section 672(f). The trustee has discretion to accumulate or currently distribute income of DT to B.

(ii) Because A is a nonresident alien, application of the grantor trust rules without regard to section 672(f) would not result in the portion of the trust consisting of the X stock being treated as owned by a United States citizen or resident. None of the exceptions in § 1.672(f)–3 applies because A cannot revest the X stock in A, amounts may be distributed during A's lifetime to B, who is neither a grantor nor a spouse of a grantor, and the trust is not a compensatory trust. Therefore, pursuant to paragraph (a)(1) of this section, A is not treated as an owner under subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code, of the portion of the trust consisting of the X stock. Any distributions from such portion of the trust are subject to the rules of subparts A through D (641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code.

(iii) Because C is a United States citizen, paragraph (a)(1) of this section does not prevent C from being treated under section 673 as the owner of the portion of the trust consisting of the Y stock.

(c) *Effective date.* The rules of this section are applicable to taxable years of a trust beginning after August 10, 1999.

§ 1.672(f)–2 Certain foreign corporations.

(a) *Application of general rule.* Subject to the provisions of paragraph (b) of this section, if the owner of any portion of a trust upon application of the grantor trust rules without regard to section 672(f) is a controlled foreign corporation (as defined in section 957), a passive foreign investment company (as defined in section 1297), or a foreign personal holding company (as defined in section 552), the corporation will be treated as a domestic corporation for purposes of applying the rules of § 1.672(f)–1.

(b) *Gratuitous transfers to United States persons*—(1) *Transfer from trust to which corporation made a gratuitous transfer.* If a trust (or portion of a trust) to which a controlled foreign corporation, passive foreign investment company, or foreign personal holding company has made a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)), makes a gratuitous transfer to a United States person, the controlled foreign corporation, passive foreign investment company, or foreign personal holding company, as the case may be, is treated as a foreign corporation for purposes of § 1.672(f)–4(c), relating to gratuitous transfers from trusts (or portions of trusts) to which a partnership or foreign corporation has made a gratuitous transfer.

(2) *Transfer from trust over which corporation has a section 678 power.* If a trust (or portion of a trust) that a controlled foreign corporation, passive foreign investment company, or foreign personal holding company is treated as owning under section 678 makes a gratuitous transfer to a United States person, the controlled foreign corporation, passive foreign investment company, or foreign personal holding company, as the case may be, is treated as a foreign corporation that had made a gratuitous transfer to the trust (or portion of a trust) and the rules of § 1.672(f)–4(c) apply.

(c) *Special rules for passive foreign investment companies*—(1) *Application of section 1297.* For purposes of determining whether a foreign corporation is a passive foreign investment company as defined in section 1297, the grantor trust rules apply as if section 672(f) had not come into effect.

(2) *References to renumbered Internal Revenue Code section.* For taxable years of shareholders beginning on or before December 31, 1997, and taxable years of passive foreign investment companies ending with or within such taxable years of the shareholders, all references in this § 1.672(f)–2 to section 1297 are deemed to be references to section 1296.

(d) *Examples.* The following examples illustrate the rules of this section. In each example, FT is an irrevocable foreign trust, and CFC is a controlled foreign corporation. The examples are as follows:

Example 1. Application of general rule. CFC creates and funds FT. CFC is the grantor of FT within the meaning of § 1.671–2T(e). CFC has a reversionary interest in FT within the meaning of section 673 that would cause CFC to be treated as the owner of FT upon application of the grantor trust rules without regard to section 672(f). Under paragraph (a) of this section, CFC is treated as a domestic corporation for purposes of applying the general rule of § 1.672(f)–1. Thus, § 1.672(f)–1 does not prevent CFC from being treated as the owner of FT under section 673.

Example 2. Distribution from trust to which CFC made gratuitous transfer. A, a nonresident alien, owns 40 percent of the stock of CFC. A's brother B, a resident alien, owns the other 60 percent of the stock of CFC. CFC makes a gratuitous transfer to FT. FT makes a gratuitous transfer to A's daughter, C, who is a resident alien. Under paragraph (b)(1) of this section, CFC will be treated as a foreign corporation for purposes of § 1.672(f)–4(c). For further guidance, see § 1.672(f)–4(g) *Example 2* through *Example 4*.

(e) *Effective date.* The rules of this section are generally applicable to taxable years of shareholders of controlled foreign corporations, passive foreign investment companies, and foreign personal holding companies beginning after August 10, 1999, and taxable years of controlled foreign corporations, passive foreign investment companies, and foreign personal holding companies ending with or within such taxable years of the shareholders.

§ 1.672(f)–3 Exceptions to general rule.

(a) *Certain revocable trusts*—(1) *In general.* Subject to the provisions of paragraph (a)(2) of this section, the general rule of § 1.672(f)–1 does not apply to any portion of a trust for a taxable year of the trust if the power to revest absolutely in the grantor title to such portion is exercisable solely by the grantor (or, in the event of the grantor's incapacity, by a guardian or other person who has unrestricted authority to exercise such power on the grantor's behalf) without the approval or consent of any other person. If the grantor can exercise such power only with the approval of a related or subordinate party who is subservient to the grantor, such power is treated as exercisable solely by the grantor. For the definition of *grantor*, see § 1.671–2T(e). For the definition of *related or subordinate party*, see § 1.672(c)–1. For purposes of this paragraph (a), a related or subordinate party is subservient to the grantor unless the presumption in the last sentence of § 1.672(c)–1 is rebutted by a preponderance of the evidence. A trust (or portion of a trust) that fails to qualify for the exception provided by this paragraph (a) for a particular taxable year of the trust will be subject to the general rule of § 1.672(f)–1 for that taxable year and all subsequent taxable years of the trust.

(2) *183-day rule.* For purposes of paragraph (a)(1) of this section, the grantor is treated as having a power to revest for a taxable year of the trust only if the grantor has such power for a total of 183 or more days during the taxable year of the trust. If the first or last taxable year of the trust (including the year of the grantor's death) is less than 183 days, the grantor is treated as having a power to revest for purposes of paragraph (a)(1) of this section if the grantor has such power for each day of the first or last taxable year, as the case may be.

(3) *Grandfather rule for certain revocable trusts in existence on September 19, 1995.* Subject to the rules of paragraph (d) of this section (relating to separate accounting for gratuitous transfers to the trust after September 19, 1995), the general rule of § 1.672(f)–1 does not apply to any portion of a trust that was treated as owned by the grantor under section 676 on September 19, 1995, as long as the trust would continue to be so treated thereafter. However, the preceding sentence does not apply to any portion of the trust attributable to gratuitous transfers to the trust after September 19, 1995.

(4) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. Grantor is owner. FP1, a foreign person, creates and funds a revocable trust, T, for the benefit of FP1's children, who are resident aliens. The trustee is a foreign bank, FB, that is owned and controlled by FP1 and FP2, who is FP1's brother. The power to revoke T and revest absolutely in FP1 title to the trust property is exercisable by FP1, but only with the approval or consent of FB. The trust instrument contains no standard that FB must apply in determining whether to approve or consent to the revocation of T. There are no facts that would suggest that FB is not subservient to FP1. Therefore, the exception in paragraph (a)(1) of this section is applicable.

Example 2. Death of grantor. Assume the same facts as in Example 1, except that FP1 dies. After FP1's death, FP2 has the power to withdraw the assets of T, but only with the approval of FB. There are no facts that would suggest that FB is not subservient to FP2. However, the exception in paragraph (a)(1) of this section is no longer applicable, because FP2 is not a grantor of T within the meaning of § 1.671–2T(e).

Example 3. Trustee is not related or subordinate party. Assume the same facts as in *Example 1,* except that neither FP1 nor any member of FP1's family has any substantial ownership interest or other connection with FB. FP1 can remove and replace FB at any time for any reason. Although FP1 can replace FB with a related or subordinate party if FB refuses to approve or consent to FP1's decision to revest the trust property in himself, FB is not a related or subordinate party. Therefore, the exception in paragraph (a)(1) of this section is not applicable.

Example 4. Unrelated trustee will consent to revocation. FP, a foreign person, creates and funds an irrevocable trust, T. The trustee is a foreign bank, FB, that is not a related or subordinate party within the meaning of § 1.672(c)–1. FB has the discretion to distribute trust income or corpus to beneficiaries of T, including FP. Even if FB would in fact distribute all the trust property to FP if requested to do so by FP, the exception in paragraph (a)(1) of this section is not applicable, because FP does not have the power to revoke T.

(b) *Certain trusts that can distribute only to the grantor or the spouse of the grantor*—(1) *In general.* The general rule of § 1.672(f)–1 does not apply to any trust (or portion of a trust) if at all times during the lifetime of the grantor the only amounts distributable (whether income or corpus) from such trust (or portion thereof) are amounts distributable to the grantor or the spouse of the grantor. For purposes of this paragraph (b), payments of amounts that are not gratuitous transfers (within the meaning of § 1.671–2T(e)(2)) are not amounts distributable. For the definition of *grantor,* see § 1.671–2T(e).

(2) *Amounts distributable in discharge of legal obligations*—(i) *In general.* A trust (or portion of a trust) does not fail to satisfy paragraph (b)(1) of this section solely because amounts are distributable from the trust (or portion thereof) in discharge of a legal obligation of the grantor or the spouse of the grantor. Subject to the provisions of paragraph (b)(2)(ii) of this section, an obligation is considered a legal obligation for purposes of this paragraph (b)(2)(i) if it is enforceable under the local law of the jurisdiction in which the grantor (or the spouse of the grantor) resides.

(ii) *Related parties*—(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) of this section, an obligation to a person who is a related person for purposes of § 1.643(h)–1(e) (other than an individual who is legally separated from the grantor under a decree of divorce or of separate maintenance) is not a legal obligation for purposes of paragraph (b)(2)(i) of this section unless it was contracted bona fide and for adequate and full consideration in money or money's worth (see § 20.2043–1 of this chapter).

(B) *Exceptions*—(*1*) *Amounts distributable in support of certain individuals.* Paragraph (b)(2)(ii)(A) of this section does not apply with respect to amounts that are distributable from the trust (or portion thereof) to support an individual who—

(*i*) Would be treated as a dependent of the grantor or the spouse of the grantor under section 152(a)(1) through (9), without regard to the requirement that over half of the individual's support be received from the grantor or the spouse of the grantor; and

(*ii*) Is either permanently and totally disabled (within the meaning of section 22(e)(3)), or less than 19 years old.

(*2*) *Certain potential support obligations.* The fact that amounts might become distributable from a trust (or portion of a trust) in discharge of a potential obligation under local law to support an individual other than an individual described in paragraph (b)(2)(ii)(B)(*1*) of this section is disregarded if such potential obligation is not reasonably expected to arise under the facts and circumstances.

(*3*) *Reinsurance trusts.* [Reserved]

(3) *Grandfather rule for certain section 677 trusts in existence on September 19, 1995.* Subject to the rules of paragraph (d) of this section (relating to separate accounting for gratuitous transfers to the trust after September 19, 1995), the general rule of § 1.672(f)–1 does not apply to any portion of a trust that was treated as owned by the grantor under section 677 (other than section 677(a)(3)) on September 19, 1995, as long as the trust would continue to be so treated thereafter. However, the preceding sentence does not apply to any portion of the trust attributable to gratuitous transfers to the trust after September 19, 1995.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Amounts distributable only to grantor or grantor's spouse. H and his wife, W, are both nonresident aliens. H is 70 years old, and W is 65. H and W have a 30-year-old child, C, a resident alien. There is no reasonable expectation that H or W will ever have an obligation under local law to support C or any other individual. H creates and funds an irrevocable trust, FT, using only his separate property. H is the grantor of FT within the meaning of § 1.671–2T(e). Under the terms of FT, the only amounts distributable (whether income or corpus) from FT as long as either H or W is alive are amounts distributable to H or W. Upon the death of both H and W, C may receive distributions from FT. During H's lifetime, the exception in paragraph (b)(1) of this section is applicable.

Example 2. Effect of grantor's death. Assume the same facts as in *Example 1.* H predeceases W. Assume that W would be treated as owning FT under section 678 if the grantor trust rules were applied without regard to section 672(f). The exception in paragraph (b)(1) of this section is no longer applicable, because W is not a grantor of FT within the meaning of § 1.671–2T(e).

Example 3. Amounts temporarily distributable to person other than grantor or grantor's spouse. Assume the same facts as in *Example 1,* except that C (age 30) is a law student at the time FT is created and the trust instrument provides that, as long as C is in law school, amounts may be distributed from FT to pay C's expenses. Thereafter, the only amounts distributable from FT as long as either H or W is alive will be amounts distributable to H or W. Even assuming there is an enforceable obligation under local law for H and W to support C while he is in school, distributions from FT in payment of C's expenses cannot qualify as distributions in discharge of a legal obligation under paragraph (b)(2) of this section, because C is neither permanently and totally disabled nor less than 19 years old. The exception in paragraph (b)(1) of this section is not applicable. After C graduates from law school, the exception in paragraph (b)(1) still will not be applicable, because amounts were distributable to C during the lifetime of H.

Example 4. Fixed investment trust. FC, a foreign corporation, invests in a domestic fixed investment trust, DT, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. Under the terms of DT, the only amounts that are distributable from FC's portion of DT are amounts distributable to FC. The exception in paragraph (b)(1) of this section is applicable to FC's portion of DT.

Example 5. Reinsurance trust. A domestic insurance company, DI, reinsures a portion of its business with an unrelated foreign insurance company, FI. To satisfy state regulatory requirements, FI places the premiums in an irrevocable domestic trust, DT. The trust funds are held by a United States bank and may be used only to pay claims arising out of the reinsurance policies, which are legally enforceable under the local

law of the jurisdiction in which FI resides. On the termination of DT, any assets remaining will revert to FI. Because the only amounts that are distributable from DT are distributable either to FI or in discharge of FI's legal obligations within the meaning of paragraph (b)(2)(i) of this section, the exception in paragraph (b)(1) of this section is applicable.

Example 6. Trust that provides security for loan. FC, a foreign corporation, borrows money from B, an unrelated bank, to finance the purchase of an airplane. FC creates a foreign trust, FT, to hold the airplane as security for the loan from B. The only amounts that are distributable from FT while the loan is outstanding are amounts distributable to B in the event that FC defaults on its loan from B. When FC repays the loan, the trust assets will revert to FC. The loan is a legal obligation of FC within the meaning of paragraph (b)(2)(i) of this section, because it is enforceable under the local law of the country in which FC is incorporated. Paragraph (b)(2)(ii) of this section is not applicable, because B is not a related person for purposes of § 1.643(h)–1(e). The exception in paragraph (b)(1) of this section is applicable.

(c) *Compensatory trusts*—(1) *In general.* The general rule of § 1.672(f)–1 does not apply to any portion of—

(i) A nonexempt employees' trust described in section 402(b), including a trust created on behalf of a self-employed individual;

(ii) A trust, including a trust created on behalf of a self-employed individual, that would be a nonexempt employees' trust described in section 402(b) but for the fact that the trust's assets are not set aside from the claims of creditors of the actual or deemed transferor within the meaning of § 1.83–3(e); and

(iii) Any additional category of trust that the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(2) *Exceptions.* The Commissioner may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), designate categories of compensatory trusts to which the general rule of paragraph (c)(1) of this section does not apply.

(d) *Separate accounting for gratuitous transfers to grandfathered trusts after September 19, 1995.* If a trust that was treated as owned by the grantor under section 676 or 677 (other than section 677(a)(3)) on September 19, 1995, contains both amounts held in the trust on September 19, 1995, and amounts that were gratuitously transferred to the trust after September 19, 1995, paragraphs (a)(3) and (b)(3) of this section apply only if the amounts that were gratuitously transferred to the trust after September 19, 1995, are treated as a separate portion of the trust that is accounted for under the rules of § 1.671–3(a)(2). If the amounts that were gratuitously transferred to the trust after September 19, 1995 are not so accounted for, the general rule of § 1.672(f)–1 applies to the entire trust. If such amounts are so accounted for, and without regard to whether there is physical separation of the assets, the general rule of § 1.672(f)–1 does not apply to the portion of the trust that is attributable to amounts that were held in the trust on September 19, 1995.

(e) *Effective date.* The rules of this section are generally applicable to taxable years of a trust beginning after August 10, 1999. The initial separate accounting required by paragraph (d) of this section must be prepared by the due date (including extensions) for the tax return of the trust for the first taxable year of the trust beginning after August 10, 1999.

§ 1.672(f)–4 Recharacterization of purported gifts.

(a) *In general*—(1) *Purported gifts from partnerships.* Except as provided in paragraphs (b), (e), and (f) of this section, and without regard to the existence of any trust, if a United States person (United States donee) directly or indirectly receives a purported gift or bequest (as defined in paragraph (d) of this section) from a partnership, the purported gift or bequest must be included in the United States donee's gross income as ordinary income.

(2) *Purported gifts from foreign corporations.* Except as provided in paragraphs (b), (e), and (f) of this section, and without regard to the existence of any trust, if a United States donee directly or indirectly receives a purported gift or bequest (as defined in paragraph (d) of this section) from any foreign corporation, the purported gift or bequest must be included in the United States donee's gross income as if it were a distribution from the foreign corporation. If the foreign corporation is a passive foreign investment company (within the meaning of section 1297), the rules of section 1291 apply. For purposes of section 1012, the United States donee is not treated as having basis in the stock of the foreign corporation. However, for purposes of section 1223, the United States donee is treated as having a holding period in the stock of the foreign corporation on the date of the deemed distribution equal to the weighted average of the holding periods of the actual interest holders (other than any interest holders who treat the portion of the purported gift attributable to their interest in the foreign corporation in the manner described in paragraph (b)(1) of this section). For purposes of section 902, a United States donee that is a domestic corporation is not treated as owning any voting stock of the foreign corporation.

(b) *Exceptions*—(1) *Partner or shareholder treats transfer as distribution and gift.* Paragraph (a) of this section does not apply to the extent the United States donee can demonstrate to the satisfaction of the Commissioner that either—

(i) A United States citizen or resident alien individual who directly or indirectly holds an interest in the partnership or foreign corporation treated and reported the purported gift or bequest for United States tax purposes as a distribution to such individual and a subsequent gift or bequest to the United States donee; or

(ii) A nonresident alien individual who directly or indirectly holds an interest in the partnership or foreign corporation treated and reported the purported gift or bequest for purposes of the tax laws of the nonresident alien individual's country of residence as a distribution to such individual and a subsequent gift or bequest to the United States donee, and the United States donee timely complied with the reporting requirements of section 6039F, if applicable.

(2) *All beneficial owners of domestic partnership are United States citizens or residents or domestic corporations.* Paragraph (a)(1) of this section does not apply to a purported gift or bequest from a domestic partnership if the United States donee can demonstrate to the satisfaction of the Commissioner that all beneficial owners (within the meaning of § 1.1441–1(c)(6)) of the partnership are United States citizens or residents or domestic corporations.

(3) *Contribution to capital of corporate United States donee.* Paragraph (a) of this section does not apply to the extent a United States donee that is a corporation can establish that the purported gift or bequest was treated for United States tax purposes as a contribution to the capital of the United States donee to which section 118 applies.

(4) *Charitable transfers.* Paragraph (a) of this section does not apply if either—

(i) The United States donee is described in section 170(c); or

(ii) The transferor has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing its exempt status under section 501(c)(3), and the transferor made the transfer pursuant to an exempt

purpose for which the transferor was created or organized. For purposes of the preceding sentence, a ruling or determination letter recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

(c) *Certain transfers from trusts to which a partnership or foreign corporation has made a gratuitous transfer—(1) Generally treated as distribution from partnership or foreign corporation.* Except as provided in paragraphs (c)(2) and (3) of this section, if a United States donee receives a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)) from a trust (or portion of a trust) to which a partnership or foreign corporation has made a gratuitous transfer, the United States donee must treat the transfer as a purported gift or bequest from the partnership or foreign corporation that is subject to the rules of paragraph (a) of this section (including the exceptions in paragraphs (b) and (f) of this section). This paragraph (c) applies without regard to who is treated as the grantor of the trust (or portion thereof) under § 1.671–2T(e)(4).

(2) *Alternative rule.* Except as provided in paragraph (c)(3) of this section, if the United States tax computed under the rules of paragraphs (a) and (c)(1) of this section does not exceed the United States tax that would be due if the United States donee treated the transfer as a distribution from the trust (or portion thereof), paragraph (c)(1) of this section does not apply and the United States donee must treat the transfer as a distribution from the trust (or portion thereof) that is subject to the rules of subparts A through D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. For purposes of paragraph (f) of this section, the transfer is treated as a purported gift or bequest from the partnership or foreign corporation that made the gratuitous transfer to the trust (or portion thereof).

(3) *Exception.* Neither paragraph (c)(1) of this section nor paragraph (c)(2) of this section applies to the extent the United States donee can demonstrate to the satisfaction of the Commissioner that the transfer represents an amount that is, or has been, taken into account for United States tax purposes by a United States citizen or resident or a domestic corporation. A transfer will be deemed to be made first out of amounts that have not been taken into account for United States tax purposes by a United States citizen or resident or a domestic corporation, unless the United States donee can demonstrate to the satisfaction of the Commissioner that another ordering rule is more appropriate.

(d) *Definition of purported gift or bequest*—(1) *In general.* Subject to the provisions of paragraphs (d)(2) and (3) of this section, *a purported gift or bequest* for purposes of this section is any transfer of property by a partnership or foreign corporation other than a transfer for fair market value (within the meaning of § 1.671–2T(e)(2)(ii)) to a person who is not a partner in the partnership or a shareholder of the foreign corporation (or to a person who is a partner in the partnership or a shareholder of a foreign corporation, if the amount transferred is inconsistent with the partner's interest in the partnership or the shareholder's interest in the corporation, as the case may be). For purposes of this section, the term *property* includes cash.

(2) *Transfers for less than fair market value—(i) Excess treated as purported gift or bequest.* Except as provided in paragraph (d)(2)(ii) of this section, if a transfer described in paragraph (d)(1) of this section is for less than fair market value, the excess of the fair market value of the property transferred over the value of the property received, services rendered, or the right to use property is treated as a purported gift or bequest.

(ii) *Exception for transfers to unrelated parties.* No portion of a transfer described in paragraph (d)(1) of this section will be treated as a purported gift or bequest for purposes of this section if the United States donee can demonstrate to the satisfaction of the Commissioner that the United States donee is not related to a partner or shareholder of the transferor within the meaning of § 1.643(h)–1(e) or does not have another relationship with a partner or shareholder of the transferor that establishes a reasonable basis for concluding that the transferor would make a gratuitous transfer to the United States donee.

(e) *Prohibition against affirmative use of recharacterization by taxpayers.* A taxpayer may not use the rules of this section if a principal purpose for using such rules is the avoidance of any tax imposed by the Internal Revenue Code. Thus, with respect to such taxpayer, the Commissioner may depart from the rules of this section and recharacterize (for all purposes of the Internal Revenue Code) the transfer in accordance with its form or its economic substance.

(f) *Transfers not in excess of $10,000.* This section does not apply if, during the taxable year of the United States donee, the aggregate amount of purported gifts or bequests that is transferred to such United States donee directly or indirectly from all partnerships or foreign corporations that are related (within the meaning of section 643(i)) does not exceed $10,000. The aggregate amount must include gifts or bequests from persons that the United States donee knows or has reason to know are related to the partnership or foreign corporation (within the meaning of section 643(i)).

(g) *Examples.* The following examples illustrate the rules of this section. In each example, the amount that is transferred exceeds $10,000. The examples are as follows:

Example 1. Distribution from foreign corporation. FC is a foreign corporation that is wholly owned by A, a nonresident alien who is resident in Country C. FC makes a gratuitous transfer of property directly to A's daughter, B, who is a resident alien. Under paragraph (a)(2) of this section, B generally must treat the transfer as a dividend from FC to the extent of FC's earnings and profits and as an amount received in excess of basis thereafter. If FC is a passive foreign investment company, B must treat the amount received as a distribution under section 1291. B will be treated as having the same holding period as A. However, under paragraph (b)(1)(ii) of this section, if B can establish to the satisfaction of the Commissioner that, for purposes of the tax laws of Country C, A treated (and reported, if applicable) the transfer as a distribution to himself and a subsequent gift to B, B may treat the transfer as a gift (provided B timely complied with the reporting requirements of section 6039F, if applicable).

Example 2. Distribution of corpus from trust to which foreign corporation made gratuitous transfer. FC is a foreign corporation that is wholly owned by A, a nonresident alien who is resident in Country C. FC makes a gratuitous transfer to a foreign trust, FT, that has no other assets. FT immediately makes a gratuitous transfer in the same amount to A's daughter, B, who is a resident alien. Under paragraph (c)(1) of this section, B must treat the transfer as a transfer from FC that is subject to the rules of paragraph (a)(2) of this section. Under paragraph (a)(2) of this section, B must treat the transfer as a dividend from FC unless she can establish to the satisfaction of the Commissioner that, for purposes of the tax laws of Country C, A treated (and reported, if applicable) the transfer as a distribution to himself and a subsequent gift to B and that B timely complied with the reporting requirements of section 6039F, if applicable. The alternative rule in paragraph (c)(2) of this section would not apply as long as the United States tax computed under the rules of paragraph (a)(2) of this section is equal to or greater than the United States tax that would be due if the transfer were treated as a distribution from FT.

Example 3. Accumulation distribution from trust to which foreign corporation made gratuitous transfer. FC is a foreign corporation that is wholly owned by A, a nonresident alien. FC is not a passive foreign

investment company (as defined in section 1297). FC makes a gratuitous transfer of 100X to a foreign trust, FT, on January 1, 2001. FT has no other assets on January 1, 2001. Several years later, FT makes a gratuitous transfer of 1000X to A's daughter, B, who is a United States resident. Assume that the section 668 interest charge on accumulation distributions will apply if the transfer is treated as a distribution from FT. Under the alternative rule of paragraph (c)(2) of this section, B must treat the transfer as an accumulation distribution from FT, because the resulting United States tax liability is greater than the United States tax that would be due if the transfer were treated as a transfer from FC that is subject to the rules of paragraph (a) of this section.

Example 4. Transfer from trust that is treated as owned by United States citizen. Assume the same facts as in *Example 3,* except that A is a United States citizen. Assume that A treats and reports the transfer to FT as a constructive distribution to himself, followed by a gratuitous transfer to FT, and that A is properly treated as the grantor of FT within the meaning of § 1.671–2T(e). A is treated as the owner of FT under section 679 and, as required by section 671 and the regulations thereunder, A includes all of FT's items of income, deductions, and credit in computing his taxable income and credits. Neither paragraph (c)(1) nor paragraph (c)(2) of this section is applicable, because the exception in paragraph (c)(3) of this section applies.

Example 5. Transfer for less than fair market value. FC is a foreign corporation that is wholly owned by A, a nonresident alien. On January 15, 2001, FC transfers property directly to A's daughter, B, a resident alien, in exchange for 90X. The Commissioner later determines that the fair market value of the property at the time of the transfer was 100X. Under paragraph (d)(2)(i) of this section, 10X will be treated as a purported gift to B on January 15, 2001.

(h) *Effective date.* The rules of this section are generally applicable to any transfer after August 10, 1999, by a partnership or foreign corporation, or by a trust to which a partnership or foreign corporation makes a gratuitous transfer after August 10, 1999.

1.672(f)–5 Special rules.

(a) *Transfers by certain beneficiaries to foreign grantor*—(1) *In general.* If, but for section 672(f)(5), a foreign person would be treated as the owner of any portion of a trust, any United States beneficiary of the trust is treated as the grantor of a portion of the trust to the extent the United States beneficiary directly or indirectly made transfers of property to such foreign person (without regard to whether the United States beneficiary was a United States beneficiary at the time of any transfer) in excess of transfers to the United States beneficiary from the foreign person. The rule of this paragraph (a) does not apply to the extent the United States beneficiary can demonstrate to the satisfaction of the Commissioner that the transfer by the United States beneficiary to the foreign person was wholly unrelated to any transaction involving the trust. For purposes of this paragraph (a), the term property includes cash, and a transfer of property does not include a transfer that is not a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)). In addition, a gift is not taken into account to the extent such gift would not be characterized as a taxable gift under section 2503(b). For a definition of United States beneficiary, see section 679.

(2) *Examples.* The following examples illustrate the rules of this section:

Example 1. A, a nonresident alien, contributes property to FC, a foreign corporation that is wholly owned by A. FC creates a foreign trust, FT, for the benefit of A and A's children. FT is revocable by FC without the approval or consent of any other person. FC funds FT with the property received from A. A and A's family move to the United States. Under paragraph (a)(1) of this section, A is treated as a grantor of FT. (A may also be treated as an owner of FT under section 679(a)(4).)

Example 2. B, a United States citizen, makes a gratuitous transfer of $1 million to B's uncle, C, a nonresident alien. C creates a foreign trust, FT, for the benefit of B and B's children. FT is revocable by C without the approval or consent of any other person. C funds FT with the property received from B. Under paragraph (a)(1) of this section, B is treated as a grantor of FT. (B also would be treated as an owner of FT as a result of section 679.)

(b) *Entity characterization.* Entities generally are characterized under United States tax principles for purposes of §§ 1.672(f)–1 through 1.672(f)–5. See §§ 301.7701–1 through 301.7701–4 of this chapter. However, solely for purposes of § 1.672(f)–4, a transferor that is a wholly owned business entity is treated as a corporation, separate from its single owner.

(c) *Effective date.* The rules in paragraph (a) of this section are applicable to transfers to trusts on or after August 10, 1999. The rules in paragraph (b) of this section are applicable August 10, 1999.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 23, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–19928 Filed 8–5–99; 2:09 pm]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 26, 29, 57, and 75

RIN 1219–AA98

Improving and Eliminating Regulations; Lighting Equipment, Coal Dust/Rock Dust Analyzers, and Methane Detectors

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendments.

SUMMARY: We are removing approval regulations for lighting equipment for illuminating underground workings; portable coal dust/rock dust analyzers; and continuous duty, warning light, portable methane detectors. These regulations are unnecessary because they address equipment that is addressed by other MSHA regulations. Removal of these parts will not reduce protection for miners. This final rule will also make conforming amendments to safety regulations that require the use of this approved equipment in underground coal mines and in gassy underground metal and nonmetal mines.

EFFECTIVE DATE: This regulation is effective October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

In response to the Administration's regulatory reinvention initiative, we conducted a review of our existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that can be removed or revised without reducing protection afforded miners. This final rule is part of our ongoing plan to improve our regulations. The removal of parts 26 and 29, from title 30 of the Code of Federal Regulations (30 CFR), will not reduce protection to miners. These provisions are covered by other MSHA regulations. Conforming amendments to other 30 CFR parts will be made, as appropriate. To increase awareness of this regulatory action, we will mail a copy of this final rule to all mine operators and miners' representatives and post it on MSHA's Website at www.msha.gov.

Even though we are removing 30 CFR parts 26 and 29, lighting equipment for illuminating underground workings and continuous duty, warning light, portable methane detectors approved by MSHA

under these parts can continue to be manufactured and distributed for use in mines as long as this is done in accordance with the drawings and specifications upon which such approvals were based and there are no changes in the approved devices.

On September 3, 1998, we published a proposed rule in the **Federal Register** (63 FR 47120) requesting public comments on our intention to remove 30 CFR parts 26 and 29 and make conforming changes to 30 CFR parts 57 and 75. We allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing on the proposal.

II. Discussion of Final Rule

A. 30 CFR 26—Lighting Equipment for Illuminating Underground Workings

In 1958, we developed the regulations in 30 CFR 26 to establish specifications for the approval of mine lighting systems that are used independently, *i.e.*, not connected to an approved machine. These specifications contain permissibility requirements to ensure that the electric system and components do not pose an explosion hazard, and design requirements to address the adequacy of the light intensity. MSHA has received only one application for approval of mine lighting systems under 30 CFR 26 since 1978.

Even though we are removing 30 CFR 26, lighting systems approved under this part can continue to be manufactured and distributed for use in mines as long as done in accordance with the drawings and specifications upon which the approval is based and provided there are no changes in the approved systems. We will not permit changes in the approved systems under 30 CFR 26 once it is deleted. Any future changes to lighting systems approved under 30 CFR 26 will require a new application for approval under 30 CFR 18.

Currently, approvals of lighting systems which are used independently, as well as those which are part of MSHA-approved equipment, can be requested under the requirements of 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. The general requirements in 30 CFR 18, subpart A; certain design and construction requirements in subpart B (e.g., 18.20, 18.23, 18.24, 18.25, 18.30, 18.35, 18.41, 18.48, 18.50, and 18.51); and certain inspections and tests in subpart C (e.g., 18.62, 18.66, 18.67, and 18.68), as well as any other provisions necessary to address the design and performance of the system, are applicable to the approval of independent mine lighting systems. For example, an evaluation for intrinsic safety under 30 CFR 18 includes a ''Lamp Bulb Breakage'' test which consists of breaking the bulb in the presence of an explosive mixture of methane-in-air. In addition to the permissibility and intrinsic safety requirements in 30 CFR 18, provisions in 30 CFR 75.1719–1 through 75.1719–3 contain voltage limitations, specify the amount of light required in mine workings, and address other safety requirements applicable to mine lighting systems.

For these reasons, we believe that the approval regulations in 30 CFR 26 are unnecessary. Therefore, we are removing part 26. This final rule will not reduce the protection afforded to miners.

B. 30 CFR 29—Portable Coal Dust/Rock Dust Analyzers, and Continuous Duty, Warning Light, Portable Methane Detectors for Use in Coal Mines

We originally developed the regulations in 30 CFR 29 in the early 1970's to provide performance requirements for the approval of portable coal dust/rock dust analyzers for use in measuring the incombustible content of mine dust; and for the approval of continuous duty, warning light, portable methane detectors for use in providing a visual signal of the presence of methane. At that time, we anticipated that there would be a need for the approval of these types of instruments. We have now determined, however, that the approval requirements in 30 CFR 29 for both portable coal dust/rock dust analyzers and continuous duty, warning light, portable methane detectors are unnecessary. Therefore, we are removing part 29.

Although we are removing 30 CFR 29, any devices approved under this part can continue to be manufactured and distributed for use in mines as long as done in accordance with the drawings and specifications upon which the approval is based and provided there are no changes in the approved devices. To clarify this point, MSHA has modified the conforming amendments in parts 57 and 75 to indicate that devices approved under part 29 prior to its removal (30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999), may continue to be used. We will not permit changes in these approved devices under 30 CFR 29 once it is deleted. Any future changes to such devices approved under 30 CFR 29 will require a new application for approval under 30 CFR 18 or 22, as discussed below.

Portable coal dust/rock dust analyzers. We have never issued an approval for a portable coal dust/rock dust analyzer under 30 CFR 29. An experimental approval was granted in the late 1980's; however, the project was never completed. We believe that 30 CFR 29 is no longer necessary or viable for approval of a portable coal dust/rock dust analyzer because there has been negligible interest in approval of such an instrument. Furthermore, the performance requirements in 30 CFR 29 for portable coal dust/rock dust analyzers are now outdated. The elimination of 30 CFR 29, therefore, will not reduce protection afforded miners by the existing standards.

Although no such request is anticipated, should portable coal dust/rock dust analyzers be developed in the future, they can be approved under 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. Approvals are routinely issued under 30 CFR 18 for instruments that are not required by regulation, but are to be used in underground mines, provided that they meet the intrinsic safety requirements in 30 CFR 18.68 and are safe for their intended use as required by 30 CFR 18.20(b). In addition, the general requirements in 30 CFR 18, subpart A, as well as any other provisions necessary to address the design and performance of the instrument, are appropriate for the approval of portable coal dust/rock dust analyzers.

Continuous duty, warning light, portable methane detectors. We have not issued a new approval for a continuous duty, warning light, portable methane detector under 30 CFR 29 since 1981. When 30 CFR 29 was developed, portable methane detectors approved under 30 CFR 22 did not have continuous monitoring, warning, or alarm capability. Since 1981, however, advancements in technology have resulted in instruments that are suitable for approval both as portable methane detectors under 30 CFR 22 and which also have the capability to be used for continuous monitoring and warning or alarm. Portable methane detectors in use in mines now routinely have the capabilities specified in 30 CFR 29, and we have approved them for the past 16 years under 30 CFR 22, Portable Methane Detectors.

If we were to receive a new request under 30 CFR 29 for approval of a methane detector that is portable, operates continuously, and provides a warning to the user, we could conduct an equivalent evaluation of the instrument using the approval requirements in 30 CFR 22. For these reasons, we believe that 30 CFR 29 is

unnecessary and that its removal will not reduce protection afforded miners by the existing standards.

III. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We have determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, have not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets our responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, we must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. Although we traditionally have considered small mines to be those with fewer than 20 employees, we have analyzed the impact of the final rule on mines with 500 or fewer employees for the purposes of the RFA. We have also evaluated the impact of the rule on small manufacturers of lighting equipment for illuminating underground workings and small manufacturers of continuous duty, warning light, portable methane detectors using the appropriate SBA definition of 500 or fewer employees.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule including the preamble and regulatory flexibility certification statement to all affected mines and miners' representatives and approval holders.

Factual Basis for Certification

MSHA used a qualitative approach in concluding that the final rule will not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers. This final rule removes approval regulations for equipment that can be approved under other existing MSHA regulations. The benefit of removing unnecessary provisions is that MSHA regulations will be more concise, clearer, easier to use, and reflect advances in technology. This final rule will have no economic impact on the mining industry.

V. Paperwork Reduction Act

This final rule contains no information collection requirements subject to the Paperwork Reduction Act of 1995.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate and, therefore, results in no increased expenditures by State, local, and tribal governments, or by the private sector.

VII. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, MSHA has evaluated the environmental health and safety risks of the final rule on children. The Agency has determined that the final rule will have no effect on children.

VIII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments, because they neither manufacture products covered by parts 26 and 29 nor operate any underground coal or gassy metal/nonmetal mines.

IX. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. This rule does not limit state policy options, because they neither manufacture products covered by parts 26 and 29 nor operate any underground coal or gassy metal/nonmetal mines, it complies with the principles of federalism and with Executive Order 12612.

X. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects

30 CFR Parts 26 and 29

Mine safety and health.

30 CFR Parts 57 and 75

Mine safety and health, Underground mining.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957 and 961 and for the reasons set out in the preamble, 30 CFR, chapter I, is amended as follows:

PART 26—LIGHTING EQUIPMENT FOR ILLUMINATING UNDERGROUND WORKINGS

1. Part 26 is removed.

PART 29—PORTABLE COAL DUST/ ROCK DUST ANALYZERS, AND CONTINUOUS DUTY, WARNING LIGHT, PORTABLE METHANE DETECTORS FOR USE IN COAL MINES

2. Part 29 is removed.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.22303 is revised to read as follows:

§ 57.22303 Approved equipment (I–C mines).

Only electrical equipment that is approved by MSHA under the applicable requirements of 30 CFR parts 18 through 28 or approved under 30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999, shall be used underground, except for submersible sump pumps.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811.

6. Section 75.506 is amended by revising paragraph (d) to read as follows:

§ 75.506 Electric face equipment; requirements for permissibility.

* * * * *

(d) The following equipment will be permissible electric face equipment only if it is approved under the appropriate parts of this chapter, or former Bureau of Mines' approval schedules, and if it is in permissible condition:

(1) Multiple-Shot Blasting Units, part 7 subpart D;

(2) Electric Cap Lamps, part 19;

(3) Electric Mine Lamps Other than Standard Cap Lamps, part 20;

(4) Flame Safety Lamps;

(5) Portable Methane Detectors, part 22;

(6) Telephone and Signaling Devices, part 23;

(7) Single-Shot Blasting Units;

(8) Lighting Equipment for Illuminating Underground Workings;

(9) Methane-Monitoring Systems, part 27; and

(10) Continuous Duty, Warning Light, Portable Methane Detectors, 30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999.

[FR Doc. 99–20408 Filed 8–9–99; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71, and 90

RIN 1219–AA98

Improving and Eliminating Regulations; Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: We (MSHA) have revised and updated our Informational Report No. 1121 (IR 1121) to include currently approved sampling equipment and to permit the use of fast-response calibrators having a volumetric tube. The updated document is Informational Report No. 1240 (IR 1240) entitled, ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers.'' This final rule updates the existing incorporation-by-reference of IR 1121 in MSHA's coal mine respirable dust standards to reference IR 1240.

EFFECTIVE DATE: This regulation is effective October 12, 1999. The incorporation-by-reference of the publication listed in the rule is approved by the Director of the **Federal Register** as of October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

In response to the Administration's regulatory reinvention initiative, we conducted a review of existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. This final rule is part of our ongoing plan to improve our regulations. It updates the incorporation-by-reference of IR 1121, with the most recent revision, IR 1240. IR 1240 allows mine operators to use advanced technology without reducing protection to miners.

On September 3, 1998, we published a proposed rule in the **Federal Register** (63 FR 47123) requesting public comment on our intention to update the incorporation-by-reference in title 30 of the Code of Federal Regulations (30 CFR) §§ 70.204, 71.204, and 90.204. We allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing.

To increase awareness of this regulatory action, MSHA will mail a copy of this final rule to all operators and miners' representatives and will post it and IR 1240 on MSHA's Website at www.msha.gov.

II. Discussion of Final Rule

Existing coal mining regulations §§ 70.204, 71.204, and 90.204 require that approved respirable dust sampling devices be calibrated in accordance with MSHA Informational Report No. 1121 (IR 1121) ''Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073).'' These regulations further state that amendments to IR 1121 will be announced in the **Federal Register**. This final rule updates the incorporation-by-reference of IR 1121, with the most recent revision, IR 1240, which is entitled ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers.''

IR 1240 addresses improved technology and describes the standard procedures that MSHA currently uses for calibration of approved personal samplers and associated equipment and for maintenance of this equipment. IR 1240 continues to require operators to record calibration parameters and results. MSHA encourages mine operators who store records electronically to provide a mechanism which will allow the continued storage and retrieval of records in the year 2000 and thereafter.

IR 1240 includes the calibration and maintenance procedures for the newest approved sampling unit for collecting respirable coal mine dust. This sampling unit uses constant flow technology and a power source which is different from other approved sampling units. The constant flow technology permits the calibration of this unit without concern for flow fluctuations. In addition, IR 1240 cautions mine operators and other interested parties to maintain such units as approved so as to ensure the accurate collection of respirable coal mine dust samples. IR 1240 also permits the use of fast-response calibrators for calibrating all approved sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121.

Copies of IR 1240 are available at MSHA, Coal Mine Safety and Health, Room 816, 4015 Wilson Boulevard, Arlington, VA 22203; at each MSHA

Coal Mine Safety and Health district and subdistrict office; and on MSHA's Home Page at www.msha.gov.

III. Paperwork Reduction Act

This final rule, like the existing rule, contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA 95). MSHA submitted the proposed information collection request to OMB for its review and approval under § 3507(o) of PRA 95. OMB reviewed and approved the collection of information under OMB Control Number 1219–0128. This section contains a description of the information collection requirement, the respondent categories, and the annual information collection burden.

Description

Final 30 CFR 70.204, 71.204, and 90.204 require that approved respirable dust sampling devices be calibrated in accordance with IR 1240 ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers.'' Calibration of sampling units requires data to be recorded as part of the calibration procedure. Most mines that calibrate their own pumps now use instantaneous flow meters for this purpose; and almost all but the largest underground mines send their pumps out to be calibrated, rather than calibrating them themselves.

Respondents

The respondents are mine operators. We estimate that this information collection requirement affects about 900 coal mines and that these mines calibrate about 1,850 pumps per year. Further, MSHA estimates that 897 of these mines calibrate 1814 pumps with a fast response calibrator; that three mines calibrate 36 pumps using the bubble tube method of pump calibration; and that no mines use the wet test meter method of pump calibration.

Information Collection Burden

The recording of calibration data is considered an information collection burden under PRA 95. MSHA estimates that it takes about 30 minutes (0.5 hour) to calibrate a pump using the bubble tube method, including recording calibration-related information and marking the pump flowmeter, and that it takes about 3 minutes (0.05 hour) to calibrate each pump with a fast-response calibrator and mark the pump flowmeter. The average time for pump calibration is 0.059 hour. The mine's technical staff usually does the pump calibration, if it's done at the mine, at a cost of about $42 per hour.

The total estimated annual information collection burden for pump calibration and marking the pump flowmeter is about 109 hours with an associated cost of about $4,580.

We estimate that most mine operators incurred the capital and start-up costs associated with pump calibration prior to October 1, 1995. Fast-response calibrators cost about $900 and have a useful life of about 10 years. The annualization factor for an equipment life of 10 years is 0.142. The annualized cost for calibrators, therefore, is about $128 per calibrator. For the purpose of this analysis, we estimate that about five new mines per year would purchase a fast-response calibrator resulting in a total annualized capital cost of about $640.

We estimate that about 2010 mines send about 2040 pumps per year to an outside contractor for calibration and maintenance. This service includes pump calibration and marking the flowmeter; certification of pump calibration; cleaning and checking pump function; replacing worn or damaged parts; and shipping and handling. MSHA estimates that the average cost for this service is about $100 per pump. Fast-response calibrators also require routine calibration and maintenance each year at a cost of about $100. The cost for calibration and maintenance of 2040 pumps and five calibrators, therefore, is $204,500.

The following chart summarizes MSHA's estimates for compliance with PRA 95.

Provision	Number of respondents	Number of responses	Number of responses per respondent (average)	Hours per response (average)	Total hours
Calibration records	900	1849	2	0.059	109

Annual Cost of calibration for 2040 pumps @ $100 ea.	Annual cost of calibration for 5 fast-response calibrators @ $100 ea.	Annual cost of 5 new mines acquiring fast-response calibrators @ $128 ea. annualized	Total annual cost
$204,000	$500	$640	$205,140

The burden hours and costs associated with pump calibratioin and marking the flowmeter do not represent any license for the mining industry because MSHA regulations currently require operators to perform these activities.

IV. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We estimate that the cost impact of the final rule is the same as under the existing rule. The primary benefit of the final rule is that it provides mine operators alternatives in maintaining and calibrating dust sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121. MSHA has determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. Although MSHA traditionally has considered small mines to be those with fewer than 20

employees, MSHA has analyzed the impact of the final rule on mines with 500 or fewer employees for the purposes of the RFA.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, we will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

Factual Basis for Certification

We used a qualitative approach in concluding that the final rule would not have a significant economic impact on a substantial number of small entities. This final rule updates the regulations to incorporate by reference the latest revision of an MSHA informational report describing the calibration and maintenance procedures for coal mine respirable dust sampling units. The benefit of updating provisions is that MSHA regulations would be clearer and reflect advances in technology. This final rule will have no economic impact on the mining industry. The cost impact on mines employing fewer than 20 miners or those employing 500 or fewer miners will be the same as under the existing rule.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or by the private sector.

VII. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, MSHA has evaluated the environmental health and safety risks of the final rule on children. The Agency has determined that the final rule would have no effect on children.

VIII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments.

IX. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Since this rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

X. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

XII. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et. seq.*) requires each Federal agency to consider the environmental effects of final actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. We have reviewed the final standards in accordance with the requirements of NEPA, the regulations of the Council on Environmental Policy (40 CFR 1500), and the NEPA procedures of the Department of Labor (29 CFR 11). As a result of this review, MSHA has determined that this final rule will have no environmental impact.

List of Subjects in 30 CFR Parts 70, 71, and 90

Coal mines, Incorporation by reference, Mine safety and health, Scientific equipment.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 811 and for the reasons set out in the preamble, MSHA is amending chapter I, title 30 of the Code of Federal Regulations, as follows.

PART 70—[AMENDED]

1. The authority citation for part 70 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

2. The authority citation for subpart C continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), and 957.

3. Section 70.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 70.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)'' by a person certified in accordance with § 70.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

PART 71—[AMENDED]

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

Authority: 30 U.S.C. 811, 951, and 957.

5. The authority citation for subpart C continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

6. Section 71.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 71.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)'' by a person certified in accordance with § 71.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

PART 90—[AMENDED]

7. The authority citation for part 90 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h).

8. The authority citation for subpart C is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

9. Section 90.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 90.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers ''(supersedes IR 1121)'' by a person certified in accordance with § 90.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996)referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

[FR Doc. 99–20409 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Improving and Eliminating Regulations; Approved Books and Records

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: We (MSHA) are revising our regulations to remove certain regulations on Approved Books and Records from the Code of Federal Regulations. Forms required by these regulations are obsolete and some requirements are redundant. In addition, we are revising regulations concerning the records of the testing, examination, and maintenance of circuit breakers to clarify that secure electronic records may be used and that records must be retained for one year.

EFFECTIVE DATE: This regulation is effective October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances: 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

In response to the Administration's regulatory reinvention initiative, MSHA conducted a review of its existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. On September 3, 1998, MSHA published a proposed rule in the **Federal Register** (63 FR 47122) requesting public comment on its intention to remove part 75, subpart S, Approved Books and Records, and revising 30 CFR 75.800–4 concerning the records of the testing, examination, and maintenance of circuit breakers to clarify that secure electronic records may be used and that the records shall be retained for one year. The Agency allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing. Consequently, the final rule is unchanged from the proposal. This final rule will streamline 30 CFR part 75 by improving consistency and clarity in MSHA requirements for approved books and records for underground coal mines without reducing protection to miners.

II. Discussion of Final Rule

Existing MSHA standards in 30 CFR 75, subpart S, Approved Books and Records, contain recordkeeping requirements for certain tests and examinations conducted in underground mines. Subpart S specifies approved books for recording test results, as well as the manner in which the books are to be maintained.

Existing 30 CFR 75.1800(b) specifies approved forms on which mine operators are to record results for provisions in 30 CFR 75.1801 through 75.1808. Of these, however, only 30 CFR 75.1806 and 75.1808 remain in 30 CFR 75, subpart S. In addition, all the forms listed are obsolete and are no longer in use.

Existing 30 CFR 75.1800(c) allows mine operators to use record books kept to comply with State requirements, in lieu of the books required in 30 CFR 75, subpart S, if the MSHA district manager determines that those books provide the information specified in any record book required by the MSHA regulation.

The only records specified in 30 CFR 75, subpart S, are those in 30 CFR 75.1806 which require that the results of monthly examinations of high voltage circuit breakers, required by 30 CFR 75.800–3 and 75.800–4, be recorded in a book entitled ''Monthly Examinations of Surface High Voltage Circuit Breakers'', Form 6–1293. This form is no longer in use and MSHA no longer approves record books.

Existing 30 CFR 75.1808 requires that all approved books and records maintained under the provisions of 30 CFR 75.1801 through 75.1807 be stored in a fireproof repository on the surface of the mine, in a location chosen by the mine operator, and be made available to interested persons. This provision now applies only to 30 CFR 75.1806. To be consistent with other MSHA recordkeeping requirements, and to accommodate the electronic storage of data, we are deleting this requirement.

The rule recognizes the increasing use of electronic storage and retrieval of information and revises 30 CFR 75.800–4 to accommodate this technology.

In addition, we have revised 30 CFR 75.800–4 to clarify that the records must be retained for one year. We consider this additional requirement to be a non-substantive clarification of the existing standard because mine operators already are required to make these records available to an authorized representative of the Secretary, which implies that they be retained.

III. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We have determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, have not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. The analysis contained in this preamble meets our responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No small governmental jurisdiction or nonprofit organizations are affected. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis.

Factual Basis for Certification

Based on the fact that there is no substantive change in the recordkeeping requirements, we have determined that there would be no impact on small businesses. No small governmental jurisdictions or nonprofit organizations are affected. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, we will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

IV. Paperwork Reduction Act

No new or additional paperwork burdens are included in this amendment. Test records are required in existing 30 CFR 75.800–3 and 75.800–4 and are approved under OMB control number 1219–0067. The Paperwork Reduction Act of 1995 (PRA 95), however, requires that regulations specify a time period for the retention of records. Existing 30 CFR 75.800–3 and 75.800–4 do not specify a retention period for maintaining these required test records. We are requiring, consistent with other MSHA recordkeeping requirements, that these records be kept for at least one year.

V. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate and, therefore, results in no increased expenditures by State, local, and tribal governments, or by the private sector.

VI. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, we have evaluated the environmental health and safety risks of the final rule on children. We have determined that the final rule would have no effects on children.

VII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments.

VIII. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Since this rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

IX. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

X. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects in 30 CFR Part 75

Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, MSHA proposes to amend part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811.

2. Section 75.800–4 is revised to read as follows:

§ 75.800–4 Testing, examination, and maintenance of circuit breakers; record.

(a) *Recordkeeping.* The operator shall make a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits which enter any underground area of the mine.

(b) *Record security.* These records shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(c) *Retention and access.* These records shall be retained at a surface location at the mine for at least one year and shall be made available to authorized representatives of the Secretary, the representative of miners, and other interested persons.

Subpart S—[Removed]

3. Part 75 subpart S—Approved Books and Records, consisting of §§ 75.1800, 75.1806, and 75.1808, is removed and reserved.

[FR Doc. 99–20410 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC00

Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances, and Coal Washing and Transportation Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations concerning oil and gas and coal allowances on Federal and Indian leases which were published in the **Federal Register** on Monday, February 12, 1996, (61 FR 5447).

DATES: Effective on March 1, 1996.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION:

Background

The Minerals Management Service (MMS) is making corrections to a final rule published in the **Federal Register** on February 12, 1996 (61 FR 5447). This final rule, effective March 1, 1996, amended 30 CFR part 206–PRODUCT VALUATION regulations for oil and gas transportation and processing allowances for production from Federal leases. It also amended the regulations for coal washing and transportation allowances for production from Federal leases. The final rule did not change the existing regulations applicable to Indian leases.

Need for Correction

As published, the final regulations in 30 CFR part 206 contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 30 CFR Part 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Accordingly, 30 CFR part 206 is corrected by making the following correcting amendments:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

§ 206.51 Definitions [Corrected]

2. In § 206.51, definition of *gross proceeds*, remove the word ''terminating'' in the third sentence and add, in its place, the word ''terminaling.''

3. In § 206.51, definition of *tar sands*, remove the word ''either,'' the comma after the word ''temperature,'' and the phrase ''or contains quarrying.'' End the sentence with a period.

§ 206.53 [Corrected]

4. In § 206.53(c), remove the word ''proved'' in the second sentence and add, in its place, the word ''approved.''

Subpart D—Federal Gas

§ 206.151 [Corrected]

5. In § 206.151, definition of *gross proceeds*, remove the next-to-last word in the first sentence, ''oil,'' and add, in its place, the words ''gas, residue gas, and gas plant products.'' Also, remove the third sentence.

§ 206.156 [Corrected]

6. In § 206.156(d), remove the word ''oil'' in the last sentence, and add, in its place, the words ''unprocessed gas, residue gas, and gas plant products.''

§ 206.158 [Corrected]

7. In § 206.158(e), remove the word ''transportation'' in the second sentence and add, in its place, the word ''processing.'' Also remove the word ''oil'' in the second sentence and add, in its place, the words ''gas plant products.''

8. In § 206.159 paragraph (a)(1)(i), remove the word ''transportation'' in the last sentence and add, in its place, the word ''processing.'' In paragraph (e)(2), remove the word ''transporting'' and add, in its place, the word ''processing.''

9. In the last section in Subpart D, § 206.106, correct the section number to read ''206.160.''

Subpart E—Indian Gas

§ 206.172 [Corrected]

10. In § 206.172(h), remove both instances of the words ''pursuant to'' and add, in their place, the word ''under.''

§ 206.173 [Corrected]

11. In § 206.173(a)(2), remove the word ''section'' immediately before the words ''of this part'' and add, in its place, ''§ 206.52.''

§ 206.174 [Corrected]

12. In § 206.174(d)(2), remove the reference ''202.171(c)'' in the first sentence, and add, in its place, ''202.151(b) and (c).''

§ 206.176 [Corrected]

13. In § 206.176(c)(3), remove the last sentence and add, in its place, the sentence ''Under no circumstances will the value for royalty purposes be reduced to zero.''

§ 206.177 [Corrected]

14. In § 206.177 paragraph (b)(3)(ii), first sentence, remove the letter ''(i)'' after the word ''paragraph'' and add, in its place, the words ''(b)(3)(i) of this section.'' In paragraph (d)(1), first sentence, remove the word ''processing,'' and add, in its place, the word ''transportation.''

Subpart F—Federal Coal

§ 206.251 [Corrected]

15. In § 206.251, definition of *like-quality coal*, add the word ''that'' before the word ''has.''

§ 206.258 [Corrected]

16. In § 206.258(a), remove the second sentence and add, in its place, the sentence ''Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.''

§ 206.259 [Corrected]

17. In § 206.259(c)(2)(ii), second sentence, remove the word ''processing'' and add, in its place, the word ''washing.''

18. In § 206.261, revise paragraph (b) to read as follows:

§ 206.261 Transportation allowances—general.

* * * * *

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

* * * * *

19. In § 206.262, remove reserved paragraph (c)(2)(iv), redesignate paragraph (c)(2)(v) as paragraph (c)(2)(iv), add paragraphs (d)(2) and

(d)(3), and revise paragraph (e)(2). The added and revised text reads as follows:

§ 206.262 Determination of transportation allowances.

* * * * *

(d) * * *

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) * * *

(2) The lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payments, in accordance with instructions provided by MMS.

* * * * *

§ 206.263 [Corrected]

20. In § 206.263(b), remove the words ''pursuant to'' and add, in its place, the word ''under.'' Also, remove the word ''in'' and add, in its place, the word ''is.''

§ 206.264 [Corrected]

21. In § 206.264, remove the first word ''In'' and add, in its place the word ''If.''

Subpart J—Indian Coal

§ 206.451 [Corrected]

22. In § 206.451, definition of *like-quality coal,* add the word ''that'' before the word ''has.''

23. In § 206.457, revise the last sentence of paragraph (a) to read as follows:

§ 206.457 Washing allowances—general.

(a) * * * Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

* * * * *

24. In § 206.460 revise paragraph (b) to read as follows:

§ 206.460 Transportation allowances—general.

* * * * *

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

* * * * *

§ 206.461 [Corrected]

25. In § 206.461(e)(1), last sentence, add the word ''entitled'' before the word ''to.''

§ 206.462 [Corrected]

26. In § 206.462 paragraph (b), remove the word ''in'' and add, in its place, the word ''is.'' In paragraph (c), remove the section number ''206.251'' and add, in its place, ''206.451.''

§ 206.463 [Corrected]

27. In § 206.463, remove the first word ''In'' and add, in its place, the word ''If.''

§ 206.464 [Corrected]

28. In § 206.464(a), remove the section number ''206.465'' in the sentence and add, in its place, ''206.456.''

Dated: August 3, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–20470 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–049]

RIN 2115–AE46

Special Local Regulations; Rising Sun Regatta Ohio River Mile 505.0–507.0, Rising Sun, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Rising Sun Inboard Hydroplane Races. This event will be held on September 11 & 12, 1999 from 11 a.m. until 6 p.m. at Rising Sun, Indiana. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 11 a.m. until 6 p.m. on September 11, 1999 and from 11 a.m. to 6 p.m. on September 12, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting information. The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a series of high-speed hydroplane boat races. The event is sponsored by Community Heritage Promotions. The course to be followed by the race participants will be marked by precisely placed marker buoys, mid-channel on the Ohio River, between river miles 505.0–507.0. Commercial vessels will be permitted to transit the area every three hours.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary beacause of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

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

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–049 is added to read as follows:

§ 100.35–T08–049 Ohio River at Rising Sun, Indiana.

(a) *Regulated Area:* Ohio River Mile 505.0–507.0

(b) *Special Local Regulations:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. ''Participants'' are those persons and vessels identified by the sponsor as taking part in the event. The ''official patrol'' consists of any Coast Guard, public, state or local law enforcement and sponsor provided vessel assigned to patrol the event. The Coast Guard ''Patrol Commander'' is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and property and can be reached on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective Date:* This section will be effective from 11 a.m. to 6 p.m. on September 11, 1999 and from 11 a.m. to 6 p.m. on September 12, 1999.

Dated: July 26, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–20514 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–118]

RIN 2115–AA97

Safety Zone: The Clinton Bluefish Festival Fireworks Display, Clinton Harbor Clinton, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Clinton Bluefish Festival Fireworks Display to be held in Clinton Harbor, Clinton, CT., on August 21, 1999. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on August 21 and 22, 1999, from 9 p.m. until 10:05 p.m.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Chief C.D. Stubblefield, Office Supervisor of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Clinton Bluefish Festival Committee is sponsoring a 20 minute fireworks display in Clinton Harbor, Clinton, Connecticut. The fireworks display will occur on August 21, 1999, from 9:30 p.m. until 9:50 p.m. The safety zone covers all waters of Clinton Harbor within a 800 foot radius of the fireworks launching site which will be located in approximate position 41° – 05′25″ N, 072° – 31′25″ W (NAD) 1983. This zone is required to protect the maritime community from the dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 1286 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Clinton Harbor and entry into this zone will be restricted for only 65 minutes on August 21, 1999. Although this regulation prevents traffic from transiting this section of Clinton Harbor, the effect of this regulation will not be significant for several reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this proposal would

have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01–118 to read as follows:

§ 165.T01—118 The Clinton Bluefish Festival Fireworks Display, Clinton Harbor, Clinton, CT.

(a) *Location.* The safety zone includes all waters of Clinton Harbor within a 800 foot radius of the launch site located in approximate position 41°–05′.37″N, 071°–31′25″W (NAD 1983).

(b) *Effective date.* This section is effective on August 21, 1999 from 9:00 p.m. until 10:05 p.m., and the rain date is August 22 at the same times.

(c) *Regulations.* (1) The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

D.P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–20516 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–99–033]

RIN 2115–AA97

Safety Zone Regulation; Columbia River, St. Helens, Oregon, to Port of Benton, Washington

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 300 yard moving safety zone around the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, as this composite vessel transits through U.S. navigable waters from St. Helens, Oregon (Columbia River mile 72.5) to Benton, Washington (Columbia River mile 342) from 5:30 a.m. (PDT) on August 4, 1999 through 11:30 p.m. (PDT) August 10, 1999. This moving safety zone is needed to protect the composite vessel, persons, facilities, and other vessels from the safety hazards inherent to a vessel restricted in maneuverability and transporting Type B claissifed radioactive materials in a river environment. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective form 5:30 a.m. (PDT) on August 4, 1999 through 11:30 p.m. (PDT) August 10, 1999.

ADDRESSES: Documetns as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Group/MSO Portland, Oregon 6767 N. Basin Ave, Portland, Oregon 97217. Normal office hours are between 7:00 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Tom Allan, c/o Captain of the Port, Portland, Oregon 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–9327.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, notice of proposed rulemaking has not been published for this regulation and good

cause exists for making it effective less than 30 days from date of publciaiton in the **Federal Register.** Publishing a NPRM would be contrary to public interest since immediate action is necessary to protect the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, persons, facilities, and other vessels from the safety hazards inherent to a vessel restricted in maneuverability and transporting Type B classified radioactive materials in a river environment. Due to the complex planning and coordination, the event sponsor, Portland General Electric was unable to provide the Coast Guard with notice of the final details until less than 30 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is adopting a temporary moving safety zone regulation for the Trojan Reactor Vessel and Internals Removal Project transport from St. Helens, Oregon to Benton, WA. The zone is needed to protect the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, persons, facilities, and other vessels from the safety hazards inherent to a vessel restricted in maneuverability and transporting Type B classified radioactive materials in a river environment. This moving safety zone will be enforced by representatives of the Captain of the Port Portland, Oregon. The Captain of the Port may be assisted by other federal agencies and local agencies.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedure of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation would encompass less than 300 yards around the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, as this composite vessel transits through U.S. navigable waters from St. Helens, Oregon to Benton, Washington.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would 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. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final 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 final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this section and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of less than one week.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A temporary 0165.T13–023 is added to read as follows:

§ 165.T13–023 Safety Zone Regulation; Columbia River St. Helens, Oregon, to Port of Benton, Washington.

(a) *Location.* The following area is a moving safety zone: All waters within 300 yards of the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, as this composite vessel transits through U.S. navigable waters from St. Helens, Oregon (Columbia River mile 72.5) to Benton, Washington (Columbia River mile 342).

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This section is effective from 5:30 a.m. (PDT) on August 4, 1999 through 11:30 p.m. (PDT) August 10, 1999.

Dated: July 28, 1999.

J.D. Spitzer,

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

[FR Doc. 99–20513 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 20

International Priority Airmail Service

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: On November 25, 1998, the Postal Service published in the **Federal Register** (63 FR 65153) a proposed rule to change rates and conditions of service for International Priority Airmail (IPA). The Postal Service adopted the proposed rule by notice in the **Federal Register** (64 FR 10219) on March 3, 1999, with an effective date of April 4, 1999. The Postal Service is now introducing rates for mail to Canada.

DATES: *Effective Date:* 12:01 a.m., August 10, 1999. Comments on the interim rule must be received on or before September 9, 1999.

ADDRESSES: Written comments should be sent to the Manager, Financial Services, Room 370–IBU, International Business Unit, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Singer, (202) 268–3422.

SUPPLEMENTARY INFORMATION: International Priority Airmail (IPA) is a volume airmail letter service that gives mailers the opportunity to benefit from work-sharing with the Postal Service and to gain improved speed of delivery for presorted mail. On November 25, 1998, by notice in the **Federal Register** (63 FR 65153), the Postal Service sought comment on proposed changes in IPA service. These changes include increasing the minimum sack weight from 10 pounds to 11 pounds; providing country-wide acceptance; instituting volume discounts; providing drop ship rates; and reducing the rates for IPA service.

In response to the request for comment, the Postal Service received one comment. The commenter fully supported the changes proposed by the Postal Service but suggested that the Postal Service include Canada in rate group 2.

IPA service is currently not available to Canada; however, the Postal Service does provide a similar service to Canada—Bulk Letter Service to Canada. The Postal Service was not able to include service to Canada because the costs associated with sending mail to Canada differed from those associated with sending mail to all other countries in rate group 2 and the differences would have resulted in non-compensatory rates. The proposed rule was adopted by notice in the **Federal Register** (64 FR 10219) on March 3, 1999, with an effective date of April 4, 1999.

Due to a change in the cost of sending mail to Canada, the Postal Service is now able to offer IPA service for mail destined for delivery in Canada. However, because the cost for this mail is dissimilar to current rate groups, a separate rate group is established for Canada.

IPA service to Canada will be more flexible than Bulk Letter Service to Canada, which will be eliminated at the end of the current postal fiscal year. This will enable current users of Bulk Letter Service to Canada to transition to IPA at their convenience until September 10, 1999.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), interested parties are invited to submit written data, views, or comments regarding this interim rule to the address above.

The Postal Service is adopting the following interim amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to delete Subchapter 225, Bulk Letter Service (Canada only), effective September 11, 1999, and to immediately incorporate program changes to Subchapter 280, International Priority Airmail Service, as follows:

International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

220 Letters and Letter Packages

* * * * *

225 Bulk Letter Service (Canada Only)

[This subchapter is deleted effective September 11, 1999.]

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280 International Priority Airmail Service

281 Description

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281.3 Minimum Quantity Requirements

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281.32 Presort Mail

The mailer must have a minimum of 11 pounds of presorted LC/AO mail to a single rate group, including Canada, to qualify for the presort rate for that rate group.

Note: Mail that cannot be made up in direct country packages (284.521), in direct country sacks (284.61), or in trays (284.651) does not qualify for the presort rates and is subject to the worldwide nonpresort rates.

* * * * *

282 Postage

282.1 Rates

282.11 General

There are two rate options for International Priority Airmail service: a presort rate option that has five rate groups, and a worldwide nonpresort rate. For both options, there are full service rates for mail deposited at offices other than the drop shipment offices listed in 281.5, and drop ship rates for mail deposited at one of the drop shipment offices. The per-piece rates and per-pound rates are shown in Exhibit 282.11. The per-piece rate of $0.10 or $0.25 applies to each piece regardless of its weight. The per-pound rate applies to the net weight (gross weight minus tare weight of sack) of the mail for the specific rate group. Fractions of a pound are rounded to the next whole pound for postage calculation.

EXHIBIT 282.11

[International priority airmail rates]

Rate group	Piece rate	Pound rate	
		Full service	Drop ship
Canada	$0.25	$3.40	$2.40
1	0.25	5.00	4.00
2	0.10	5.25	4.25
3	0.10	6.50	5.50
4	0.10	7.50	6.50
Worldwide	0.25	7.00	6.00

* * * * *

282.15 Presort Rates

To qualify for the presort Canada or Group 1, 2, 3, or 4 rates (see Exhibit 282.11), a mailing must consist of a minimum of 11 pounds to a specific rate group. This minimum applies to each rate group and not to the entire mailing (see 281.32). Within a rate group, all mail addressed to an individual country must be sorted into direct country packages of 10 or more pieces (or 1 pound or more of mail) (284.521) and/or sacked in direct country sacks of 11 pounds or more (284.61).

Note: There are separate preparation requirements for mail to Canada. See 284.65.

Mail that cannot be made up into direct country packages or direct country sacks must be sent at the worldwide nonpresort rates.

282.16 Separation by Rate Group

The mailer must specify the rate group on the back of Tag 115, International Priority Airmail, with Canada, 1, 2, 3, 4, or WW (Worldwide), and must physically separate the sacks by rate group at the time of mailing.

* * * * *

284 Preparation Requirements for Individual Items

* * * * *

EXHIBIT 284.522

[Add Canada to exhibit as follows:]

Rate group	Country	3-Letter exchange office code	Exchange Office
Canada	Canada	Exhibit 284.65, Canadian Labeling Information.	

* * * * *

284.6 Sacking Requirements

* * * * *

284.612 Direct Country Sack Tags

Direct country sacks must be labeled with Tag 178. The tag is white and specially coded to route the mail to a specific country and airport of destination. The blocks on the tag for date, weight, and dispatch information must be completed by the Postal Service and may not be completed by the mailer. The mailer must complete the ''To'' block showing the destination country. Tag 115, International Priority Airmail, must also be affixed to the direct country sacks. Tag 115 is a ''Day-Glo'' pink tag that identifies the mail to ensure it receives priority handling. The mailer must designate on the back of Tag 115 the applicable rate group, using Canada, 1, 2, 3, 4, or WW (Worldwide).

* * * * *

284.65 Preparation Requirements for Canada

To qualify for the presort rates for Canada, a mailer must have at least 11 pounds of mail for Canada. This includes letter-size, flat-size, and package-size items even though such items are prepared in separate equipment. If the mailing contains less than 11 pounds of mail for Canada, or if the mailer chooses to do so, mail for Canada is included in the worldwide nonpresort rate mail with that for other countries. Worldwide nonpresort mail for Canada is prepared in accordance with 284.63. The preparation requirements of presorted mail to Canada follow.

284.651 Letter-Size Mail and Flat-Size Mail

Letter-size items are prepared in letter trays, either half-size or full-size, depending on volume. Flat-size items are prepared in flat trays. All items must be faced in the same direction, and all trays must be full enough to keep the mail from mixing during transportation. Do not prepare the content of the tray in packages. The mailer must label each tray to show the destination in Canada and the dispatching U.S. international exchange office in the following format:

Line 1: Canadian destination, U.S. exchange office code

Line 2: Contents

Line 3: Mailer, mailer location

Example:

Toronto ON FWD 11430
IPA
ABC Company, New York, NY

In addition, the mailer must complete PS Tag 115, International Priority Airmail. Write ''Canada'' on the reverse and tape the tag to the tray sleeve. All trays must be banded.

284.652 Packages

Items that cannot be prepared in trays because of their size or shape must be placed loose in blue airmail sacks. Use PS Tag 115, International Priority Airmail, and label to either Toronto or Vancouver, as appropriate. Attached a completed PS Tag 178. See 284.612.

EXHIBIT 284.65

[Canadian labeling information]

Origin ZIP Code	Exchange office	U.S. Exchange office code	Canadian destination
270–282, 286–326, 344, 350–397, 399	ATL	30320	Toronto ON FWD.
130–149	BUF	14240	Toronto ON FWD.
700–708, 710–738, 740–799, 885	DFW	75300	Toronto ON FWD.
430–459, 480–497	DTW	48242	Toronto ON FWD.
967–969	HNL	96820	Vancouver BC FWD.
200–249, 254, 268, 283–285, 400–418, 420–427, 476–477	IAD	20101	Toronto ON FWD.
004–005, 010–098, 100–129, 150–199, 250–267	JFK	11430	Toronto ON FWD.
850, 852–853, 855–857, 859–860, 863–865, 889–891, 896, 900–908, 910–928, 930–936	LAX	90009	Vancouver BC FWD.
006–009, 327–334, 340, 347, 349	MIA	33159	Toronto ON FWD.
460–475, 478–479, 498–516, 520–528, 530–567, 570–578, 600–631, 633–641, 644–658, 660–662, 664–681, 683–693, 739, 800–816, 822–831, 840–847, 870–884, 893, 898.	ORD	60666	Toronto ON FWD.
590–599, 821, 832–838, 970–986, 988–999	SEA	98158	Vancouver BC FWD.

EXHIBIT 284.65—Continued

[Canadian labeling information]

Origin ZIP Code	Exchange office	U.S. Exchange office code	Canadian destination
894–895, 897, 937–966	SFO	94128	Vancouver BC FWD.
335–339, 341–342, 346–347	TPA	33630	Toronto ON FWD.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–20555 Filed 8–5–99; 4:40 pm]

BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 498

[HCFA–2054–CN]

RIN 0938–AJ59

Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects a technical error that appeared in the interim final rule with comment period published in the **Federal Register** on July 23, 1999, entitled ''Medicare and Medicaid Programs; Appeal of the Loss of Nurse Aide Training Programs.''

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey Golland, (202) 619–3377.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 99–18802 of July 23, 1999, (64 FR 39934), there was a technical error. The error relates to an omission of a needed change to our hearing regulations and the accompanying preamble discussion. Specifically, the interim final regulation explicitly made appealable determinations of substandard quality of care that lead to a nursing home's loss of its nurse aide training program. What was inadvertently omitted was a needed revision to § 498.3(b)(12) (Initial determinations by HCFA) which excludes a loss of nurse aide training from the list of initial determinations that are appealable. Because this provision is so flatly inconsistent with the rest of the recently published interim final rule, which made this determination appealable, § 498.3(b)(12) needs to be revised as well to make it consistent with the rest of the nurse aide training appeal rule.

The provision in this correction notice is effective as if it had been included in the document published in the **Federal Register** on July 23, 1999.

Correction of Errors

In FR Doc. 99–18802 of July 23, 1999, make the following corrections:

1. On page 39936, column one, a paragraph is added after the second full paragraph to read as follows:

''We are revising § 498.3(b) (Initial determinations by HCFA) by revising paragraph (12) to remove the reference to the loss of the approval for a nurse aide training program as an exception to an initial determination.''

§ 498.3 [Corrected]

2. On page 39937, in column 3, in the regulations text, the amendatory language for item 2 should be revised to read as follows:

''2. In § 498.3, paragraphs (b)(12) and (b)(13) are revised, a new paragraph (b)(15) is added, and paragraph (d)(10)(iii) is revised to read as follows:''

3. On page 39937, in column 3, in § 498.3, paragraph (b)(12) is correctly revised to read as follows:

§ 498.3 Scope and applicability

* * * * *

(b) * * *

(12) With respect to an SNF or NF, a finding of noncompliance that results in the imposition of a remedy specified in § 488.406 of this chapter, except the State monitoring remedy.

* * * * *

(Sections 1866(b) and (h) of the Social Security Act (42 U.S.C. 1395cc(b) and (h)).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 2, 1999.

Kerry Weems,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 99–20402 Filed 8–9–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area

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 Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 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.

The amount of the 1999 TAC of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999)

as 6,760 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 5,760 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific ocean perch in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 11, 1999, (64 FR 37884, July 14, 1999).

NMFS has determined that as of July 24, 1999, 900 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. 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 Pacific ocean perch TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. 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: August 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–20526 Filed 8–5–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9060–01; I.D. 080399C]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-water Species Fishery by Vessels using Trawl Gear 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 species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully utilize the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified to the deep-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time, August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7280

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.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) for the third season, the period July 4, 1999, through September 30, 1999, as 400 metric tons.

The fishery for the deep-water species fishery by vessels using trawl gear in the GOA was closed under § 679.21(d)(7)(i) on July 21, 1999, (64 FR 40293, July 26, 1999).

NMFS has determined that as of July 24, 1999, 180 metric tons remain in the third seasonal apportionment of the Pacific halibut bycatch mortality allowance specified for the GOA trawl deep-water species fishery. Therefore, NMFS is terminating the previous closure and is opening directed fishing for species that comprise the deep-water species fishery that are not otherwise closed to directed fishing in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

All other closures remain in full force and effect. 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 third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified to the deep-water species fishery in the GOA. 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 maximizing groundfish 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 § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–20527 Filed 8–5–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 071699A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area

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 northern rockfish in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time, August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 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.

The amount of the 1999 TAC of northern rockfish in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999

Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 4,150 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 3,650 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The fishery for northern rockfish in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 19, 1999, (64 FR 39090, July 21, 1999).

NMFS has determined that as of July 24, 1999, 700 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. 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 northern rockfish TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. 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: August 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–20528 Filed 8–5–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9017–01; I.D. 011199A]

RIN 0648–AM08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries off Alaska; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the emergency interim rule to implement reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat that was published in the **Federal Register** on January 22, 1999.

DATES: Effective August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650.

SUPPLEMENTARY INFORMATION: An emergency interim rule was published in the **Federal Register** on January 22, 1999 (64 FR 3437), implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. An extension and revision of the emergency interim rule was subsequently published in the **Federal Register** on July 21, 1999 (64 FR 39087).

Need for Correction

In FR Doc. 99–1378, published on January 22, 1999 (64 FR 3437), incomplete seasonal references concerning protective measures for Steller sea lions were published. This document corrects those references.

§ 679.22 [Corrected]

On page 3443, in the third column, in § 679.22, in paragraph (a)(11)(iv)(C)(*2*), in the first, third, and fourth lines, after ''A1 and A2'' insert ''and C'' in both places.

Dated: August 4, 1999.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20533 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–3 PR]

Almonds Grown in California; Salable and Reserve Percentages for the 1999–2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on establishing salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The almond marketing order (order) regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999–2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices.

DATES: Comments must be received by September 9, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable and reserve percentages may be established for almonds handled by handlers during the crop year. This rule would establish salable and reserve percentages for almonds received by handlers during the 1999–2000 crop year which runs from August 1, 1999, through July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on establishing salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999–2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices. This action was recommended by the Board at a meeting on July 12, 1999, by a vote of seven in favor and three opposed. Volume regulation was last implemented for California almonds during the 1994–95 crop year.

Section 981.47 of the order provides authority for the Secretary, based on recommendations by the Board and analysis of other available information, to establish salable and reserve percentages for almonds received by handlers during a crop year. The crop year runs from August 1 through July 31. To aid the Secretary in fixing the salable and reserve percentages, § 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand needs for the year, carryin inventory at the beginning of the year, and the desirable carryout inventory at the end of the crop year. Section 981.66 authorizes the disposition of reserve

almonds to certain outlets such as almond oil, almond butter, and animal feed.

The Board met on May 12, 1999, to review the projected crop estimate and marketing conditions for the 1999–2000 season. The day before the Board's meeting, the California Agricultural Statistics Service (CASS) issued its initial forecast for the 1999 almond crop at 760 million kernelweight pounds. Based on that estimate, the Board recommended salable and reserve percentages of 84.79 percent and 15.21 percent, respectively. The CASS revised its crop estimate upwards to 830 million pounds on July 8, 1999. Based on the updated crop estimate, the Board met on July 12 and revised its recommendation for salable and reserve percentages to 77.64 and 22.36 percent, respectively, again by a seven to three vote. The 830 million pound crop estimate represents a 60 percent increase over 1998–99 production, and is 10 percent larger than the previous record crop of 756 million pounds produced in 1997–98. According to the CASS, although freezing temperatures in early April caused locally variable production losses, average yields are expected to be high due to excellent bloom and good weather during the pollination period. If realized, this will be the largest almond crop on record to date.

A tabulation of the estimates and calculations used by the Board as it considered recommending volume regulation for the 1999–2000 almond crop follows:

MARKETING POLICY ESTIMATES—1999 CROP

[Kernelweight basis]

	Million Pounds	Percent
Estimated production:		
1. 1999 Production	830.0	
2. Loss and Exempt—4.0% (Resulting from the removal of inedible kernels by handlers and losses during manufacturing)	33.2	
3. Marketable Production	796.8	
Estimated Trade Demand:		
4. Domestic	190.0	
5. Export	459.0	
6. Total	649.0	
Inventory Adjustment:		
7. Carryin 8/1/99	100.4	
8. Desirable Carryover 7/31/00 (available for early season shipments during 2000–2001)	70.0	
9. Adjustment (No. 8 minus no. 7)	−30.4	
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9) (quantity of almonds from the marketable production necessary to meet trade demand needs)	618.6	
11. Reserve (No. 3 minus no. 10)	178.2	
12. Salable % (Item 10 divided by item 3 × 100)		77.64
13. Reserve % (100% minus item 12)		22.36

As specified in the marketing order, the Board considered the factors set forth in the preceding table in its deliberations. The available data indicates a supply for the 1999–2000 crop year of 827.2 million kernelweight pounds (marketable production adjusted for carryin and desired carryout), which will exceed estimated trade demand by 178.2 million kernelweight pounds. The estimated trade demand of 649 million kernelweight pounds represents 110 percent of the estimated shipments for the current crop year, and exceeds the record high shipments of 1997–98 by 36 million kernelweight pounds, or 6 percent.

In addition to the factors included in the table, the Board considered additional information such as the weather-related variation in production from year to year, significant increases in recent almond plantings, and increased yields. These are the primary factors contributing to the projected oversupply situation. The Board also considered recent price fluctuations in its deliberations. In 1997, grower prices averaged $1.55 per pound; during the 1998–99 season, prices have reportedly dropped significantly. This has been attributed to larger than anticipated 1998 supplies, speculation within the marketplace, and the anticipated large 1999–2000 crop.

The proposed salable percentage of 77.64 percent would make 618.6 million kernelweight pounds of the marketable production available to handlers for sale to any market. Combining this figure with the carryin inventory from the 1998–99 crop year (100.4 million kernelweight pounds) and deducting the desired carryout inventory at the end of the 1999–2000 crop year (70.0 million kernelweight pounds) would result in a supply of 649 million kernelweight pounds. This supply would allow the industry to meet its trade demand needs of 649 million kernelweight pounds and allow for market growth. The remaining 22.36 percent, or 178.2 million kernelweight pounds, of the marketable production would be withheld by handlers to meet their reserve obligation.

All or part of the reserve almonds could be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1999–2000 trade demand needs or desirable carryover for use during the 2000–2001 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 2000, pursuant to § 989.48 of the order. Alternatively, all or a portion of the reserve almonds could be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal outlets for almonds.

As previously stated, 3 of the 10 Board members opposed the recommendation for volume regulation at both meetings where the percentages were recommended, with those in opposition commenting that this year's projected ''large'' crop would ultimately

be considered average in size, and that next year's crop would be even larger due to new plantings, or expressing a preference for seeing the industry concentrating on building demand rather than imposing a reserve. Observers at the Board meetings who were opposed to volume regulation commented that the industry should deal with increasing supplies by building demand through its promotional activities, rather than implementing reserves. Others suggested that it is more appropriate to manage market risks at the individual handler level through marketing tools such as forward contracting, rather than controlling supplies at the industry level.

After much discussion, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The long term goal of the almond industry is to increase almond consumption and demand, and the supporting Board members believe this can be best achieved in the presence of stable and orderly marketing conditions. These members believe that use of the reserve provisions of the order as a supply management tool, in conjunction with other marketing tools available in the order, can assist in accomplishing the industry's goals.

The ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) issued by the Department in 1982 specify that 110 percent of recent years' sales be made available to primary markets each season for marketing orders using volume regulation. This rule would provide an estimated 719 million kernelweight pounds of California almonds for unrestricted sales (1999 crop salable production plus carryin from the 1998 crop) to meet increasing domestic and world almond consumption demand. This amount exceeds the estimated delivered sales for 1998–99 California almonds by about 22 percent. Thus, the Guidelines' goals are met.

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

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

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service (NASS), and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

Pursuant to § 981.47 of the order, this rule would establish salable and reserve percentages applicable to California almonds received by handlers during the 1999–2000 crop year. The volume regulation percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets such as almond oil, almond butter, and animal feed. Volume regulation is warranted this season because the marketable production estimate of 796.8 million kernelweight pounds combined with the 1998–99 carryin inventory of 100.4 million kernelweight pounds results in an available supply of about 897 million kernelweight pounds. After subtracting the desirable carryout of 70 million kernelweight pounds, the remaining supply of 827 million kernelweight pounds would be 178 million kernelweight pounds higher than the trade demand of 649 million kernelweight pounds. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices, and should ultimately improve grower returns.

Regarding the impact of this rule on affected entities, the salable and reserve percentages would apply uniformly to all handlers in the industry, regardless of size. There were some concerns expressed at the Board's meeting regarding the impact of a reserve on small handlers, specifically, that small handlers who do not have adequate storage facilities may have to rent such facilities to hold their reserve almonds. These are costs they would not otherwise incur. However, the costs of holding almonds in reserve would be borne proportionately throughout the industry. All handlers would be required to store reserve almonds in varying quantities, depending upon the total amount of almonds handled. Those with existing facilities would also incur storage costs, although those costs may be fixed costs spread over a longer period of time. In any event, costs associated with storing reserve product are expected to be more than offset by the benefits of orderly marketing. In addition, the order was amended in 1996 to allow handlers to transfer their reserve obligation to other handlers. Thus, handlers with no storage facilities would now have the option to transfer their reserve withholding obligation to other handlers who could store the reserve almonds.

Furthermore, almond production, like that of many agricultural commodities, can vary significantly from season to season due to a variety of factors. This in turn can contribute to wide fluctuations in prices. For example, California almond production over the past 10 years has varied from a low of 366.7 million kernelweight pounds in 1995 to a high of 756.5 million kernelweight pounds in 1997. Grower prices for the past 10 years, as reported by the NASS, have varied from a low of $.93 per pound in 1990 to $2.48 per pound in 1995.

In addition, returns to growers have reportedly decreased by as much as $1.00 per pound since the beginning of the 1998–99 crop year. It is believed that a larger than anticipated 1998 crop, market speculation, and an estimated record 1999 crop have contributed to the depressed grower prices. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers and consumers. While the benefits of this rulemaking may be difficult to quantify, any stabilizing effects of volume regulation would impact both small and large handlers positively by helping them maintain orderly marketing conditions through supply management.

Regarding alternatives, the Board considered not recommending volume regulation this season. As previously mentioned, three Board members and some observers at the Board's meetings

expressed their view that the industry should continue to focus on increasing the demand for almonds rather than implementing a reserve. It was expressed that market risk can be managed by individual handlers through marketing tools such as forward contracting, rather than managing supply at the industry level. However, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The Board also deliberated the merits of allocating the reserve to noncompetitive outlets or ultimately releasing part or all of the reserve as salable. The Board decided to delay this decision until next spring when additional information, including an estimate of the 2000–2001 crop, is available. However, handlers may sell reserve almonds to authorized reserve outlets at any time pursuant to an agency agreement as authorized in § 981.67 of the order, and receive credit against their withholding obligation.

This rule may impose some additional reporting, recordkeeping and other compliance requirements on both small and large handlers. Handlers who choose to divert their reserve almonds to authorized outlets would have to file certain reports with the Board. This requirement is the same as that applied during the 1991–92 and 1994–95 crop years when almond reserves were last established. Most of the industry's handlers handled almonds during those years and are thus familiar with the required reports. These reports have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend and participate in Board deliberations. Like all Board meetings, the May 12 and July 12, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Reserve Committee met on April 1, May 11, and July 12, 1999, and presented its recommendations to the Board at meetings on May 12 and July 12, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposal. Thirty days is deemed appropriate because any salable and reserve percentages established based on this proposal should be implemented as soon as possible. The beginning of the 1999-2000 crop year is August 1. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. In Part 981, § 981.240 is added to read as follows:

§ 981.240 Salable and reserve percentages for almonds during the crop year beginning on August 1, 1999.

The salable and reserve percentages during the crop year beginning on August 1, 1999, shall be 77.64 percent and 22.36 percent, respectively.

Dated: July 29, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–20499 Filed 8–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 98–096–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 12, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–096–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–096–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as ''U.S. Pullorum-Typhoid Clean'' before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart C, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis*, require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified ''U.S.S. Enteritidis Monitored'' under the Plan or have met equivalent requirements for *S. enteritidis* control, in accordance with 9 CFR 145.23(d), under official supervision.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan. In this document, we are proposing to amend the regulations to:

1. Establish two new classifications: ''U.S. Avian Influenza Clean'' for primary and multiplier egg- and meat-type breeding chicken flocks and ''U.S. Mycoplasma Meleagridis Clean State, Turkeys.''
2. Identify the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA) as official tests for avian influenza in the Plan.
3. Allow the use of Food and Drug Administration (FDA) approved feed sanitizing agents or salmonella control products in certain chicken and turkey breeding flocks.
4. Eliminate references to *Salmonella typhimurium* throughout the regulations.
5. Add the colony lift assay for group D salmonella and eliminate the referral of all group D salmonella to APHIS' National Veterinary Services Laboratories (NVSL) in the laboratory protocol for isolation and identification of salmonella in breeding turkeys.
6. Make several changes to the duties of the General Conference Committee of the NPIP.
7. Establish technical protocol for culturing chick meconium.
8. Provide for the use of either chick papers or meconium as testing samples in the ''U.S. Salmonella Monitored'' program of meat-type breeding chickens.
9. Amend the procedure for determining the status of a flock reacting to tests for *Mycoplasma gallisepticum*, *M. synoviae*, and *M. meleagridis*.
10. Provide for the participation of emu, rhea, and cassowary breeding flocks in the provisions of the Plan.
11. Remove exceptions to the requirements for pullorum typhoid clean States that pertain to turkey hatcheries or supply flocks.
12. Add or amend several definitions.

These proposed amendments are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from July 15 to 17, 1998.

Participants in the 1998 National Plan Conferences represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. The proposed amendments are discussed in greater detail below.

U.S. Avian Influenza Clean

We are proposing to add a new § 145.23(h) to establish a new ''U.S. Avian Influenza Clean'' classification for egg-type chickens and meat-type chickens. This proposed program is intended to be the basis from which the breeding-hatchery industry could conduct a program for the prevention and control of avian influenza. The program would enable flockowners to determine the presence of avian influenza in breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it would qualify for this proposed classification when the Official State Agency determined that they have met the qualifying requirements.

For primary breeding flocks, a minimum of 30 birds would have to have been tested negative for antibodies to avian influenza when the flock is more than 4 months of age to qualify for the classification. After qualifying, a sample of at least 30 birds from the flock would have to be tested negative at intervals of 90 days to retain the classification. As noted above, this routine serological surveillance would allow flockowners to monitor their flocks for the presence of avian influenza. Under the proposed classification criteria, flockowners could test samples of fewer than 30 birds at any one time if all pens were equally represented and a total of 30 birds was tested within each 90-day period. This would provide an alternative for flockowners who may find it easier to spread the necessary testing out over a period of time rather than testing all the birds at the same time.

The qualifying requirements for multiplier breeding flocks would be the same as for primary breeding flocks with one exception: Instead of having to test a sample of 30 birds every 90 days to retain the classification, the testing interval for multiplier breeding flocks would be 30 birds every 180 days. This longer testing interval for multiplier breeding flocks is used throughout the Plan in other disease classifications and is appropriate because there are many more multiplier breeding flocks than primary breeding flocks—the ratio is roughly 5½ to 1. With the much larger number of multiplier breeding flocks, it works out that multiplier breeding flocks would actually be tested nearly three times more often during the course of a year than the primary breeding flocks in a given State. Given that the multiplier breeding flocks are held in comparatively closer proximity and looser biosecurity conditions, relative to the primary breeding flocks, the health status of one multiplier flock is considered a reliable indicator of the health status of the surrounding multiplier flocks. This is especially true with regard to avian influenza, given the fact that the level of avian influenza infection in the flocks in an area where the disease is present would be very high, if not 100 percent. Given these considerations, we believe that this longer interval for testing multiplier breeding flocks would provide an appropriate level of surveillance for avian influeza.

U.S. M. Meleagridis Clean State, Turkeys

We are proposing to add a new § 145.44(e) to establish a new ''U.S. M. Meleagridis Clean State'' classification for turkeys. This proposed new classification would be given to qualifying States in which all turkey flocks have been shown to be free of *Mycoplasma meleagridis* and in which no *M. meleagridis* has been detected in

turkey flocks for at least the previous 12 months.

For a State to qualify for this proposed new classification, all turkey breeding flocks in production in the State would have to qualify as ''U.S. M. Meleagridis Clean'' or its equivalent, and all turkey hatcheries within the State would have to handle only products that are classified as ''U.S. M. Meleagridis Clean'' or its equivalent. Additionally, all shipments of products from turkey breeding flocks other than those classified as ''U.S. M. Meleagridis Clean'' or its equivalent into the State would be prohibited.

All persons performing poultry disease diagnostic services within the State would be required to report to the Official State Agency within 48 hours the source of all turkey specimens that are identified as being infected with *M. meleagridis;* such reports would have to be followed by an investigation by the Official State Agency to determine the origin of the infection. Any turkey breeding flock found to be infected with *M. meleagridis* would have to be quarantined until marketed under supervision of the Official State Agency.

If a State no longer met any of the above conditions, or if repeated outbreaks of *M. meleagridis* occurred in turkey breeding flocks, or if an infection spread from the premises on which it originated, APHIS would have grounds to revoke its determination that the State was entitled to the classification. Such action would not be taken until APHIS had conducted a thorough investigation and the Official State Agency had been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

Tests for Avian Influenza

We are proposing to amend § 145.14, ''Blood testing,'' to designate the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA) as the official Plan blood tests for avian influenza. These tests would have to be conducted using antigens or test kits approved by the Department and the Official State Agency and would have to be performed in accordance with the recommendations and instructions provided by the test's producer or manufacturer. These proposed requirements would ensure that the tests are routinely conducted in a consistent and accurate manner. We would allow the use of either test because some laboratories find the ELISA a less labor-intensive test to perform, but the AGID is recognized by the Office of International Epizootics as the international standard test for avian influenza. We would require, however, that any ELISA positive tests would have to be check tested using the AGID, since the AGID test is specifically required by many of the countries to which the United States poultry industry exports its products.

The instructions for conducting the AGID and ELISA tests would be set out in a new § 147.9. Paragraph (a) of the proposed new section would provide detailed instructions regarding the use of AGID test as a screening test for avian influenza, including lists of the materials and reagents needed for the test and directions for preparing the avian influenza AGID agar, performing the AGID test, and interpreting test results. Paragraph (b) of the proposed new section would explain that the ELISA may also be used as a screening test for avian influenza and would require the use of federally licensed ELISA kits in accordance with the manufacturer's instructions. The AGID testing protocols, which are set out in § 147.9 in the rule portion of this document, were developed by NVSL and have been reviewed by avian influenza technical experts. Because proposed § 147.9 contains a footnote, we would also renumber the remaining footnotes in part 147 to accommodate its inclusion.

Feed and Salmonella Control Products

The definitions of *baby poultry* in § 145.1, *chicks* in §§ 145.21 and 145.31, and *poults* in § 145.41 all refer to newly hatched birds that have not been fed or watered. The limitation on feeding and watering can be traced back to the standard practices for shipping mail order chicks and poults that were developed when it was impractical to include food or water in the chick or poult boxes. Now, however, gels are available that can easily be placed in chick and poult boxes. The use of these gels has become widespread in the industry and has virtually eliminated primary mortality in baby poultry due to dehydration. Therefore, we are proposing to amend the definitions of *baby poultry*, *chicks*, and *poults* to remove the words ''that have not been fed or watered'' in order for the regulations in part 145 to reflect actual poultry industry practice.

We do believe, however, that it is important to ensure that the gels or other nutrients provided to the baby poultry in participating flocks and hatcheries do not expose the chicks or poults to any of the diseases addressed by Plan programs. Accordingly, we are proposing to add a paragraph to each of the subparts in part 145 to inform Plan participants that any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in Plan disease classifications, which are listed in § 145.10. This paragraph would be added to § 145.6, ''Specific provisions for participating hatcheries,'' in subpart A and to the ''Participation'' sections (i.e., §§ 145.21, 145.31, 145.41, 145.51, and 145.61) of the other five subparts.

We are also proposing to amend §§ 145.23(d), 145.33(h), and 145.43(f) to provide for the use of FDA-approved salmonella control products on finished feed as an additional measure for reducing salmonella in breeding flocks. The Plan's provisions currently provide for the use of feed with no animal protein or require feed containing animal protein to meet specified requirements. Allowing salmonella control products that have been approved by the FDA to be used in poultry feed would provide flockowners with an alternative means of reducing the likelihood of salmonella being introduced into their breeding flocks through feed.

Addition of Emus, Rheas, and Cassowaries

We are proposing to amend parts 145 and 147 to provide for the participation of emu, rhea, and cassowary breeding flocks in the provisions of the Plan. The proposed addition to the Plan of provisions for emu, rhea, and cassowary breeding flocks was voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference and follows the addition in 1998 of provisions for the participation of ostrich breeding flocks. Adding provisions to the Plan for emu, rhea, and cassowary breeding flocks would make it possible for the owners of those flocks to voluntarily participate in the Plan's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases. To integrate emus, rheas, and cassowaries into the provisions of the Plan, we are proposing to amend several sections of the regulations.

First, we would add emus, rheas, and cassowaries to the definition of *poultry* in § 145.1 to ensure that the general provisions of the regulations would apply, where applicable, to emus, rheas, and cassowaries as well as to the types of poultry already covered by the Plan. With the proposed addition of emus, rheas, and cassowaries, the definition of *poultry* would read: ''Domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, and cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the

primary purpose of producing eggs or meat.''

Under § 145.3(c), ''Participation,'' a Plan participant in any State must participate with all of his poultry hatching egg supply flocks and hatchery operations in that State. To demonstrate compliance with that requirement, the Plan participant must submit a report of each of his breeding flocks within the State to the Official State Agency before the birds in a breeding flock reach 24 weeks of age or, in the case of ostriches, before the birds reach 20 months of age. Under the provisions of this proposed rule, those participation requirements would also apply to emu, rhea, and cassowary hatching egg supply flocks and hatchery operations. Because emus, rheas, and cassowaries mature at a rate comparable to that of ostriches, a participant would have to report his or her emu, rhea, or cassowary breeding flocks to the Official State Agency before the birds in the flock reach 20 months of age, as is the case for ostriches, rather than 24 weeks of age as required for other poultry.

We would amend the introductory text of § 145.14 by adding a provision regarding the blood testing of emus, rheas, and cassowaries. That text currently states that poultry must be more than 4 months of age when blood tested for an official classification, except for turkeys, which may be blood tested at 12 weeks of age; game birds, which may be blood tested when more than 4 months of age or upon reaching sexual maturity, whichever comes first; and ostriches, which must be more than 12 months of age.

In providing for the blood testing of emus, rheas, and cassowaries, we are also proposing to amend the exception regarding ostriches. Specifically, we would provide that ostrich, emu, rhea, and cassowary candidates would be blood tested when at least 12 months of age or upon reaching sexual maturity, depending upon the species and at the discretion of the Official State Agency. (As noted in the previous paragraph, ostriches currently must be ''more than 12 months of age'' when blood tested.) We would provide for blood testing to occur when the birds are at least 12 months of age or upon reaching sexual maturity because these four species will not reach sexual maturity at the same age, although approximately a year after hatching is an appropriate general time frame. The immature birds are kept in a juvenile rearing facility for about a year after hatching, so it would not be necessary to test them for an official classification until such time as they were ready to be integrated into a breeding flock.

The special provisions for emu, rhea, and cassowary breeding flocks would be added to subpart F (§§ 145.61 through 145.63), which currently pertains only to ostriches. To include emus, rheas, and cassowaries in subpart F, we would add the words ''emu, rhea, and cassowary'' after the word ''ostrich'' in the following places:

The title of the subpart. As amended, the title would read ''Special Provisions for Ostrich, Emu, Rhea, and Cassowary Breeding Flocks.''

The introductory text of § 145.62. Emus, rheas, and cassowaries would be subject to the section's requirement that participating flocks, and the eggs and chicks produced from them, must comply with the applicable general provisions of subpart A and the special provisions of subpart F.

Paragraph (a) of § 145.62. Emus, rheas, and cassowaries would lose their identity under Plan terminology—that is, they would not be considered U.S. Pullorum-Typhoid Clean poultry—if they were not maintained under the conditions prescribed in § 145.5(a). Under § 145.5(a), poultry equipment, poultry houses, and the land in their immediate vicinity must be kept in sanitary condition, and the participating flock, its eggs, and all equipment used in connection with the flock must be kept separated from nonparticipating flocks. The sanitation and segregation described in § 145.5(a) are important factors in maintaining the health of flocks, which is why we would require that those conditions be met in order for started poultry to retain its identity under Plan terminology.

Paragraph (b) of § 145.62. The hatching eggs produced by emu, rhea, and cassowary primary breeding flocks would have to be fumigated or otherwise sanitized; that paragraph also refers the reader to § 147.22, which contains procedures for the sanitation of hatching eggs. This proposed requirement for the sanitation of hatching eggs would serve to help prevent the transmission of egg-disseminated diseases that could be spread by unsanitized eggs.

Paragraph (a) of § 145.63. Emu, rhea, and cassowary flocks would be subject to the same qualifying criteria for the U.S. Pullorum-Typhoid Clean classification as are ostrich flocks. Emu, rhea, and cassowary flocks seeking the U.S. Pullorum Typhoid Clean classification would have to demonstrate their freedom from pullorum and typhoid to the Official State Agency through annual blood testing or a bacteriological monitoring program.

The regulations in § 147.45 regarding official delegates to Plan conferences refer to the programs prescribed in subparts B, C, D, and E of part 145. Similarly, the regulations in § 147.46 refer to four committees within the Plan (egg-type chickens, meat-type chickens, turkeys, and waterfowl, exhibition poultry, and game birds) that have been established to consider possible changes to the Plan's provisions. In order to fully integrate ostrich, emu, rhea, and cassowary flocks into the Plan and provide for the full participation of their flockowners, we are proposing to amend § 147.45 so that it refers to subpart F and § 147.46 so that it refers to a committee for ostriches, emus, rheas, and cassowaries.

Mycoplasma Status of Flocks

In § 147.6, ''Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis,'' paragraph (a)(14) currently provides that a flock will be considered infected with mycoplasma based on the results of an in vivo bio-assay, polymerase chain reaction (PCR) based procedures, or cultural examinations. That paragraph does, however, provide that if only the bio-assay is positive, additional in vivo bio-assays, PCR-based procedures, or cultural examinations may be conducted by the Official State Agency before a final determination on the flock's mycoplasma status is made. In this document, we are proposing to amend that paragraph to provide the same opportunity for additional testing in instances when only the results of the PCR-based procedure are positive. This proposed change would allow Official State Agencies to corroborate the findings of the PCR-based procedures through the use of seroconversion or culture isolation of the mycoplasma organism.

Colony Lift Assay

We are proposing to amend § 147.11(b), which contains bacteriological examination procedures for use with turkey specimens and environmental specimens from turkey flocks, to provide for the use of the colony lift assay as a means for laboratories to pick group D salmonella colonies from selective and non-selective agar culture plates. Group D salmonella colonies are difficult to detect on agar culture plates, so allowing the use of a group D colony lift assay would increase the sensitivity of the culture procedure by eliminating the randomness of selecting colonies, as the

randomness could lead to group D cultures being missed on the agar plate.

We are also proposing to amend the turkey culturing provisions in § 147.11(b) to remove the requirement that all salmonella group D cultures be referred to NVSL for serotyping. Authorized laboratories are capable of conducting the serotyping themselves, so there is no need for the cultures to be referred to NVSL. These proposed changes would make the turkey culturing requirements consistent with the corresponding requirements for egg-type and meat-type chickens.

Chick Meconium Testing Procedure

We are proposing to add a new § 147.18 to provide a testing procedure for chick meconium. This procedure, which is set out in the rule portion of this document, would be added because the ''U.S. Salmonella Monitored'' classification requires the testing of chick meconium. Because the testing is required by the Plan, it is necessary to provide an official procedure for the collection of samples and laboratory testing. The testing protocol was developed by scientists from the Primary Poultry Breeders Veterinarian Roundtable who have expertise in salmonella isolation and identification.

General Conference Committee

Section 147.43 explains the membership, duties, and functions of the Plan's General Conference Committee (GCC), which is the body that provides advice and assistance to the Department in its administration of the NPIP. At the 1998 National Plan Conference, the voting delegates approved additional duties that the Plan membership wishes the GCC to undertake. Those additional duties are:

- Advise and make recommendations to the Department to the relative importance of maintaining, at all times, adequate Department funding for the NPIP to enable the Senior Coordinator and staff to fully administer the provisions of the Plan.
- Advise and make yearly recommendations to the Department with respect to the NPIP budget well in advance of the start of the budgetary process.
- Serve as a direct liaison between the NPIP and the United States Animal Health Association.
- Advise and make recommendations to the Department regarding NPIP involvement or representation at poultry industry functions and activities as deemed necessary or advisable for the purposes of the NPIP.

We are, therefore, proposing to amend § 147.43 to reflect these additional advisory and liaison duties.

Definitions

In § 145.1, we are proposing to amend the definition of *authorized laboratory* and to add a definition of *independent flock*. The definition of *authorized laboratory* currently reads: ''A laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in this part.'' We are proposing to add to the end of that definition the following: ''The Service's review will include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. A satisfactory review will result in the authorized laboratory being recognized by the Service as a nationally approved laboratory qualified to perform the blood testing and bacteriological examinations provided for in this part.'' Authorized laboratories have developed into a significant component of the Plan, and the types of tests that are conducted by authorized laboratories on behalf of the NPIP have become more varied in recent years as the Plan has become involved in the certification of essentially all of the live poultry and poultry meat products produced in the United States. The delegates at the Plan's 1998 National Plan Conference voted to add the specific review elements described above to the definition of *authorized laboratory* in order to provide for uniformity and consistency among the Plan's 125 authorized laboratories.

There are three categories of participation in the NPIP: Hatcheries, independent flocks, and dealers. Hatcheries and dealers are already addressed in § 145.1, but there is not currently a definition of the term ''independent flock.'' Therefore, we are proposing to add the following definition of *independent flock* to § 145.1: ''A flock that produces hatching eggs and that has no ownership affiliation with a specific hatchery.''

We are also proposing to amend § 145.61, which provides definitions for the specific provisions of subpart F. That section does not currently include a definition for the term ''chick,'' which is used several times in that subpart. Therefore, we are also proposing to amend § 145.61 to add a definition of *chick*, which would read ''Newly hatched ostriches, emus, rheas, or cassowaries.'' Adding this definition, which is consistent with the definition provided for the same term in the other four subparts of part 145, would clarify what is intended when the term ''chick'' is used in subpart F.

Miscellaneous

Prior to 1970, the provisions of the regulations that apply to turkeys were not part of the NPIP, but were instead part of the National Turkey Improvement Plan (NTIP). Because turkeys were not included in the NPIP, the NPIP regulations specifically excluded turkey hatcheries, hatchery supply flocks, and breeding flocks from the criteria used to determine the pullorum-typhoid status of meat-type and egg-type chicken breeding flocks and waterfowl, exhibition poultry, and game bird breeding flocks. When the NTIP was integrated into the NPIP, those exemptions should have been removed from the regulations but were not, which has resulted in a discrepancy between the U.S. Pullorum-Typhoid Clean classification criteria for turkeys and the same criteria for chickens and waterfowl, exhibition poultry, and game birds. A similar discrepancy exists between the U.S. Pullorum-Typhoid Clean classification criteria for egg- and meat-type chicken supply flocks and the requirements for waterfowl, exhibition poultry, and game bird supply flocks. In order to eliminate those discrepancies, we are proposing to amend §§ 145.23, 145.33, and 145.53 to eliminate the incorrect exemptions discussed in this paragraph.

We are also proposing to amend § 145.1 to remove the definition of *S. typhimurium infection or typhimurium* because the disease is not referred to, nor is the term itself used, in part 145. Further, because the Plan does not include any programs for the prevention or control of *Salmonella typhimurium*, the instructions provided in § 147.4, ''The tube agglutination test for S. typhimurium,'' are unnecessary. Therefore, we are proposing to remove § 147.4 from the regulations.

Executive Order 12866 and Regulatory Flexibility Act

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

The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 1998 National Plan Conference. The proposed changes would amend the Plan and its auxiliary

provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

The Plan serves as a ''seal of approval'' for egg and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. In all cases, the changes proposed in this document have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability. Because participation in the Plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

Assuming they wished to voluntarily remain in the program, the cost to comply with the proposed protocols, tests, classification schemes, etc. would be borne primarily by the approximately 12 primary breeders in NPIP. However, the net economic effect of the proposed changes on those breeders is expected to be positive over the long term. This is because the breeders' compliance costs should be more than offset by the expected benefits resulting from compliance, i.e., increased U.S. poultry exports. U.S. exports are expected to increase because, by serving to reduce disease risk, the proposed protocols and procedures should make domestic poultry more marketable in foreign markets. That the net economic effect of the proposed changes on the poultry industry is expected to be positive is evidenced by the fact the industry participants of NPIP themselves initiated the proposed changes.

The precise dollar amount of the costs that the breeders would incur to comply with the proposed changes is not available. However, those costs are not expected to be significant, especially since many of the proposed changes are no more than technical corrections to the provisions of the Plan or are intended to bring those provisions into conformity with current developments in the scientific community. In 1997, the dollar value of U.S. exports of meat and edible offal of poultry (fresh, chilled, and frozen) totaled $2.2 billion (World Trade Atlas, September 1998 edition). Even if exports increased by only 1 percent as a result of the proposed changes, the benefit would be $22 million.

In any event, the breeder participants in NPIP always have the option of withdrawing from the Plan, in which case they would not be subject to the proposed changes. As indicated above, industry participation in the NPIP is voluntary.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of its rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The changes proposed in this document are not expected to have a significant economic effect on a substantial number of small entities, if for no other reason than few, if any, of those entities most affected by the proposed changes—i.e., NPIP-participating breeders and producers—are small in size. The U.S. Small Business Administration's small entity threshold for almost all standard industrial classification categories for poultry and egg producers is annual revenues of $0.5 million or less. We believe that most, if not all, breeders and producers participating in the Plan generate annual revenues in excess $0.5 million.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–096–1. Please send a copy of your comments to: (1) Docket No. 98–096–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The NPIP is a voluntary Federal-State-industry mechanism for controlling certain poultry diseases and for improving poultry breeding flocks and products through disease control techniques. APHIS is responsible for administering the Plan, the primary purpose of which is to protect the health of the U.S. poultry population.

This proposed rule would, among other things, amend the provisions of the Plan to provide for the participation of emu, rhea, and cassowary breeding flocks in the Plan. This would make it possible for the owners of these breeding flocks to voluntarily participate in the NPIP's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases. Including emu, rhea, and cassowary in the provisions of the Plan would enhance our ability to protect the United States against certain poultry diseases.

Our proposed rule would also establish a new ''U.S. M. Meleagridis Clean State'' classification for turkeys that would be awarded to qualifying States in which all turkey flocks have been shown to be free of this disease. Achieving this classification would enhance the value of turkey products in national and international trade, and would provide flock owners with added incentive to eliminate this disease from their flocks.

Expanding the Plan to include emu, rhea, and cassowary breeding flocks and establishing a ''U.S. M. Meleagridis Clean State'' classification for turkeys will necessitate the use of two information collection activities that will (1) alert us to the disease status of turkeys in any given State and (2) alert us when any given owner of emu, rhea, or cassowary flocks opts to enroll these flocks in the Plan. We are asking OMB to approve our use of these information collection activities, which are a necessary element of the Plan's

programs to prevent the spread of contagious poultry diseases within the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Flock owners, breeders, hatchery operators, and State veterinary medical officers.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 2 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 145.1 would be amended as follows:

a. The definition of *authorized laboratory* would be revised to read as set forth below.

b. The definition of *baby poultry* would be revised to read as set forth below.

c. A new definition of *independent flock* would be added, in alphabetical order, to read as set forth below.

d. The definition of *poultry* would be amended by adding the words ''emus, rheas, cassowaries,'' immediately after the word ''ostriches,''.

e. The definition of *S. typhimurium infection or typhimurium* would be removed.

§ 145.1 Definitions.

* * * * *

Authorized laboratory. A laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in this part. The Service's review will include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. A satisfactory review will result in the authorized laboratory being recognized by the Service as a nationally approved laboratory qualified to perform the blood testing and bacteriological examinations provided for in this part.

Baby poultry. Newly hatched poultry (chicks, poults, ducklings, goslings, keets, etc.).

* * * * *

Independent flock. A flock that produces hatching eggs and that has no ownership affiliation with a specific hatchery.

* * * * *

§ 145.3 [Amended]

3. In § 145.3, the introductory text of paragraph (c) would be amended by adding the words ''emus, rheas, cassowaries,'' immediately after the word ''ostriches,''.

4. In § 145.6, paragraph (e) would be redesignated as paragraph (f) and a new paragraph (e) would be added to read as follows:

§ 145.6 Specific provisions for participating hatcheries.

* * * * *

(e) Any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

* * * * *

5. In § 145.10, new paragraphs (r) and (s) would be added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(r) *U.S. Avian Influenza Clean.* (See §§ 145.23(h) and 145.33(l).)

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Figure 19

(s) *U.S. M. Meleagridis Clean State, Turkeys.* (See § 145.44(e).)

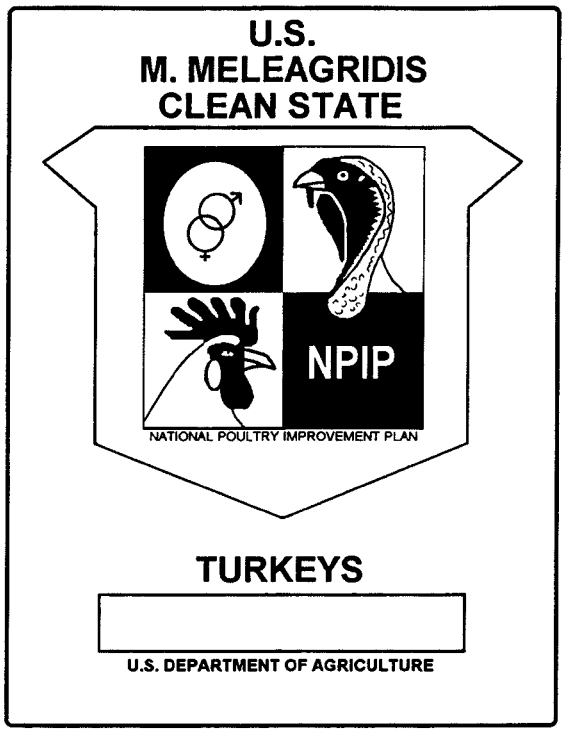

Figure 20

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6. Section 145.14 would be amended as follows:

a. In the introductory text at the end of the first sentence, the words ''and ostriches blood tested under subpart F must be more than 12 months of age'' would be removed and the words ''and ostrich, emu, rhea, and cassowary candidates must be blood tested when at least 12 months of age or upon reaching sexual maturity, depending upon the species and at the discretion of the Official State Agency'' would be added in their place.

b. A new paragraph (d) would be added to read as follows:

§ 145.14 Blood testing.

* * * * *

(d) *For avian influenza.* The official blood tests for avian influenza are the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA).

(1) The AGID test must be conducted on all ELISA-positive samples. Positive tests by AGID or ELISA must be further tested by Federal Reference Laboratories. Final judgment may be based upon further sampling or culture results.

(2) The tests must be conducted using antigens or test kits approved by the Department or the Official State Agency and must be performed in accordance with the recommendations of the producer or manufacturer.

* * * * *

7. In § 145.21, the definition of *chicks* would be revised to read as follows:

§ 145.21 Definitions.

* * * * *

Chicks. Newly hatched chickens.

* * * * *

8. In § 145.22, a new paragraph (e) would be added to read as follows:

§ 145.22 Participation.

* * * * *

(e) Any nutritive material provided to chicks must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

9. Section 145.23 would be amended as follows:

a. In paragraph (b)(3)(i), the words '', except turkey hatcheries,'' would be removed.

b. In paragraph (b)(3)(ii), the words '', except turkey flocks,'' would be removed.

c. In paragraph (b)(3)(viii), the words '', other than turkey flocks,'' would be removed.

d. In paragraph (b)(4), the words '', other than turkey, waterfowl, exhibition poultry, and game bird supply flocks,'' would be removed.

e. Paragraph (d)(1)(ii)(B) would be revised.

f. A new paragraph (h) would be added to read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Mash feed may contain no animal protein other than an APPI animal protein product supplement manufactured in pellet form and crumbled: *Provided*, that mash feed may contain non-pelleted APPI animal protein product supplements if the finished feed is treated with a salmonella control product approved by the Food and Drug Administration.

* * * * *

(h) *U.S. Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for this classification when the Official State Agency

determines that they have met one of the following requirements:

(1) It is a primary breeding flock in which minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period.

(2) It is a multiplier breeding flock in which minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 180-day period.

* * * * *

10. In § 145.31, the definition of *chicks* would be revised to read as follows:

§ 145.31 Definitions.

* * * * *

Chicks. Newly hatched chickens.

* * * * *

11. In § 145.32, a new paragraph (d) would be added to read as follows:

§ 145.32 Participation.

* * * * *

(d) Any nutritive material provided to chicks must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

12. Section 145.33 would be amended as follows:

a. In paragraph (b)(3)(i), the words ‘‘, except turkey hatcheries,’’ would be removed.

b. In paragraph (b)(3)(ii), the words ‘‘, except turkey flocks,’’ would be removed.

c. In paragraph (b)(3)(viii), the words ‘‘, other than turkey flocks,’’ would be removed.

d. In paragraph (b)(4), the words ‘‘, other than turkey, waterfowl, exhibition poultry, and game bird supply flocks,’’ would be removed.

e. Paragraph (h)(1)(ii)(B) would be revised.

f. Paragraph (i)(1)(vi) would be amended by removing the words ‘‘meconium and’’ and adding the words ‘‘meconium or’’ in their place.

g. A new paragraph (l) would be added to read as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) Mash feed may contain no animal protein other than an APPI/NMFS animal protein product supplement manufactured in pellet form and crumbled: *Provided*, that mash feed may contain non-pelleted APPI/NMFS animal protein product supplements if the finished feed is treated with a salmonella control product approved by the Food and Drug Administration.

* * * * *

(l) *U.S. Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in primary breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for this classification when the Official State Agency determines that they have met one of the following requirements:

(1) It is a primary breeding flock in which a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period.

(2) It is a multiplier breeding flock in which minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 180-day period.

* * * * *

13. In § 145.41, the definition of *poults* would be revised to read as follows:

§ 145.41 Definitions.

* * * * *

Poults. Newly hatched turkeys.

14. In § 145.42, a new paragraph (d) would be added to read as follows:

§ 145.42 Participation.

* * * * *

(d) Any nutritive material provided to poults must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

15. In § 145.43, paragraphs (f)(3)(ii) and (f)(3)(iii) would be revised to read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(f) * * *

(3) * * *

(ii) Initial feed for poults to 2 weeks of age must be manufactured in pellet form. Initial feed may contain no animal protein other than animal protein products produced under the Animal Protein Products Industry (APPI) Salmonella Education/Reduction Program or the Fishmeal Inspection Program of the National Marine Fisheries Service (NMFS). Finished feed must be treated with a Food and Drug Administration (FDA) approved salmonella control product at FDA-approved levels.

(iii) Succeeding feed for turkeys 2 weeks or older must be either:

(A) Pelleted feed that meets the requirements of paragraph (f)(3)(ii) of this section; or

(B) Mash feed that contains no animal protein products; or

(C) Mash feed that contains an APPI/NMFS animal protein products supplement that has been manufactured in pellet form and crumbled. Finished feed must be treated with an FDA-approved salmonella control product at FDA-approved levels.

* * * * *

16. In § 145.44, a new paragraph (e) would be added to read as follows:

§ 145.44 Terminology and classification; States.

* * * * *

(e) *U.S. M. Meleagridis Clean State, Turkeys.* (1) A State will be declared a U.S. M. Meleagridis Clean State, Turkeys, if the Service determines that:

(i) No *Mycoplasma meleagridis* is known to exist nor to have existed in turkey breeding flocks in production within the State during the preceding 12 months;

(ii) All turkey breeding flocks in production are tested and classified as U.S. M. Meleagridis Clean or have met equivalent requirements for *M. meleagridis* control under official supervision;

(iii) All turkey hatcheries within the State only handle products that are classified as U.S. M. Meleagridis Clean

or have met equivalent requirements for *M. meleagridis* control under official supervision;

(iv) All shipments of products from turkey breeding flocks other than those classified as U.S. M. Meleagridis Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all turkey specimens that have been identified as being infected with *M. meleagridis*;

(vi) All reports of *M. meleagridis* infection in turkeys are promptly followed by an investigation by the Official State Agency to determine the origin of the infection; and

(vii) All turkey breeding flocks found to be infected with *M. meleagridis* are quarantined until marketed under supervision of the Official State Agency.

(2) The Service may revoke the State's classification as a U.S. M. Meleagridis Clean State, Turkeys, if any of the conditions described in paragraph (d)(1) of this section are discontinued. The Service will not revoke the State's classification as a U.S. M. Meleagridis Clean State, Turkeys, until it has conducted an investigation and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

* * * * *

17. In § 145.52, a new paragraph (d) would be added to read as follows:

§ 145.52 Participation.

* * * * *

(d) Any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

§ 145.53 [Amended]

18. In § 145.53, paragraph (b) would be amended as follows:

a. In paragraph (b)(3)(i), the words '', except turkey hatcheries,'' would be removed.

b. In paragraph (b)(3)(ii) the words '', except turkey flocks,'' would be removed.

c. In paragraph (b)(3)(viii), the words '', other than turkey flocks,'' would be removed.

d. In paragraph (b)(4), the words '', other than turkey flocks,'' would be removed.

19. The subpart heading for subpart F would be revised to read as follows:

Subpart F—Special Provisions for Ostrich, Emu, Rhea, and Cassowary Breeding Flocks and Products

20. In 145.61, a definition of *chicks* would be added, in alphabetical order, to read as follows:

§ 145.61 Definitions.

* * * * *

Chicks. Newly hatched ostriches, emus, rheas, or cassowaries.

* * * * *

21. In § 145.62, the introductory text would be amended by adding the words ''emus, rheas, and cassowaries,'' immediately after the word ''ostriches,'' and a new paragraph (c) would be added to read as follows:

§ 145.62 Participation.

* * * * *

(c) Any nutritive material provided to chicks must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

§ 145.63 [Amended]

22. In § 145.63, paragraph (a)(2) would be amended by adding the words '', emus, rheas, or cassowaries'' immediately after the word ''ostriches''.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

23. The authority citation for part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

§ 147.4 [Removed and reserved]

24. Section 147.4 would be removed and reserved.

25. In § 147.6, paragraph (a)(14) would be revised to read as follows:

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

* * * * *

(a) * * *

(14) If the in vivo bio-assay, PCR-based procedures, or culture procedures are positive, the flock will be considered infected. However, the following considerations may apply:

(i) In PCR-positive flocks for which there are other negative mycoplasma test results, the flock's mycoplasma status should be confirmed through either seroconversion or culture isolation of the organism, or through both methods, before final determination of the flock's status is made.

(ii) In flocks for which only the bio-assay is positive, additional in vivo bio-assay, PCR-based procedures, or cultural examinations may be conducted by the Official State Agency before final determination of the flock's status is made.

* * * * *

§§ 147.11, 147.12, 147.14, 147.15, 147.16 [Footnotes redesignated]

26. In §§ 147.11, 147.12, 147.14, 147.15, 147.16, footnotes 6 through 22 and their references would be redesignated as footnotes 7 through 23, respectively.

27. A new § 147.9 would be added to read as follows:

§ 147.9 Standard test procedures for avian influenza.

(a) The agar gel immunodiffusion (AGID) test should be considered the basic screening test for antibodies to Type A influenza viruses. The AGID test is used to detect circulating antibodies to Type A influenza group-specific antigens, namely the ribonucleoprotein (RNP) and matrix (M) proteins. Therefore, this test will detect antibodies to all influenza A viruses, regardless of subtype. The AGID test can also be used as a group-specific test to identify isolates as Type A influenza viruses. The method used is similar to that described by Beard.[6] The basis for the AGID test is the concurrent migration of antigen and antibodies toward each other through an agar gel matrix. When the antigen and specific antibodies come in contact, they combine to form a precipitate that is trapped in the gel matrix and produces a visible line. The precipitin line forms where the concentration of antigen and antibodies is optimum. Differences in the relative concentration of the antigen or antibodies will shift the location of the line towards the well with the lowest concentration or result in the absence of a precipitin line. Electrolyte concentration, pH, temperature, and other variables also affect precipitate formation.

(1) *Materials needed.*

(i) Refrigerator (4 °C).

(ii) Freezer (−20 °C).

(iii) Incubator or airtight container for room temperature (~25 °C) incubations.

(iv) Autoclave.

(v) Hot plate/stirrer and magnetic stir bar (optional).

(vi) Vacuum pump.

(vii) Microscope illuminator or other appropriate light source for viewing results.

[6] Beard, C.W. Demonstration of type-specific influenza antibody in mammalian and avian sera by immunodifussion Bull. Wld. Hlth. Orig. 42:779–785. 1970.

(viii) Immunodiffusion template cutter, seven-well pattern (a center well surrounded by six evenly spaced wells). Wells are 5.3 mm in diameter and 2.4 mm apart.

(ix) Top loading balance (capable of measuring 0.1 gm differences).

(x) Pipetting device capable of delivering 50 µl portions.

(xi) Common laboratory supplies and glassware—Erlenmeyer flasks, graduated cylinders, pipettes, 100 × 15 mm or 60 × 15 mm petri dishes, flexible vacuum tubing, side-arm flask (500 mL or larger), and a 12-or 14-gauge blunt-ended cannula.

(2) *Reagents needed*.

(i) Phosphate buffered saline (PBS), 0.01M, pH 7.2 (NVSL media #30054 or equivalent).

(ii) Agarose (Type II Medium grade, Sigma Chemical Co. Cat.# A–6877 or equivalent).

(iii) Avian influenza AGID antigen and positive control antiserum approved by the Department and the Official State Agency.

(iv) Strong positive, weak positive, and negative control antisera approved by the Department and the Official State Agency (negative control antisera optional).

(3) *Preparing the avian influenza AGID agar*.

(i) Weigh 9 gm of agarose and 80 gm of NaCl and add to 1 liter of PBS (0.01 M, pH 7.2) in a 2 liter Erlenmeyer flask.

(ii) To mix the agar, either:

(A) Autoclave the mixture for 10 minutes and mix the contents by swirling after removing from the autoclave to ensure a homogeneous mixture of ingredients; or

(B) Dissolve the mixture by bringing to a boil on a hot plate using a magnetic stir bar to mix the contents in the flask while heating. After boiling, allow the agar to cool at room temperature (~25 °C) for 10 to 15 minutes before dispensing into petri plates.

(iii) Agar can be dispensed into small quantities (daily working volumes) and stored in airtight containers at 4 °C for several weeks, and melted and dispensed into plates as needed.

Note: Do not use agar if microbial contamination or precipitate is observed.

(4) *Performing the AGID*. (i) *Detection of serum antibodies*.

(A) Dispense 15 to 17 mL of melted agar into a 100 x 15 mm petri plate or 5 to 6 mL agar into a 60 x 15 mm petri plate using a 25 mL pipette. The agar thickness should be approximately 2.8 mm.

(B) Allow plates to cool in a relatively dust-free environment with the lids off to permit the escape of water vapor. The lids should be left off for at least 15 minutes, but not longer than 30 minutes, as electrolyte concentration of the agar may change due to evaporation and adversely affect formation of precipitin lines.

Note: Plates should be used within 24 hours after they are poured.

(C) Record the sample identification, reagent lot numbers, test date, and identification of personnel performing and reading the test.

(D) Using the template, cut the agar after it has hardened. Up to seven template patterns can be cut in a 100 x 15 mm plate and two patterns can be cut in a 60 x 15 mm plate.

(E) Remove the agar plugs by aspiration with a 12-to 14-gauge cannula connected to a side arm flask with a piece of silicone or rubber tubing that is connected to a vacuum pump with tubing. Adjust the vacuum so that the agar surrounding the wells is not disturbed when removing the plugs.

(F) To prepare the wells, either:

(*1*) Place 50 µl of avian influenza AGID antigen in the center well using a micropipette with an attached pipette tip. Place 50 µl AI AGID positive control antiserum in each of two opposite wells, and add 50 µl per well of test sera in the four remaining wells. This arrangement provides a positive control line on one side of the test serum, thus providing for the development of lines of identity (see figure 1); or

(*2*) Place 50 µl AI AGID positive control antiserum in each of three alternate peripheral wells, and add 50 µl per well of test sera in the three remaining wells. This arrangement provides a positive control line on each side of the test serum, thus providing for the development of lines of identity on both sides of each test serum (see figure 2).

Note: A pattern can be included with positive, weak positive, and negative reference serum in the test sera wells to aid in the interpretation of results (see figure 3).

(G) Cover each plate after filling all wells and allow the plates to incubate for 24 hours at room temperature (~25 °C) in a closed chamber to prevent evaporation. Humidity should be provided by placing a damp paper towel in the incubation chamber. Note: Temperature changes during migration may lead to artifacts.

(ii) *Interpretation of test results*.

(A) Remove the lid and examine reactions from above by placing the plate(s) over a black background, and illuminate the plate with a light source directed at an angle from below. A microscope illuminator works well and allows for varying intensities of light and positions.

(B) The type of reaction will vary with the concentration of antibody in the sample being tested. The positive control serum line is the basis for reading the test. If the line is not distinct, the test is not valid and must be repeated. The following types of reactions are observed (see figure 3):

(*1*) *Negative reaction*. The control lines continue into the test sample well without bending or with a slight bend away from the antigen well and toward the positive control serum well.

(*2*) *Positive reaction*. The control lines join with, and form a continuous line (line of identity) with, the line between the test serum and antigen. The location of the line will depend on the concentration of antibodies in the test serum. Weakly positive samples may not produce a complete line between the antigen and test serum but may only cause the tip or end of the control line to bend inward toward the test well.

(3) *Non-specific lines*. These lines occasionally are observed between the antigen and test serum well. The control lines will pass through the non-specific line and continue on into the test serum well. The non-specific line does not form a continuous line with positive control lines.

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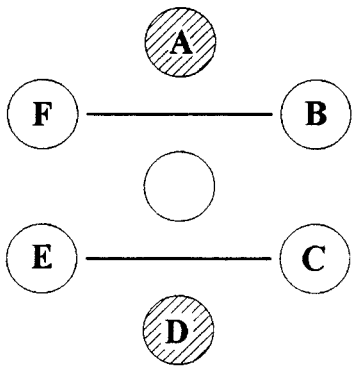

Figure 1. Immunodiffusion test that uses AI AGID antigen in the center well; AI-positive control serum in wells A and D; and AI-negative test serum in wells B, C, E, and F.

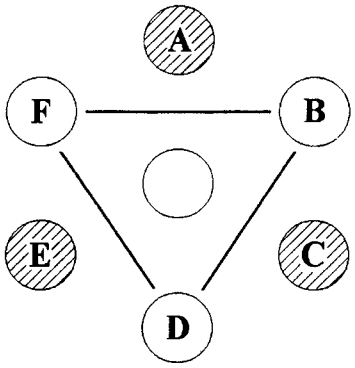

Figure 2. Immunodiffusion test that has AI AGID antigen in the center well; AI-positive control serum in wells A, C, and E; and AI-negative test serum in wells B, D, and F.

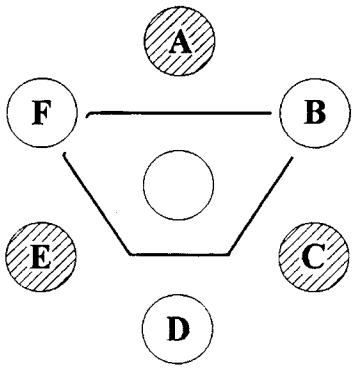

Figure 3. Immunodiffusion test that has AI AGID antigen in the center well; AI-positive control serum in wells A, C, and E; AI-negative test serum in well B; AI-positive test serum in well D; and weak positive test serum in well F.

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(b) The enzyme-linked immunosorbent assay (ELISA) may be used as a screening test for avian influenza. Use only federally licensed ELISA kits and follow the manufacturer's instructions. All ELISA-positive serum samples must be confirmed with the AGID test conducted in accordance with paragraph (a) of this section.

§ 147.11 [Amended]

28. Section 147.11 would be amended as follows:

a. In paragraph (b)(2)(iii) the words ''A group D colony lift assay may be utilized to signal the presence of the hard-to-detect group D salmonella colonies on agar culture plates.'' would be added after the final sentence.

b. In paragraph (b)(2)(v), the words ''at the National Veterinary Services Laboratory'' would be removed.

29. A new § 147.18 would be added to read as follows:

§ 147.18 Chick meconium testing procedure for salmonella.

Procedure:

(a) Record the date, source, and flock destination on the ''Meconium Worksheet.''

(b) Shake each plastic bag of meconium until a uniform consistency is achieved.

(c) Transfer a 25 gm sample of meconium to a sterile container. Add 225 mL of a preenrichment broth to each sample (this is a 1:10 dilution), mix gently, and incubate at 37 °C for 18–24 hours.

(d) Enrich the sample with selective enrichment broth for 24 hours at 42 °C.

(e) Streak the enriched sample onto brilliant green-Novobiocin (BGN) agar and xylose-lysine-tergitol 4 (XLT4) agar.

(f) Incubate both plates at 35 °C for 24 hours and process suspect salmonella colonies according to § 147.11.

30. In § 147.43, paragraphs (d)(1) through (d)(4) would be redesignated as paragraphs (d)(3) through (d)(6), respectively, and new paragraphs (d)(1), (d)(2), (d)(7), and (d)(8) would be added to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(d) * * *

(1) Advise and make recommendations to the Department on the relative importance of maintaining, at all times, adequate departmental funding for the NPIP to enable the Senior Coordinator and staff to fully administer the provisions of the Plan.

(2) Advise and make yearly recommendations to the Department with respect to the NPIP budget well in advance of the start of the budgetary process.

* * * * *

(7) Serve as a direct liaison between the National Poultry Improvement Plan and the United States Animal Health Association.

(8) Advise and make recommendations to the Department regarding NPIP involvement or representation at poultry industry functions and activities as deemed necessary or advisable for the purposes of the NPIP.

§ 147.45 [Amended]

31. Section 147.45 would be amended by removing the words ''and E'' and adding the words ''E, and F'' in their place.

32. In § 145.46, the introductory text of paragraph (a) would be amended by removing the word ''four'' and adding the word ''five'' in its place, and a new paragraph (a)(5) would be added to read as follows:

§ 147.46 Committee consideration of proposed changes.

(a) * * *

(5) Ostriches, emus, rheas, and cassowaries.

* * * * *

Done in Washington, DC, this 4th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20540 Filed 8–9–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–280–AD]

Airworthiness Directives; Raytheon (Beech) Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A airplanes. This proposal would require replacement of the fuel drain tube assembly in the aft fuselage with a new, modified assembly. This proposal is prompted by a report of chafing of the fuel tube assembly against the elevator control cable due to inadequate clearance between the components. The actions specified by the proposed AD are intended to prevent chafing of the fuel drain tube assembly, which could result in fuel leakage from the fuel drain tube assembly and consequent risk of a fire.

DATES: Comments must be received by September 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Scott West, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–280–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of chafing on the fuel drain tube assembly in the aft fuselage on a Raytheon (Beech) Model 400A airplane. Further investigation revealed that the elevator control cable contacted the fuel drain tube assembly due to inadequate clearance between the components. This condition, if not corrected, could result in fuel leakage from the fuel drain tube assembly and consequent risk of a fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB.28–3076, dated October, 1997, which describes procedures for replacement of the existing fuel drain tube assembly with a new, modified assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 92 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed action, and that the average labor rate is $60 per work hour. Required parts would cost approximately $21 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $36,072, or $501 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranties are available for parts associated with accomplishing the replacement action required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company (Formerly Beech): Docket 98–NM–280–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–92 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel drain tube assembly, which could result in fuel leakage from the fuel drain tube assembly and consequent risk of fire, accomplish the following:

Replacement

(a) At the next scheduled inspection, but no later than 200 flight hours after the effective date of this AD, replace the existing aft fuselage fuel drain tube assembly, part number (P/N) 128–920151–1, with a new, modified tube assembly, P/N 128–920237–1, in accordance with Raytheon Aircraft Service Bulletin SB.28–3076, dated October, 1997.

Spares

(b) As of the effective date of this AD, no person shall install a fuel drain tube assembly, P/N 128–920151–1, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on August 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20502 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–71–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 and MD–11F series airplanes. This proposal would require a one-time inspection to determine if metallic transitions are installed on wire harnesses of the tail tank fuel transfer pumps, and to determine if damaged wires are present; and repair, if necessary. This proposal also would require repetitive inspections of the repaired area; and a permanent modification of the wire harnesses if metallic transitions are not installed, which would terminate the repetitive inspections. This proposal is prompted by a report of chafing and damage to a wire harness of a tail tank fuel transfer pump. The actions specified by the proposed AD are intended to prevent wire chafing and damage, which could result in an inoperative fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak.

DATES: Comments must be received by September 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Roscoe Van Dyke, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–71–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of chafing and damage to a wire harness of a tail tank fuel transfer pump on a McDonnell Douglas Model MD–11 series airplane. The cause of such chafing and damage has been attributed to wires chafing against a combination of wire mesh tape and braided shielding, which were installed during production as a substitute for metallic transitions at the wiring harness breakouts. Chafing or damage of a wire harness, if not corrected, could result in an inoperative fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, which describes procedures for a one-time visual inspection to determine if metallic transitions are installed on the wire harnesses of the tail tank fuel transfer pumps, and to determine if damaged wires are present; repair, if necessary; and repetitive inspections of the repaired area. The FAA also has reviewed and approved McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999, which describes procedures for a permanent modification of the wire harnesses if metallic transitions are not installed. Accomplishment of the permanent modification would eliminate the need for the repetitive inspections in service bulletin MD11–28A101. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, recommends accomplishing the visual inspection within 15 days (after the release of the service bulletin), the FAA has determined that a compliance time of 30 days would be appropriate. In developing an appropriate compliance time for the

proposed visual inspection of this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the time necessary to perform the inspection (less than five work hours), and reports from the manufacturer, which indicate that all affected airplanes have been inspected. In light of all of these factors, the FAA finds a 30-day compliance time for initiating the proposed visual inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should note that the procedures described in condition 2 of McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, permit flight for 15 days before installation of a temporary repair, if metallic transitions are not installed on wire harnesses of the tail tank fuel transfer pumps. This proposed AD would require accomplishment of a temporary repair, prior to further flight. The FAA has determined that, because of the safety implications and consequences associated with chafing and damage of wires, any subject wire harness that is found to not have metallic transitions installed must be repaired prior to further flight.

Operators should also note that, although McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999, recommends accomplishing the permanent modification at the earliest practical maintenance period (after the release of the service bulletin), the FAA has determined that a compliance time of 5 years would be appropriate. In developing an appropriate compliance time for the proposed modification of this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification (less than nine hours). In light of all of these factors, the FAA finds a 5-year compliance time for initiating the proposed modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 14 airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $300, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 99–NM–71–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and damage which could result in an inoperative tail tank fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak, accomplish the following:

Inspection and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the wire harnesses of the tail tank fuel transfer pumps to determine if metallic transitions are installed, and to determine if damaged wires are present, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998.

(1) If all metallic transitions are installed, no further action is required by this AD.

(2) If metallic transitions are not installed, accomplish the following:

(i) Prior to further flight, accomplish the temporary repair in accordance with condition 2 of the service bulletin;

(ii) Repeat the visual inspection thereafter at intervals not to exceed 2 years; and

(iii) Within 5 years after the effective date of this AD, permanently modify the wire harnesses in accordance with McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 2: Modification of the wire harnesses accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD11–28–102,

dated January 29, 1999, is considered acceptable for compliance with the modification required by paragraph (a)(2)(iii) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on August 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20503 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–323–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires repetitive inspections of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. That AD also provides for an optional terminating modification for the repetitive inspections. This action would require a new terminating modification for the repetitive inspections. For certain airplanes, this action would require new repetitive inspections to detect discrepancies of the front spar web. This proposal is prompted by a report indicating that the optional terminating modification in the existing AD does not address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent fatigue cracks in the front spar web, which could lead to fuel leakage into the air-conditioning distribution bay and/or depressurization of the cabin, and to prevent fuel fumes in the cabin of the airplane.

DATES: Comments must be received by September 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–323–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–323–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–323–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 21, 1989, the FAA issued AD 90–02–16, amendment 39–6452 (55 FR 602, January 8, 1980), applicable to certain Boeing Model 727 series airplanes, to require inspection of the front spar web of the center section of the wings, and repair, if necessary. That action was prompted by reports of cracks in the front spar web. The requirements of that AD are intended to detect and correct such cracking, which could lead to fuel leakage and/or depressurization of the cabin.

Actions Since Issuance of Previous Rule

Since issuance of AD 90–02–16, the FAA has received a report indicating that modification procedures specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; and Revision 2, dated September 16, 1993; do not adequately address airplanes equipped with internal fuel tanks in the center section of the wings. Specifically, the service bulletin does not include procedures for application of the secondary fuel seal on the forward side of the front spar and on the fillet seals on the aft side of the front spar. The service bulletin also describes procedures for the application of sealant Boeing material specification (BMS) 5–95 inside the fuel tank instead of the fuel-proof sealant BMS 5–26, and the installation of non-fluid tight fasteners instead of fluid tight fasteners.

Boeing Service Bulletin 727–57–0177, dated December 22, 1988, was referenced in AD 90–02–16 as the appropriate source of service information for accomplishment of the required modification and close visual and high frequency eddy current (HFEC) inspections. Revisions 1 and 2 of that service bulletin were approved by the FAA as alternative methods of compliance for accomplishment of those actions.

In light of this information, the FAA has determined that the optional modification specified in AD 90–02–16 does not adequately preclude fuel leakage into the air-conditioning distribution bay, which could result in fuel fumes in the cabin of the airplane.

In addition, the FAA finds that the subject service bulletin does not contain procedures for accomplishing an HFEC inspection as an option to the close visual inspection, as required by paragraph A. of AD 90–02–16. The actual procedures used to accomplish that HFEC inspection and the effectiveness of those procedures are unknown to the FAA. The FAA has determined that performing an HFEC inspection in accordance with an unknown procedure does not ensure that cracks will be detected in a timely manner. Therefore, the FAA has determined that all affected airplanes must accomplish repetitive detailed visual inspections to ensure that cracks are detected in a timely manner.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996, which describes procedures for repetitive detailed visual inspections to detect cracks of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. The service bulletin also describes procedures for modification of the front spar web between the upper and lower seals of the center section of the wings, which would eliminate the need for the repetitive inspections. For certain airplanes, the service bulletin describes procedures for repetitive visual inspections of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier. Accomplishment of the actions specified in the service bulletin are intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–02–16, amendment 39–6452 (55 FR 602, January 8, 1980), to continue to require repetitive detailed visual inspections of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. The proposed AD also would require modification of the subject front spar web, which would constitute terminating action for the repetitive inspections. For certain airplanes, the proposed AD would require repetitive visual inspections of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier. The actions would be required to be accomplished in accordance with the service bulletin described previously; except as discussed below.

The FAA has determined that, for airplanes equipped with integral fuel tanks in the center section of the wings, the repairs and modifications specified in Figure 2 and Figure 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; and Revision 2, dated September 16, 1993; do not describe procedures for installation of a fuel proof sealant in these tanks, which could lead to identified unsafe condition of this AD. The procedures specified in the original version, Revision 1, and Revision 2 of the service bulletin are acceptable for airplanes without integral fuel tanks in the center section of the wings. However, the FAA finds that Revision 3 of the subject service bulletin does provide procedures for installation of a fuel proof sealant for integral fuel tanks.

Other Relevant Rulemaking

The FAA has previously issued AD 94–05–04, amendment 39–8842 (59 FR 13442, March 22, 1994), which requires incorporation of certain structural modification on certain Boeing Model 747 series airplanes. Accomplishment of certain actions required by this proposed AD would constitute terminating action for the requirements specified in paragraph (a) of AD 94–05–04 with respect to the modification specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1998. This service bulletin is one of many service bulletins referenced in Boeing Document D6–54860, Revision G, Appendix A.3, dated March 5, 1993. All other service bulletins referenced in that document still apply.

Cost Impact

There are approximately 1,524 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,098 airplanes of U.S. registry would be affected by this proposed AD.

The detailed visual inspection that is currently required by AD 90–02–16, and retained in this AD, takes approximately 3 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 detailed visual inspection on U.S. operators is estimated to be $197,640, or $180 per airplane, per inspection cycle.

The modification that is proposed in this new AD action would take approximately 360 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,430 per airplane. Based on these figures, the cost impact of the proposed modification required by this AD on U.S. operators is estimated to be $25,286,940, or $23,030 per airplane.

For certain airplanes, the visual inspection that is proposed in this new AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification required by this AD on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6452 (55 FR 602, January 8, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–323–AD. Supersedes AD 90–02–16, Amendment 39–6452.

Applicability: Model 727 series airplanes, as listed in Boeing Service Bulletin 727–57–0177, dated December 22, 1988; 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 (g)(1) 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 fatigue cracks of the front spar web of the center section of the wings, which could lead to fuel leakage and/or depressurization of the cabin, or to prevent fuel fumes in the cabin of the airplane, accomplish the following:

Repetitive Detailed Visual Inspections

(a) For areas on which the front spar web between the upper and lower seals of the center section of the wings has not been repaired or modified in accordance with Figure 2 or 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; or Revision 2, dated September 16, 1993: Prior to the accumulation of 40,000 total flight cycles, or with the next 2,300 flight cycles after February 12, 1990 (effective date of AD 90–02–16, amendment 39–6452), whichever occurs later, unless accomplished with the last 700 flight cycles, perform a detailed visual inspection to detect cracks in the front spar web, in accordance with Figure 1 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; or Revision 3, dated February 15, 1996. Repeat the detailed visual inspection thereafter at intervals not to exceed 3,000 flight cycles, until accomplishment of the requirements specified in either paragraph (b) or (c) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Accomplishment of the high frequency eddy current (HFEC) inspection required by AD 90–02–16, is considered acceptable for compliance with the initial detailed visual inspection required by paragraph (a) of this AD.

Repair of Cracks

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the repair action constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for that repaired area.

(1) For airplanes equipped with integral fuel tanks in the center section of the wings: Repair in accordance with Figure 2 of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Repair in accordance with Figure 2 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988, Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; or Revision 3, dated February 15, 1996.

Note 4: Where there are differences between the referenced service bulletins and this AD, the AD prevails.

Modification

(c) Except as provided by paragraph (d) of this AD, prior to the accumulation of 60,000 total flight cycles, or within 48 months after the effective date of this AD, whichever occurs later, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(1) For airplanes equipped with integral fuel tanks in the center section of the wings: Modify the front spar web, between the upper and lower seals, of the center section of the wings, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Modify the front spar web, between the upper and lower seals, of the center section of the wings, in accordance with Boeing Service Bulletin 727–57–0177, dated December 22, 1988, Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; or Revision 3, dated February 15, 1996.

Repetitive Visual Inspections and Repair/Modification of the Front Spar Web

(d) For areas on which the front spar web between the upper and lower seals of the center section of the wings has been repaired or modified in accordance with Figure 2 or 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; or Revision 2, dated September 16, 1993: Accomplish the actions required by either paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes not equipped with integral fuel tanks in the center section of the wings: No further action is required by this AD for those areas repaired or modified.

(2) For airplanes equipped with integral fuel tanks in the center section of the wings: Accomplish the actions required by both paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Within 500 flight cycles after the effective date of this AD, perform a detailed visual inspection of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier; in accordance with Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight cycles, until accomplishment of the actions required by paragraph (d)(2)(ii) of this AD.

(ii) Prior to the accumulation of 14,000 flight cycles, or within 96 months after the effective date of this AD, whichever occurs later, repair/modify the front spar web in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(i) of this AD for that repaired/modified area.

Follow-On Corrective Action

(e) During any inspection required by paragraph (d)(2)(i) of this AD, if any fuel leakage or penetration in the secondary fuel barrier is detected, or if any secondary fuel barrier is verified as not being installed, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(i) of this AD for that repaired area.

Terminating Action for AD 94–05–04

(f) Accomplishment of the actions required by paragraph (b), (c), (d)(2)(ii), or (e) of this AD constitutes terminating action for the requirements specified in paragraph (a) of AD 94–05–04, amendment 39–8842 (59 FR 13442

dated March 22, 1994), with respect to the modification specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1988. This service bulletin is one of many service bulletins referenced in Boeing Document D6–54860, Revision G, Appendix A.3, dated March 5, 1993. All other service bulletins referenced in that document still apply.

Alternative Method of Compliance

(g)(1) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g)(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Alternative methods of compliance, approved previously in accordance with AD 90–02–16, amendment 39–6452, are approved as alternative methods of compliance with this AD. For airplanes equipped with integral fuel tank in the center section of the wings: Alternative methods of compliance, approved previously in accordance with AD 90–02–15, are NOT approved as alternative methods of compliance with this AD.

Special Flight Permits

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

Issued in Renton, Washington, on August 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20504 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 28979; Notice No. 97–13]

RIN 2120–AD46

Airport Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document announces the reopening of the comment period for a specific issue addressed in the Airport Security notice of proposed rulemaking (NPRM), published in the **Federal Register** on August 1, 1997 (62 FR 41760). That document proposed to amend the existing airport security rules by revising certain applicability provisions, definitions, and terms; reorganizing the rules into subparts containing related requirements; and incorporating some requirements already implemented in airport security programs. The comment period is being reopened to provide another opportunity for the public to submit additional comments on the compliance programs proposed in the NPRM.

DATES: Comments must be received on or before September 24, 1999.

ADDRESSES: Comments on the proposed rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915–G, Docket No. 28979, 800 Independence Ave., SW, Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be examined in Room 915–G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Ann M. Zipser, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire on proposed § 107.103(a)(2). Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking final action. Comments received on the section specified above will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 29879.'' The postcard will be date-stamped and mailed to the commenter. Internet users may reach the FAA's webpage at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs to access recently published rulemaking documents.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661).

Background

The FAA proposed to amend the existing 14 CFR parts 107 and 139 to update the overall regulatory structure for airport security. On August 1, 1997, the NPRM, Airport Security (part 107), was published in the **Federal Register** for public comment. The original comment period closed on December 1, 1997.

On April 21, 1998, the FAA announced the reopening of the comment period and two additional public meetings on the NPRM (63 FR 19691). The second comment period closed on June 26, 1998.

The NPRM proposed, among other things, to require that airport operators have a compliance program to ensure that persons with access to certain areas of the airport comply with the rules governing those areas. Section 107.103(a)(2) was proposed in Notice 97–13 as follows:

Section 107.103 Content

(a) Except as otherwise approved by the Administrator, each airport regularly serving an air carrier, required to conduct screening under § 108.101(a)(1) or § 129.25(b)(1) of this chapter, shall include in the security program a description of the following—

* * * * *

(2) Security compliance program that specifies procedures the airport operator will implement to ensure persons with authorized unescorted access to critical security areas and restricted operations areas comply with § 107.9 and § 107.11(a) and (b) of this part, including revocation of unescorted access authority of persons that fail to comply with security requirements.

The FAA received a number of comments on this proposal, many of them not supportive. Some commenters interpret the proposal to mean that the airport operator would be required to enforce Federal regulations, and impose fines under the Federal statute. This is not what was intended. The FAA

intends that the airport operator would have a specific program to ensure that persons for whom they are responsible carry out the requirements in parts 107 and the relevant security program.

Further, the NPRM did not specify a range of penalties that could be imposed, although the NRPM did address revocation of unescorted access authority. Often, effective programs use progressive disciplinary actions that include such corrective measures as mandated retraining, counseling, and suspension or revocation of unescorted access authority.

Since the comment period closed, the FAA has become aware that there is increased concern regarding employee compliance with requirements governing unescorted access to secured areas. Accordingly, the FAA is reopening the comment period for this section to allow for additional comments on the need for compliance programs and how they might best be structured to promote compliance.

Issued in Washington, DC on August 4, 1999.

Quinten Johnson,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–20522 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 28978; Notice No. 97–12]

RIN 2120–AD45

Aircraft Operator Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document announces the reopening of the comment period for a specific issue addressed in the Aircraft Operator Security notice of proposed rulemaking (NPRM), published in the **Federal Register** on August 1, 1997 (62 FR 41730). That document proposed to amend the existing airplane operator security rules, by revising certain applicability provisions, definitions, and terms; reorganizing the rules into subparts containing related requirements; and incorporating some requirements already implemented in air carrier approved security programs. The comment period is being reopened to provide another opportunity for the public to submit additional comments on the compliance program proposed in the NPRM.

DATES: Comments must be received on or before September 24, 1999.

ADDRESSES: Comments on the proposed rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915–G, Docket No. 28978 800 Independence Ave., SW, Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be examined in Room 915–G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Ann M. Zipser, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire on proposed § 108.103(b)(11) and (c)(6). Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking final action. Comments received on the section specified above will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28978.'' The postcard will be date-stamped and mailed to the commenter. Internet users may reach the FAA's webpage at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs to access recently published rulemaking documents.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661).

Background

The FAA proposed to amend the existing 14 CFR part 108 to update the overall regulatory structure for aircraft operator security. On August 1, 1997, the NPRM, Aircraft Operator Security (part 108), was published in the **Federal Register** for public comment. The original comment period closed on December 1, 1997.

On April 21, 1998, the FAA announced the reopening of the comment period and two additional public meetings on the NPRM (63 FR 19691). The second comment period closed on June 26, 1998.

The NPRM proposed, among other things, to require that aircraft operators have a compliance program to ensure that persons with access to certain areas of the airport comply with the rules governing those areas.

Section 108.103(b)(11) and (c)(6) was proposed in Notice 97–12 as follows:

Section 108.103 Form, Content, and Availability.

* * * * *

(b) The security program shall include:

* * * * *

(11) The procedures and curriculum of the training requirements under § 108.227 of this part; and a security compliance program that specifies procedures the air carrier will implement to ensure persons with authorized unescorted access to critical security areas and restricted operations areas comply with § 108.7 and § 108.9 of this part, including revocation of unescorted access authority of persons that fail to comply with security requirements.

(c) Each air carrier having an approved security program shall:

* * * * *

(6) Implement a program to ensure that its employees and employees of contractors comply with the paragraphs (a) and (b) of § 108.103. The program's provisions shall include penalties to be imposed on individuals who fail to comply with paragraphs (a) and (b) of this section that are in accordance with the standards contained in its approved security program.

The FAA received a number of comments on this proposal, many of them not supportive. Some commenters interpret the proposal to mean that the aircraft operator would be required to enforce Federal regulations, and impose fines under the Federal statute. This is not what was intended. The FAA intends that the aircraft operator would have a specific program to ensure that persons for whom they are responsible

carry out the requirements in part 108 and the relevant security program.

Further, the NPRM did not specify a range of penalties that could be imposed, although the notice did address revocation of unescorted access authority. Often, effective programs use progressive disciplinary actions that include such corrective measures as mandated retraining, counseling, and suspension or revocation of unescorted access authority.

Since the comment period closed, the FAA has become aware that there is increased concern regarding employee compliance with requirements governing unescorted access to secured areas. Accordingly, the FAA is reopening the comment period for this section to allow for additional comments on the need for compliance programs and how they might best be structured to promote compliance.

Issued in Washington, DC on August 4, 1999.

Quinten Johnson,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–20521 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252487–96]

RIN 1545–AX25

Inbound Grantor Trusts With Foreign Grantors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: The IRS is proposing regulations relating to the definition of the term *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code. The text of temporary regulations published elsewhere in this issue of the **Federal Register**, also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 12, 1999. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 2, 1999, at 10 a.m. must be submitted by October 12, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252487–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–252487–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn, (202) 622–3060; concerning submissions and the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 671. The temporary regulations contain rules relating to the definition of *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 2, 1999, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 12, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by October 12, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.671–2, paragraph (e) is revised to read as follows:

§ 1.671–2 Applicable principles.

* * * * *

(e) [The text of this proposed paragraph (e) is the same as the text of § 1.671–2T(e) published elsewhere in this issue of the **Federal Register**].

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 99–19929 Filed 8–5–99; 2:09 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121946–98]

RIN 1545–AW96

Private Foundation Disclosure Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. The proposed regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended fully to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. The proposed regulations provide guidance for private foundations required to make copies of applications for tax exemption and annual information returns available for public inspection and to comply with requests for copies of those documents. Final regulations relating to the public disclosure requirements applicable to tax-exempt organizations other than private foundations were issued on April 9, 1999.

DATES: Written or electronic comments and requests for a public hearing must be received by October 12, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–121946–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121946–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael B. Blumenfeld, (202) 622–6070 (not a toll-free number); concerning submissions of comments, LaNita Van Dyke (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by October 12, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 301.6104(d)–1, 301.6104(d)–2, and 301.6104(d)–3. This information is required to enable a private foundation to comply with section 6104(d) of the Internal Revenue Code (Code). Under section 6104(d), a private foundation is required to make its application for tax exemption and its annual information returns available for public inspection. In addition, a private foundation is required to comply with requests made in person or in writing from individuals who seek a copy of those documents or, in the alternative, to make its documents widely available. The requirement that a private foundation make its application for tax exemption and annual information returns available for public inspection and comply with requests made in person or in writing from individuals who seek a copy of those documents or, in the alternative, make the documents widely available, will enable the public to obtain information about the private foundation. Under section 6104(d), a private foundation is permitted to file an application for relief from the requirement to provide copies if the private foundation reasonably believes it is the subject of a harassment campaign. The information a private foundation provides when filing an application for a determination that it is subject to a harassment campaign will be used by the IRS to make such determination. The collection of information is required to obtain relief from the requirement to comply with requests for copies if such requests are part of the harassment campaign. The likely respondents and/or recordkeepers are private foundations. The burden for recordkeeping and for reporting is reflected below.

Estimated total annual recordkeeping burden: 32,565 hours.

Estimated average annual burden per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 65,065.

Estimated total annual reporting burden: 31 hours.

Estimated average annual reporting burden per respondent: 27 minutes.

Estimated number of respondents: 68.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document proposes to amend §§ 301.6104(d)–1 through 301.6104(d)–5 of the Procedure and Administration Regulations (26 CFR Part 301) relating to the section 6104(d) public disclosure requirements applicable to tax-exempt organizations (organizations described in section 501(c) or (d) and exempt from

taxation under section 501(a)). The proposed amendments would remove existing § 301.6104(d)–1 (relating to public inspection of private foundation annual information returns). The proposed amendments also would revise §§ 301.6104(d)–2 through 301.6104(d)–5 to apply the provisions to all tax-exempt organizations, including private foundations, and redesignate existing §§ 301.6104(d)–2 through 301.6104(d)–5 as §§ 301.6104(d)–0 through 301.6104(d)–3, respectively. This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation.

Description of Current Law Disclosure Requirements Applicable to Private Foundations

Section 6104(d), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105–277, 112 Stat 2681) (with respect to private foundations), requires a private foundation to make its annual information returns available for public inspection at its principal office during regular business hours for a period of 180 days after the foundation publishes notice of the availability of its return. A private foundation must publish such notice not later than the due date of the return (determined with regard to any extension of time for filing) in a newspaper having general circulation in the county in which the principal office of the foundation is located. Section 6104(e), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (with respect to private foundations), requires a private foundation to allow public inspection of the foundation's application for recognition of exemption at the foundation's principal office (and certain regional or district offices). Section 6104(e) also requires a private foundation to provide copies of its exemption application upon request. However, the requirement to provide copies of an exemption application upon request becomes effective only after the Secretary of the Treasury issues regulations applicable to private foundations describing how a private foundation may be relieved of the obligation to provide copies in response to requests by making its exemption application widely available or by obtaining an IRS determination that a particular request is part of a harassment campaign.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998, which was enacted on October 21, 1998, amended section 6104(e) of the Code to subject the annual information returns filed by private foundations to the same rules regarding public disclosure that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). Section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, requires each tax-exempt organization, including one that is a private foundation, to allow public inspection at its principal office (and at certain regional or district offices) and to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of exemption and the organization's three most recent annual information returns. Congress appears to have intended that nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations comply with the expanded public disclosure requirements, just as such entities are subject to the information reporting requirements of section 6033 pursuant to section 6033(d). See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1998 (JCS–6–98), November 24, 1998, at 242, fn. 102.

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury issues regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). On April 9, 1999, the IRS published in the **Federal Register** (64 FR 17279) final regulations under section 6104(d) applicable to tax-exempt organizations other than private foundations. Accordingly, section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, became effective with respect to tax-exempt organizations other than private foundations on June 8, 1999.

Explanation of Provisions

The proposed amendments extend the recently-published final regulations under section 6104(d) to apply to private foundations. The proposed amendments also modify those regulations in several respects. The proposed amendments state that the term *annual information return* includes any return that is required to be filed under section 6033. For a private foundation, such returns include Form 990–PF and Form 4720. Consistent with the statute, the proposed amendments provide that, unlike other tax-exempt organizations, a *private foundation* is required to disclose to the general public the names and addresses of its contributors. The proposed amendments also clarify that, for purposes of section 6104(d), the terms *tax-exempt organization* and private foundation include nonexempt *private foundations* and nonexempt charitable trusts described in section 4947(a)(1) that are subject to the information reporting requirements of section 6033. Finally, the proposed amendments remove existing § 301.6104(d)–1 and redesignate existing §§ 301.6104–2 through 301.6104(d)–5, as §§ 301.6104(d)–0 through 301.6104(d)–3, respectively.

Until 60 days after these proposed amendments are published as final regulations in the **Federal Register**, private foundations continue to be subject to section 6104(d) and section 6104(e), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing § 301.6104(d)–1. Thereafter, private foundations will continue to be subject to the public inspection requirements of section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing § 301.6104(d)–1 with respect to any annual information return the due date (determined with regard to any extension of time for filing) for which is prior to the effective date of the final regulations.

Proposed Effective Date

The amendments made by these regulations are proposed to be effective 60 days after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is certified that the collection of information referenced in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not

have a significant economic impact on these entities. The average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each private foundation. This estimate is based on the assumption that, on average, a private foundation will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Approximately 0.1 percent of the private foundations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 65 private foundations will make its documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 3 private foundations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a private foundation is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that it will cost a private foundation less than $10 per year to comply with these regulations, which is not a significant economic impact.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting information. The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(d)–2 also issued under 26 U.S.C. 6104(d)(3);

Section 301.6104(d)–3 also issued under 26 U.S.C. 6104(d)(3); * * *

§ 301.6104(d)–1 [Removed]

Par. 2. Section 301.6104(d)–1 is removed.

§ 301.6104(d)–2 [Redesignated as § 301.6104(d)–0]

Par. 3. Section 301.6104(d)–2 is redesignated as § 301.6104(d)–0.

Par. 4. Newly designated § 301.6104(d)–0 is revised to read as follows:

§ 301.6104(d)–0 Table of contents.

This section lists the major captions contained in §§ 301.6104(d)–1 through 301.6104(d)–3 as follows:

§ 301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.
(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(iv) Local or subordinate organizations.
(4) Annual information return.
(i) In general.
(ii) Exceptions.
(iii) Returns more than 3 years old.
(iv) Local or subordinate organizations.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Request for a copy of parts of document.
(C) Agents for providing copies.
(3) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Documents to be provided by regional and district offices.
(f) Documents to be provided by local and subordinate organizations.
(1) Applications for tax exemption.
(2) Annual information returns.
(3) Failure to comply.
(g) Failure to comply with public inspection or copying requirements.
(h) Effective date.
(1) In general.
(2) Private foundation annual information returns.
§ 301.6104(d)–2 Making applications and returns widely available.
(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(i) In general.
(ii) Transition rule.
(iii) Reliability and accuracy.
(c) Discretion to prescribe other methods for making documents widely available.
(d) Notice requirement.
(e) Effective date.
§ 301.6104(d)–3 Tax-exempt organization subject to harassment campaign.
(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§ 301.6104(d)–3 [Redesignated as § 301.6104(d)–1]

Par. 5. Section 301.6104(d)–3 is redesignated as § 301.6104(d)–1.

Par. 6. Newly designated § 301.6104(d)–1 is amended as follows:

1. Revise the section heading.

1a. Paragraph (a) is amended as follows:

a. Remove the language ‘‘, other than a private foundation (as defined in paragraph (b)(2) of this section),’’ from the first sentence.

b. Remove the language ‘‘, other than a private foundation,’’ from the second sentence.

c. Remove the language ‘‘§§ 301.6104(d)–4 and 301.6104(d)–5’’ from the fourth sentence and add ‘‘§§ 301.6104(d)–2 and 301.6104(d)–3’’ in its place.

2. In paragraph (b) introductory text, remove the language ‘‘§§ 301.6104(d)–4 and 301.6104(d)–5’’ and add ‘‘§§ 301.6104(d)–2 and 301.6104(d)–3’’ in its place.

3. In paragraph (b)(1), add a sentence at the end of the paragraph.

4. In paragraph (b)(2), add the language ‘‘or a nonexempt charitable trust described in section 4947(a)(1) or a nonexempt private foundation subject to the information reporting requirements of section 6033 pursuant to section 6033(d)’’ at the end of the sentence.

5. In paragraph (b)(3)(iii)(B), remove the word ‘‘or’’ at the end of the paragraph.

6. Redesignate paragraph (b)(3)(iii)(C) as paragraph (b)(3)(iii)(D) and add a new paragraph (b)(3)(iii)(C).

7. In paragraph (b)(4)(i), remove the last two sentences and add three sentences in their place.

8. Paragraph (b)(4)(ii) is amended as follows:

a. Remove the language ‘‘, and the return of a private foundation’’ from the first sentence.

b. Revise the last sentence.

9. Revise paragraph (h).

The revisions and additions read as follows:

§ 301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

* * * * *

(b) * * *

(1) * * * The term tax-exempt organization also includes any nonexempt charitable trust described in section 4947(a)(1) or nonexempt private foundation that is subject to the reporting requirements of section 6033 pursuant to section 6033(d).

* * * * *

(3) * * *

(iii) * * *

(C) In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or

* * * * *

(4) * * * (i) * * * Returns filed pursuant to section 6033 include Form 990, Return of Organization Exempt From Income Tax, Form 990–PF, Return of Private Foundation, or any other version of Form 990 (such as Forms 990–EZ or 990–BL, except Form 990–T) and Form 1065. Each copy of a return must include all information furnished to the Internal Revenue Service on the return, as well as all schedules, attachments and supporting documents. For example, in the case of a Form 990, the copy must include Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) * * * In the case of a tax-exempt organization other than a private foundation, the term *annual information return* does not include the name and address of any contributor to the organization.

* * * * *

(h) *Effective date*—(1) *In general.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. Except as provided in paragraph (h)(2) of this section, for a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

(2) *Private foundation annual information returns.* This section applies to any private foundation return the due date for which (determined with regard to any extension of time for filing) is after the applicable date for private foundations specified in paragraph (h)(1) of this section.

§ 301.6104(d)–4 [Redesignated as § 301.6104(d)–2]

Par. 7. Section 301.6104(d)–4 is redesignated as § 301.6104(d)–2.

Par. 8. Newly designated § 301.6104(d)–2 is amended as follows:

1. In paragraph (a), remove the language ‘‘§ 301.6104(d)–3(a)’’ from each place it appears and add ‘‘§ 301.6104(d)–1(a)’’ in each place, respectively.

2. Revise paragraph (e).

The revision reads as follows:

§ 301.6104(d)–2 Making applications and returns widely available.

* * * * *

(e) *Effective date.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

§ 301.6104(d)–5 [Redesignated as § 301.6104(d)–3]

Par. 9. Section 301.6104(d)–5 is redesignated as § 301.6104(d)–3.

Par. 10. Newly designated § 301.6104(d)–3 is amended as follows:

1. In paragraph (a), remove the language ‘‘§ 301.6104(d)–3(a)’’ and add ‘‘§ 301.6104(d)–1(a)’’ in its place.

2. Revise paragraph (g).

The revision reads as follows:

§ 301.6104(d)–3 Tax-exempt organization subject to harassment campaign.

* * * * *

(g) *Effective date.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–20093 Filed 8–9–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–020–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern burden of proof in civil penalty proceedings, petitions for review of proposed individual civil penalty assessment, verification of ownership or control application information, review of ownership or control and violation information, procedures for challenging ownership or control links shown in AVS, and standards for challenging ownership or control links and the status of violation. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4:00 p.m., c.s.t., August 25, 1999.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Oklahoma program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions on the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated September 28, 1998 (Administrative Record No. OK–982), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to our letter dated January 6, 1994 (Administrative Record No. OK–977), that we sent to Oklahoma under 30 CFR 732.17(c). The amendment also included changes made at Oklahoma's own initiative. Oklahoma proposed to amend the Oklahoma Administrative Code.

We announced receipt of the proposed amendment in the October 20, 1998, **Federal Register** (63 FR 55979) and invited public comment on its adequacy. The public comment period ended November 19, 1998.

During our review of the amendment, we identified concerns relating to 460:2–8–8, Burden of Proof in Civil Penalty Proceedings; 460:2–8–9, Decision by Administrative Hearing Officer; 460:2–8–10, Petitions for Discretionary Review; 460:20–15–11, Verification of Ownership or Control Application Information; 460:20–15–12, Review of Ownership or Control and Violation Information; 460:20–15–13, Procedures for Challenging Ownership or Control Links Shown in AVS; and 460:20–15–14, Standards for Challenging Ownership or Control Links and the Status of Violations. We notified Oklahoma of the concerns by faxes dated December 3, 1998, and July 14, 1999 (Administrative Record Nos. OK–982.03 and OK–982.06, respectively). In letters dated June 23, 1999, and July 20, 1999 (Administrative Record Nos. OK–982.05 and OK–982.07, respectively), Oklahoma responded to our concerns by submitting the following revisions to the amendment:

A. 460:2–8–8, Burden of Proof in Civil Penalty Proceedings

In paragraph (a)(1) of this section, Oklahoma proposes to revise its reference to 45 O.S. 1981, Section 724 *et seq.*, referencing instead 45 O.S. 1981, Sections 775 through 780.

B. 460:2–8–9, Decision by Administrative Hearing Officer

In paragraph (a) of this section, Oklahoma proposes to revise its reference to 460:20–8–8, referencing instead 460:2–8–8.

C. 460:2–8–10, Petitions for Discretionary Review

In paragraph (g) of this section, Oklahoma proposes to revise its reference to 460:2–63–6, referencing instead 460:20–63–6.

D. 460:20–15–11, Verification of Ownership or Control Application Information

In paragraph (b) of this section, Oklahoma proposes to revise its reference to 460:20–23–3(c) through (d), referencing instead 460:20–23–2(3).

E. 460:20–15–12, Review of Ownership or Control and Violation Information

In paragraph (a) of this section, Oklahoma proposes to revise its reference to 460:20–15–11(b), referencing instead 460:20–15–11 in its entirety.

Also, in paragraph (a)(1) of this section, Oklahoma proposes to revise its reference to 460:20–23–3, referencing instead 460:20–23–2.

F. 460:20–15–13, Procedures for Challenging Ownership or Control Links Shown in AVS

Oklahoma proposes to remove the lead-in language at paragraph (a), as well the language at paragraph (a)(1), and re-designated paragraph (a)(2) as paragraph (a).

Oklahoma also proposes to revise the language at paragraph (b) to read as follows:

> Challenge Basis. Any applicant or other person who wishes to challenge the status of a state violation, and who is eligible to do so under the provision of paragraphs (a) of this section, shall submit a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents, to Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, OK 73105, ATTN: Director.

G. 460:20–15–14, Standards for Challenging Ownership or Control Links and the Status of Violations

At paragraph (c)(1)(B), Oklahoma proposes to revise the language to read as follows:

(B) That the facts relied upon by the Department to establish a presumption of ownership or control under the definition of ''owned or controlled'' or ''owns or controls'' in Section 460:20–15–2 of this Subchapter, do not or did not exist.

III. Public Comment Procedures

We are reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review

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 program is drafted and published 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 State regulatory programs and program amendments 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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. Therefore, this rule will ensure that existing requirements previously published 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 under 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 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1999.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–20505 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6415–6]

State of Alabama; Underground Injection Control (UIC) Program; Notice of Rescheduled Public Hearing and Extension of Comment Period on Withdrawal of Alabama's Class II UIC Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of rescheduled public hearing and extension of public comment period on withdrawal.

SUMMARY: EPA announces a rescheduled public hearing and extension of the public comment period regarding withdrawal of Alabama's Class II Underground Injection Control (UIC) Program from the State Oil and Gas Board of Alabama on the grounds that it does not regulate as ''underground injection,'' hydraulic fracturing associated with coalbed methane gas production. This program is currently approved by EPA under section 1425 of the Safe Drinking Water Act (SDWA), as amended. This action is being taken in accordance with paragraph 2(a) of the Writ of Mandamus issued on February 18, 1999, by the U. S. Court of Appeals for the Eleventh Circuit and in accordance with Federal regulations for withdrawal of State programs.

DATES: The rescheduled public hearing will be held Thursday, September 9, 1999, at 4:00 p.m. Central Standard Time (CST) to discuss withdrawal of the Alabama Class II UIC Program due to its failure to regulate hydraulic fracturing associated with coalbed methane gas production and EPA's proposed rule seeking such withdrawal. Registration for the hearing will begin at 3 p.m.. Written comments on EPA's proposed rule withdrawing approval of the Alabama Class II UIC Program on the grounds that it does not regulate as ''underground injection'' hydraulic fracturing associated with coalbed methane gas production must be received by the close of business Thursday, September 16, 1999.

ADDRESSES: The rescheduled public hearing will be held at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, 240 Bryant Drive, Tuscaloosa, Alabama 35401. Those interested should contact the Bryant Conference Center at (205) 348–8751 for directions. Persons wishing to comment upon or object to any aspects of this proposed withdrawal action of Alabama's Section 1425 approved Class II Program are invited to submit oral or written comments at the September 9th, 1999, public hearing or submit written comments by September 16, 1999, to the Ground Water/Drinking Water Branch, Ground Water & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Mr. Larry Cole. Copies of documents regarding this action are available between 8:30 a.m. and 4 p.m. Monday through Friday at the following locations for inspection and copying: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, PH: (404) 562–8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489–9780, PH: (205) 349–2852.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole at (404) 562–9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

This public hearing is a reschedule of the public hearing held on July 28th at 5:30 pm in the Tuscaloosa Public Library, 1801 River Road, Tuscaloosa, Alabama 35401, announced in the **Federal Register**/Vol. 64. No. 98/Friday, May 21, 1999, Pages 27744–27747. The July 28th hearing was canceled prior to its conclusion by the Tuscaloosa Fire Marshal. With this notice we are also

extending the comment period on withdrawal.

By court order, the Regional Administrator for EPA's Region 4 Office informed the State Oil and Gas Board of Alabama of specific areas of alleged noncompliance regarding its approved UIC Program. Specifically, EPA informed the State that, consistent with the Eleventh Circuit's ruling in *LEAF* v. *EPA*, hydraulic fracturing associated with coalbed methane gas production must be regulated as an ''underground injection'' under Alabama's UIC Program. Withdrawal of the Alabama program would, if completed, divest Alabama of primary enforcement authority under the SDWA to regulate Class II Wells, including hydraulic fracturing associated with coalbed methane gas wells within Alabama.

EPA is proceeding at this time with this notice of reschedule of public hearing and extension of the public comment period in order to comply with paragraph 2(a) of the Writ of Mandamus because hydraulic fracturing associated with coalbed methane gas production is not currently regulated as underground injection (by permit or rule) pursuant to the EPA-approved underground injection control program for Alabama.

At the rescheduled public hearing, all interested persons shall be given the opportunity to make written or oral presentations on EPA's proposed action to withdraw approval of Alabama's section 1425 approved Class II Program on the grounds of its failure to regulate as ''underground injection'' hydraulic fracturing associated with coalbed methane gas production. In addition, comments may be submitted as provided herein. All written and oral presentations submitted prior to the cancellation of the July 28th public hearing were recorded and will be considered in EPA's final evaluation of the State of Alabama's section 1425 Program.

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under Section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not regulating activities associated with coalbed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute ''underground injection'' under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coalbed methane gas production is not currently regulated under Alabama's UIC Program, *id.* at 1471. On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus directed at EPA to enforce its August 1997 decision. The Writ established a schedule for EPA to follow to determine whether, in light of the Court's holding regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program.

In response to the LEAF decision and the Writ of Mandamus, EPA must review Alabama's UIC Program in accordance with federal regulations at 40 CFR 145.34(b). The timing of EPA's review and decision-making process must adhere to the time frame contained in the Writ of Mandamus. In order to comply with the Writ of Mandamus and 40 CFR 145.34(b)(2), EPA must hold a public hearing no less than 60 days nor more than 75 days, following the publication of this notice of the hearing in the **Federal Register**. Therefore, in order to comply with this time frame, Region 4 held a public hearing on July 28, 1999, at 5:30 pm in the Tuscaloosa Public Library, Tuscaloosa, Alabama. Due to the cancellation of that hearing prior to its conclusion, Region 4 has rescheduled the public hearing to occur on Thursday, September 9, 1999, at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, Tuscaloosa, Alabama. All interested persons shall be given the opportunity to make written or oral presentation at the public hearing on whether EPA should withdraw Alabama's Class II UIC Program on the ground that it does not regulate as ''underground injection'' hydraulic fracturing associated with coalbed methane gas production.

Alabama Class II UIC Section 1425 Program Deficiencies

The State Oil & Gas Board of Alabama is not regulating hydraulic fracturing of coalbed methane gas production wells as ''underground injection'' (by permit or rule) pursuant to its EPA-approved underground injection control program.

Withdrawal Procedure

Section 1425 of the SDWA and subsequent published EPA guidance does not contain express procedures for the withdrawal of a Section 1425 Program. EPA has promulgated procedures for withdrawing a Section 1422 Program at 40 CFR 145.34(b). In lieu of different express regulatory provisions for the withdrawal of Section 1425 programs and in light of the Court's Writ of Mandamus, EPA is following the procedures at 40 CFR 145.34(b) in proposing to withdraw Alabama's Section 1425 Program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the State Oil and Gas Board of Alabama constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program is in compliance with the SDWA and 40 CFR part 145 (i.e., that hydraulic fracturing associated with methane gas production is regulated as ''underground injection,'' by permit or rule, pursuant to the EPA approved Underground Injection Control Program).

The Supervisor of the State Oil and Gas Board responded to the Regional Administrator's letter by a letter dated April 15, 1999. The response indicated that on March 5, 1999, the State Oil & Gas Board of Alabama promulgated rules which regulate hydraulic fracturing of coalbed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under Section 41–22–5 of the Code of Alabama (1975). They became effective on March 11, 1999, for a period of no longer than 120 days. To become part of the EPA approved UIC Program, Alabama should submit a revised UIC Program package containing new regulations to EPA for review and approval. These new regulations must protect current and potential USDWs from endangerment.

The State will not have fully corrected the identified program deficiencies consistent with the requirements of the Writ of Mandamus until a revised Alabama Section 1425 Program has been approved by EPA. Therefore, in accordance with 40 CFR 145.34(b)(2), the Regional Administrator of Region 4 is soliciting comments on the

appropriateness of withdrawing the Class II UIC Program from the State Oil & Gas Board of Alabama on the grounds that it does not, as currently approved by EPA, regulate as ''underground injection'' hydraulic fracturing associated with methane gas production. This action constitutes the second step in the withdrawal process set out in 40 CFR 145.32(b) and the Writ of Mandamus. Following the public hearing and close of the public comment period, EPA will fully evaluate the record in this matter. If EPA determines that the State is still not in compliance, the Administrator will notify the State.

Within 90 days of receipt of that notification, the State of Alabama must fully implement any required remedial actions regarding regulating hydraulic fracturing or the State's Class II UIC Program will be withdrawn. Class II program approval will, however, not be withdrawn if Alabama can demonstrate that hydraulic fracturing associated with methane gas production is regulated as ''underground injection'' (by permit or rule) pursuant to the EPA approved underground injection control program. If EPA withdraws approval of the Alabama Class II Program pursuant to the requirement of 40 CFR 145.32(b) and the Writ of Mandamus, it will propose and promulgate a federal program for Class II wells located in Alabama, including hydraulic fracturing associated with methane gas production.

EPA is extending the public comment period regarding withdrawal of the Alabama Class II UIC Program for failure to adequately regulate hydraulic fracturing associated with methane gas production as ''underground injection.'' Public comments received on or before close of business on September 16, 1999, will be considered in EPA's final evaluation of the State of Alabama Section 1425 Program. Comments may be submitted at the rescheduled public hearing to be held on September 9, 1999, at 4 p.m., CST at the University of Alabama, in the Sellers Auditorium of the Bryant Conference Center at 240 Bryant Drive, Tuscaloosa, Alabama 35401.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: July 30, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–20314 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6417–2]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Dakota has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Send your comments by September 9, 1999.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. We must receive your comments by September 9, 1999. You can view and copy South Dakota's applications at the following addresses: SDDENR, from 9:00 AM to 5:00 PM, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501–3181, contact: Carrie Jacobson, phone number (605) 773–3153 and EPA Region VIII, from 8:00 AM to 4:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that South Dakota's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant South Dakota Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Dakota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Dakota has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the proposed regulations for which South Dakota is requesting authorization are already effective, and are not changed by this proposed approval.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment. If you want to

comment on this action, you must do so at this time.

E. What Has South Dakota Previously Been Authorized For?

South Dakota initially received Final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 17, 1991, effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 01275); and July 24, 1996, effective September 23, 1996 (61 FR 38392).

F. What Changes Are We Proposing To Authorize With Today's Action?

On August 1, 1997, September 3, 1997, and March 23, 1999, South Dakota submitted final complete program revision applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a Final decision, subject to receipt of written comments that oppose this action, that South Dakota's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant South Dakota authorization for the following program changes:

Description of federal requirement	Analogous state authority [1]	Effective date
Wood Preserving Listings [55 FR 50450–50490, 12/6/90] (Checklist 82).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01.	08/05/97
Wood Preserving Listings; Technical Corrections [56 FR 30192–30198, 7/1/91] (Checklist 92).	74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01.	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Corrections & Technical Amendments I [56 FR 32688, 7/17/91] (Checklist 94).	74:28:22:01; 74:28:26:01; 74:28:27:01; 74:28:28:01	08/05/97
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) [56 FR 41164–41178, 8/19/91] (Checklist 95).	74:28:22:01; 74:28:30:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendments II [56 FR 42504–42517, 8/27/91] (Checklist 96).	74:28:22:01; 74:28:27:01; 74:28:28:01	08/05/97
Exports of Hazardous Waste; Technical Correction [56 FR 43704–43705] (Checklist 97).	74:28:23:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Administrative Stay of Applicability & Technical Amendment [56 FR 43874–43877, 9/5/91] (Checklist 98).	74:28:27:01	08/05/97
Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations [56 FR 66365–66369, 12/23/91] (Checklist 99).	74:28:21:02; 74:28:28:01	08/05/97
Liners & Leak Detection Systems for Hazardous Waste Land Disposal Units [57 FR 3462–3497, 1/29/92] (Checklist 100).	74:28:21:02; 74:28:25:01; 74:28:26:01; 74:28:28:01	08/05/97
Administrative Stay for the Requirement that Existing Drip Pads Be Impregnable [57 FR 5859–5861, 2/18/92] (Checklist 101).	74:28:25:01; 74:28:28:01	08/05/97
Second Correction to the Third Third Land Disposal Restrictions [57 FR 8086–8089, 3/6/92] (Checklist 102).	74:28:25:01; 74:28:28:01; 74:28:30:01	08/05/97
Hazardous Debris Case-by-Case Capacity Variance [57 FR 20766–20770, 5/15/92] (Checklist 103).	74:28:30:01	08/05/97
Used Oil Filter Exclusion [57 FR 21524–21534, 5/29/92] (Checklist 104).	74:28:22:01	08/05/97
Recycled Coke By-Product Exclusion [57 FR 27880–27888, 6/22/92] (Checklist 105).	74:28:22:01; 74:28:27:01	08/05/97
Lead-bearing Hazardous Materials Case-by-Case Capacity Variance [57 FR 28628–28632, 6/26/92] (Checklist 106).	74:28:30:01	08/05/97
Used Oil Filter Exclusion: Technical Corrections [57 FR 29220, 7/1/92] (Checklist 107).	74:28:22:01	08/05/97
Land Disposal Restrictions for Newly Listed Wastes & Hazardous Debris [57 FR 37194-37282] (Checklist 109).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	08/05/97
Coke By-Products Listings [57 FR 37284–37306, 8/18/92] (Checklist 110).	74:28:22:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendment III [57 FR 38558–38566, 8/25/92] Checklist 111.	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01.	08/05/97
Recycled Used Oil Management Standards [57 FR 41566–41626, 9/10/92] (Checklist 112).	74:28:22:02; 74:28:22:01; 74:28:27:01	08/05/97
Consolidated Liability Requirements [53 FR 33938–33960, 9/1/88; 56 FR 30200, 7/1/91; 57 FR 42832–42844, 9/16/92] (Checklist 113).	74:28:25:01; 74:28:28:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendment IV [57 FR 44999–45001, 9/30/92] (Checklist 114).	74:28:27:01	08/05/97
Chlorinated Toluenes Production Waste Listing [57 FR 47376–47386, 10/15/92] (Checklist 115).	74:28:22:01	08/05/97
Hazardous Soil Case-By-Case Capacity Variance [57 FR 47772–47776, 10/20/92] (Checklist 116).	74:28:30:01	08/05/97
Liquids in Landfills II [57 FR 54452–54461, 11/18/92] (Checklist 118).	74:28:21:02; 74:28:25:01; 74:28:28:01	08/05/97

Description of federal requirement	Analogous state authority [1]	Effective date
Wood Preserving: Revisions to Listings & Technical Requirements [57 FR 61492–61505, 12/24/92] (Checklist 120).	74:28:22:01; 74:28:25:01; 74:28:28:01	08/05/97
Corrective Action Management Units & Temporary Units [58 FR 8658–8685, 2/16/93] (Checklist 121).	74:28:21:02; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	08/05/97
Recycled Used Oil Management Standards; Technical Amendments & Corrections I [58 FR 26420–26426, 5/3/93] (Checklist 122).	74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01	08/05/97
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance [58 FR 28506–28511, 5/14/93] (Checklist 123).	74:28:30:01	08/05/97
Land Disposal Restrictions for Ignitable & Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated [58 FR 29860–29887, 5/24/93] (Checklist 124).	74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01	08/05/97
Boilers & Industrial Furnaces; Changes for Consistency with New Air Regulations [58 FR 38816–38884, 7/20/93] (Checklist 125).	74:28:21:02; 74:28:27:01	10/02/95
Testing & Monitoring Activities [58 FR 46040-46051, 8/31/93] (Checklist 126).	74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	10/02/95
Boilers & Industrial Furnaces; Administrative Stay & Interim Standards for Bevill Residues [58 FR 59598–59603, 11/9/93] (Checklist 127).	74:28:27:01	10/02/95
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection [59 FR 458–469, 1/4/94] (Checklist 128).	74:28:21:02	10/02/95
Revision of Conditional Exemption for Small Scale Treatability Studies [59 FR 8362–8366, 2/18/94] (Checklist 129).	74:28:22:01	10/02/95
Recycled Used Oil Management Standards; Technical Amendments & Corrections II [59 FR 10550–10560, 3/4/94] (Checklist 130).	74:28:27:01	10/02/95
Recordkeeping Instructions; Technical Amendment [59 FR 13891–13893, 3/24/94] (Checklist 131).	74:28:25:01; 74:28:28:01	10/02/95
Wood Surface Protection; Correction [59 FR 28484, 6/2/94] (Checklist 132).	74:28:21:02	10/02/95
Letter of Credit Revision [59 FR 29958–29960, 6/10/94] (Checklist 133).	74:28:25:01	10/02/95
Correction of Beryllium Powder (P015) Listing [59 FR 31551–31552, 6/20/94] (Checklist 134).	74:28:22:01; 74:28:30:01;	10/02/95
Recovered Oil Exclusion [59 FR 38336–38545, 7/28/94] (Checklist 135).	74:28:22:01; 74:28:27:01	11/05/96
Removal of the Conditional Exemption for Certain Slag Residues [59 FR 43496–43500, 8/24/94] (Checklist 136).	74:28:27:01; 74:28:30:01	11/05/96
Universal Treatment Standards & Treatment Standards for Organic Toxicity Characteristic Wastes & Newly Listed Wastes [59 FR 47982-48110, 9/19/94] (Checklist 137).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01; 74:28:30:01.	11/05/96
Testing & Monitoring Activities Amendment I [60 FR 3089–3095, 1/13/95] (Checklist 139).	74:28:21:02	11/05/96
Testing & Monitoring Activities Amendment II [60 FR 17001–17004, 4/4/95] (Checklist 141).	74:28:21:02	11/05/96
Universal Waste: General Provisions [60 FR 25492–25551, 5/11/95] (Checklist 142A).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Specific Provisions for Batteries [60 FR 25492–25551, 5/11/95] (Checklist 142B).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Specific Provisions for Thermostats [60 FR 25492–25551, 5/11/95] (Checklist 142D).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Petition Provisions to Add a New Universal Waste [60 FR 25492–25551, 5/11/95] (Checklist 142E).	74:28:21:02; 74:28:33:01	11/05/96
Liquids in Landfills III [60 FR 35703–35706, 7/11/95] (Checklist 145).	74:28:25:01; 74:28:28:01	08/05/97
Amendments to the Definition of Solid Waste; Amendment II [61 FR 13103–13106, 3/26/96] (Checklist 150).	74:28:22:01	08/05/97
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes & Spent Potliners [61 FR 15566–15660, 4/8/96] (Checklist 151).	74:28:30:01	08/05/97

[1] Administrative Rules of South Dakota.

G. Where Are The Revised State Rules Different From The Federal Rules?

EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.42(b), and 268.44. South Dakota has excluded these requirements and EPA will continue to implement these requirements.

H. Who Handles Permits After This Authorization Takes Effect?

South Dakota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. When the State incorporates

the terms and conditions of the Federal permits into State permits or issues State permits to those facilities, EPA will terminate the Federal permits. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) In South Dakota?

EPA has been consulting with the affected Tribes and has had discussions with the State regarding the extent of Indian country in South Dakota. Based on these discussions, we propose the following language. Recognizing that the affected parties may have differing opinions, we invite comment from the Tribes, the State and others.

EPA's decision to authorize the South Dakota hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151, including:

1. Land within formal Indian reservations located within or abutting the State of South Dakota, including the:
   a. Cheyenne River Indian Reservation,
   b. Crow Creek Indian Reservation,
   c. Flandreau Indian Reservation,
   d. Lower Brule Indian Reservation,
   e. Pine Ridge Indian Reservation,
   f. Rosebud Indian Reservation,
   g. Standing Rock Indian Reservation, and
   h. Yankton Indian Reservation.
2. Any land held in trust by the United States for an Indian tribe, and
3. Any other land, whether on or off a reservation, that qualifies as Indian country.

Moreover, in the context of these principles, a more detailed discussion for three reservations follows.

Rosebud Sioux Reservation

In the September 16, 1996, FR Notice, EPA noted that the U.S. Supreme Court in *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977), determined that three Congressional acts diminished the Rosebud Sioux Reservation and that it no longer includes Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA authorizes the South Dakota hazardous waste program for all land in Gregory, Tripp, Lyman and Mellette Counties that was formerly within the 1889 Rosebud Sioux Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land in Gregory, Tripp, Lyman and Mellette Counties that qualifies as Indian country.

Lake Traverse (Sisseton-Wahpeton) Reservation

In the September 16, 1996, FR Notice, EPA noted that the U.S. Supreme Court in *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), determined that an Act of Congress disestablished the Lake Traverse (Sisseton-Wahpeton) Reservation. Therefore, EPA is authorizing the South Dakota hazardous waste program for all land that was formerly within the 1867 Lake Traverse Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land within the former Lake Traverse Reservation that qualifies as Indian country.

Yankton Sioux Reservation

The U.S. Supreme Court's ruling in *South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329 (1998), found that the Yankton Sioux Reservation has been diminished by the unallotted, ''ceded'' lands, that is, those lands that were not allotted to Tribal members and that were sold by the Yankton Sioux Tribe to the United States pursuant to an Agreement executed in 1892 and ratified by the United States Congress in 1894. Accordingly, EPA is authorizing the South Dakota hazardous waste program for unallotted, ceded lands that were ceded as a result of the Act of 1894, 28 Stat. 286 and do not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land within the original boundaries of the Yankton Sioux Reservation that qualifies as Indian country under 18 U.S.C. 1151. EPA acknowledges that there may be further interpretation of land status by the final Federal court decision in *Yankton Sioux Tribe* v. *Gaffey*, Nos. 98–3893, 3894, 3986, 3900. If Indian country status changes as a result of *Gaffey*, EPA will act to modify this authorization as appropriate.

J. What Is Codification and Is EPA Codifying South Dakota's Hazardous Waste Program As Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart QQ for this authorization of South Dakota's program until a later date.

K. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

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 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.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the South Dakota program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not

increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

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, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to 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 rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 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.

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.

Compliance With Executive Order 13084

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, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to 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 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.''

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. South Dakota

is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

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 directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 2, 1999.

Jack McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 99–20551 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–6414–6]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of state of North Carolina for final approval, public hearing and public comment period.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. North Carolina's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

DATES: Written comments on the North Carolina approval application, as well as requests to present oral testimony, must be received by the close of business on September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 14, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of the North Carolina approval application are available during the hours of 9 am to 5 pm at the following addresses for inspection and copying:

North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733–8486;

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway—1st Floor, Arlington, Virginia 22202, Phone: (703) 603–9231; and,

U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9277.

Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, telephone (404) 562–9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7 pm at the North Carolina Department of Environment and Natural Resources Archadale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604–1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the following contacts after September 14, 1999.

Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9277, or

Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626–0578, Phone: (919) 733–8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone: (404) 562–9277.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA Section 9004(b), if the Agency finds that the State program is: ''no less stringent'' than the Federal program for the seven elements set forth at RCRA Section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA Section 9004(a).

B. North Carolina

The State of North Carolina submitted their draft state program approval application to EPA by letter dated December 8, 1992. After reviewing the package and coordinating with the State, EPA submitted final comments to the state for review. North Carolina submitted their complete state program approval application for EPA's tentative approval on January 16, 1998.

North Carolina adopted UST program regulations that became effective on January 1, 1991. Prior to the adoption of the regulations, North Carolina solicited public comment and held a public hearing on the draft UST program regulations. EPA has reviewed the North Carolina application, and has tentatively determined that the State's UST program for petroleum and hazardous substances meets all of the requirements necessary to qualify for final approval.

EPA will hold a public hearing on its tentative decision on September 13, 1999, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until September 9, 1999. Copies of the North Carolina application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to North Carolina. EPA expects to make a final decision on whether or not to approve the North Carolina UST program by October 12, 1999, and will give notice of it in the **Federal Register**. The notice will include a *summary* of the reasons for the final determination and a response to all major comments.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

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 certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the North Carolina program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. North Carolina's participation in an approved UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the North Carolina program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Compliance With Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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, 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. The State administers its underground storage tank program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 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. North Carolina is not approved to implement the underground storage tank program in Indian Country. This rule has no effect on the underground storage tank program that EPA implements in the Indian Country within the State. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, 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 directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 29, 1999.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 99–20313 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–3250–N3]

RIN 0938–AI92

Medicare Program; Negotiated Rulemaking; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Announcement of Additional Public Meetings

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: This document announces an additional public meeting of the Negotiated Rulemaking Committee on Coverage and Administrative Policies for Clinical Laboratory Tests. The Committee was mandated by section 4554(b) of the Balanced Budget Act of 1997, and established under the Federal Advisory Committee Act.

DATES: The meetings are scheduled as follows:

1. August 30, 1999, 9 a.m. to 3 p.m.
2. August 31, 1999, 8 a.m. to 1 p.m.

ADDRESSES: The meetings will be held at the Hubert H. Humphrey Building, Room 800, 200 Independence Ave., SW., Washington, DC. 20201.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan,(410) 786–4635

SUPPLEMENTARY INFORMATION:

We published a notice in the **Federal Register** on June 3, 1998 (63 FR 30166) announcing the intent to form a negotiated rulemaking committee to provide advice and make recommendations to the Secretary on the content of a proposed rule that will establish national coverage and administrative policies for clinical laboratory tests payable under Part B of the Medicare program. The notice also announced the dates of the Committee meetings that began on July 13, 1998. The Committee held meetings through January 1999.

The Committee wishes to meet again on August 30 and 31, 1999. The opportunity for public comments will be 9:00 a.m. on August 30, 1999. The meetings will be held at the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201. The purpose of the meeting is to discuss the Committee's comments on the draft proposed rule. The meetings are open to the public without advance registration.

Public attendance at the meetings is limited to space availability.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 3, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–20401 Filed 8–9–99; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is for reinstatement of a previously approved collection for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

DATES: Comments on this notice must be received by October 12, 1999 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, VA 22302.

Comments are invited on:

(a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR Part 246), Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

OMB Number: 0584–0043.

Expiration Date of Approval: Expired.

Type of Request: Re-instatement of a previously approved collection with changes.

Abstract: The WIC Program provides supplemental foods, nutrition education, and health care referrals to low income, nutritionally at risk pregnant, breastfeeding and postpartum women, infants, and children up to age 5. Currently, WIC operates through State health departments in 50 States, the District of Columbia, Puerto Rico, Guam, America Samoa and the Virgin Islands. Additionally, 33 Indian tribal bands and organizations serve as State agencies.

This information collection is for the reporting and recordkeeping burdens associated with the WIC Program regulations, and is necessary to ensure appropriate and efficient management of the Program. This request is being made to extend the current information collection for an additional three years.

Based on Program regulations:

- State Plans are the principal source of information about how each State agency WIC Program operates.
- Local agency applications and vendor agreements are necessary to delineate responsibility, and ensure the accountability of State agencies, local agencies, and vendors.
- Certification data provide the basis for determining the eligibility of program applicants.
- Local agency nutrition education plans facilitate the provision of quality nutrition education and allows FNS and the State agency to assess the quality and quantity of nutrition education provided to participants.
- The vendor monitoring report enables FNS to evaluate vendor trends and assess State agency efforts to control vendor fraud and abuse.
- Documentation of participant and vendor complaints enables FNS and the State agency to identify problems at the local agency level.

The requirements that the State agency:

- Identify the disposition of food instruments;
- Request approval for specified allowable costs;
- Justify the carry-over and backspending of funds;
- Submit preliminary and final closeout reports;
- Submit financial, participation, and food delivery reports to FNS;
- Develop funding procedures for local agencies;
- Report the status of participant claims; and
- Request waivers for development of alternate cost containment systems;

ensure the accountability of Federal funds and promote efficient program management.

The requirement for State agency corrective action plans ensures the problem areas of program management are rectified. Submission of information to FNS for a biennial report entitled ''Study of WIC Participant and Program Characteristics,'' provides valuable data on the various aspects of program operations. The food delivery requirements assist in controlling vendor fraud and abuse and promoting the integrity of State agency food delivery systems.

The information collected is used by FNS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the lawful, proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.140 manhours per response.

Respondents: State and local governments, individuals or households, and businesses.

Estimated Number of Respondents: 7,642,797

Estimated Number of Responses per Respondent: 2.45

Estimated Total Annual Burden: 2,607,523 manhours.

Dated: July 21, 1999.

Samuel Chambers, Jr.

Administrator, Food and Nutrition Service.

[FR Doc. 99–20500 Filed 8–9–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

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

ACTION: Notice of Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping order on ball bearings and parts thereof from Japan. Based on this information, we preliminarily determine that Tsubaki-Nakashima Co., Ltd., is the successor-in-interest to Tsubakimoto Precision Products, Co., Ltd. for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Richard Rimlinger, 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) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20904) the antidumping duty order on ball bearings and parts thereof from Japan. On July 16, 1999, Tsubaki-Nakashima Co., Ltd. (Tsubaki-Nakashima), submitted a letter stating that Tsubaki-Nakashima is the successor-in-interest to Tsubakimoto Precision Products, Co., Ltd. (Tsubakimoto), and that Tsubaki-Nakashima should receive the same antidumping duty treatment as is accorded Tsubakimoto with respect to ball bearings.

Scope of the Review

The products covered by this review are ball bearings and parts thereof. These products include all ball bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the order being reviewed, including recent scope determinations, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998). Although the HTS item numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding remains dispositive.

Initiation and Preliminary Results of Review

In a letter dated July 16, 1999, Tsubaki-Nakashima advised the Department that, effective April 1, 1996, Tsubakimoto merged with Nakashima Manufacturing Co., Ltd. (Nakashima). According to the submission, Tsubakimoto was the surviving company and is currently operating under the name Tsubaki-Nakashima Co., Ltd. Tsubaki-Nakashima stated that the former President of Tsubakimoto is now the President of Tsubaki-Nakashima, that the former Executive Vice President of Tsubakimoto is now one of three Executive Vice Presidents of Tsubaki-Nakashima (two additional Executive Vice Presidents were added following the merger), that the sole Managing Director of Tsubaki-Nakashima was one of two Managing Directors of Tsubakimoto, and, further, that all the current Directors of Tsubaki-Nakashima were Directors of Tsubakimoto. Tsubaki-Nakashima also stated that its production facilities are substantially similar to Tsubakimoto. Specifically, Tsubaki-Nakashima stated that three of its four production facilities were operated previously by Tsubakimoto. Finally, Tsubaki-Nakashima stated that its supplier relationships and customer base are substantially similar to those of Tsubakimoto. Tsubaki-Nakashima submitted exhibits listing the management, production faciliites, major suppliers, and customers of both Tsubaki-Nakashima and Tsubakimoto.

Thus, in accordance with section 751(b) of the Tariff Act, as amended (the Act), the Department is initiating a changed-circumstances review to determine whether Tsubaki-Nakashima is the successor-in-interest to Tsubakimoto for purposes of determining antidumping duty liability with respect to ball bearings. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, *e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no single or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994), and *Canadian Brass.* Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash-deposit rate of its predecessor.

We preliminarily determine that Tsubaki-Nakashima is the successor-in-interest to Tsubakimoto. Tsubakimoto, the surviving company following its merger with Nakashima, is now operating as Tsubaki-Nakashima. The former President of Tsubakimoto is now the President of Tsubaki-Nakashima. The rest of the company?s senior management structure including the board of directors is substantially similar to that of Tsubakimoto. In addition, the company's production facilities are substantially similar to Tsubakimoto as are supplier relationships and the company's customer base. Thus, we preliminarily determine that Tsubaki-Nakashima

should receive the same antidumping duty treatment with respect to ball bearings as the former Tsubakimoto, *i.e.*, a 7.77 percent antidumping duty cash-deposit rate.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: August 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20558 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany

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

ACTION: Notice of final results of antidumping duty administrative review.

EFFECTIVE DATE: August 10, 1999.

SUMMARY: On April 6, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Germany. This review covers shipments of subject merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG, during the period March 1, 1997 through February 28, 1998. Due to the respondent's withdrawal from participation in this review, we have based its margin on adverse facts available, applying the highest margin for any company during any segment of this proceeding.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Kris Campbell, AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162 or 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the 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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations provided in 19 CFR Part 351 (1998).

Background

On April 6, 1999, the Department published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Germany. *See Preliminary Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany,* 64 FR 16697 (April 6, 1999) (preliminary results). As stated in the preliminary results, Weiland-Werke AG (Weiland) withdrew from participation in this review on May 11, 1998, and accordingly received a preliminary rate based on adverse facts available (*i.e.*, the highest rate for any company during any segment of the proceeding). On May 6, 1999, we received a case brief from domestic interested parties,[1] requesting that the Department continue to assign Weiland the adverse rate selected in the preliminary results (16.18 percent). Additionally, since Wieland failed to cooperate by not placing any information on the record, the petitioners argued that the Department should draw the adverse inference that duty absorption occurred on all of Wieland's sales of the subject merchandise during the period of review. We received no comments on the preliminary results from Wieland.

Scope of the Review

This review covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000; this review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* the Statement of Administrative Action to the URAA at 870 (SAA).

On May 11, 1998, Wieland informed the Department that it was withdrawing from participation in the review. By withdrawing its participation, Wieland impeded the instant review. Therefore, in accordance with section 776(a)(2) of the Act and consistent with our preliminary results, we determine that

[1] The case brief was filed by petitioners Hussey Copper, Ltd.; Outokumpu American Brass; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; and United Steelworkers of America (AFL-CIO/CLC). Also named as interested parties were Olin Corporation—Brass Group and United Auto Workers (Local 2367).

the use of total facts available is appropriate for the final results.

As noted above, in selecting facts otherwise available, pursuant to section 776(b) of the Act, the Department may use an adverse inference if the Department finds that an interested party, such as Wieland in this case, failed to cooperate by not acting to the best of its ability to comply with requests for information. Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from any prior segment of the proceeding. *See, e.g., Viscose Rayon Staple Fiber From Finland,* 63 FR 32820, 32822 (June 16, 1998) (final administrative review). In this case, the highest margin from any prior segment of the proceeding is 16.18 percent *ad valorem,* calculated for a respondent in the less-than-fair-value (LTFV) investigation.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA (at 870) as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.,* the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada,* 62 FR 971 (January 7, 1997) (preliminary results of administrative review) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.,* 62 FR 2081, 2088 (January 15, 1997) (final results of administrative review). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render the use of the margin selected for Wieland as inappropriate.

Duty Absorption

On May 21, 1998, the petitioners requested that the Department determine whether antidumping duties have been absorbed by an exporter or producer subject to this administrative review, in the event that the subject merchandise was sold during this period of review in the United States through an importer affiliated with Weiland.

Section 751(a)(4) of the Act provides that, if requested, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an affiliated importer. Section 751(a)(4) of the Act authorizes this inquiry during an administrative review initiated two years or four years after publication of an order. For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.,* antidumping orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's regulations provides that the Department will make such a determination for any administrative review initiated in 1996 or 1998.

The order in this case is a transition order, which went into effect in 1987. *See Notice of Antidumping Duty Order: Brass Sheet and Strip from the Federal Republic of Germany,* 52 FR 6997 (March 6, 1987). Because this review was initiated in 1998,[2] and the petitioners made a timely request for a duty absorption determination (*i.e.,* within 30 days of the date of publication of the notice of initiation of this review), we find that the regulatory requirements for a duty absorption determination have been met. *See* 19 CFR 351.213(j).

In their May 6, 1999, case brief, the petitioners argued that since Wieland failed to cooperate by not placing any information on the record, the Department should draw the adverse inference that duty absorption occurred on all of Wieland's sales of the subject merchandise during the period of review. As explained above, we have determined that a margin exists for Wieland based on adverse facts available. Lacking other information, we find that duty absorption exists on all of its U.S. sales of the subject merchandise made by Wieland. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 35590, 35601 (July 1, 1999); *Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752, 12756 (March 16, 1998).

Final Results of Review

We have determined that the following margin exists for Wieland for the period March 1, 1997 through February 28, 1998:

Manufacturer/exporter	Percentage margin
Wieland-Werke AG	16.18

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Wieland will be the rate stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original

[2] *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 63 FR 20378 (April 24, 1998).

LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 7.30 percent, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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 notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.304. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20557 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Collated Roofing Nails From Taiwan: Preliminary Results of Antidumping Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on collated roofing nails from Taiwan in response to a request by Dinsen Fastening System, Inc., a producer/exporter of subject merchandise. This review covers the period November 20, 1997, through October 31, 1998.

We have preliminarily determined that sales have not been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or Katherine Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration, Room 3099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1756, or 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the 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 (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1997, the Department published in the **Federal Register** the antidumping duty order on collated roofing nails from Taiwan (62 FR 61729).

On November 12, 1998, we published in the **Federal Register** (63 FR 63287) a notice of opportunity to request an administrative review of the antidumping duty order on collated roofing nails from Taiwan covering the period November 20, 1997, through October 31, 1998.

In accordance with 19 CFR 351.213(b)(1), Dinsen Fastening System, Inc. (''Dinsen'') requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on December 23, 1998 (63 FR 71091).

On January 14, 1999, the Department issued an antidumping duty questionnaire to Dinsen. We also issued a supplemental questionnaire on April 12, 1999. On March 8, March 15, and May 3, 1999, we received from Dinsen responses to the original antidumping questionnaire and the supplemental questionnaire. We conducted verification of Dinsen's antidumping duty questionnaire responses from June 1, through June 4, 1999, and issued our report on July 6, 1999, (*see* Memorandum to the File: Sales and Cost of Production Verification) (Verification Report).

On June 2, 1999, Dinsen provided the Department with changes to its response as a result of errors found during the preparation for verification. At the Department's request, on June 30, 1999, the respondent provided revised sales and cost databases reflecting the correction of certain errors found by Dinsen in preparing for verification and also to account for certain errors found at verification.

We made the following additional adjustments to Dinsen's June 30, 1999, reported databases based on verification findings:

1. We deleted threading cost for all control numbers except one, based on the verification results. We also corrected an error in the per-unit threading cost for the one control number based on the verification results.
2. We adjusted the plastic sheet cost to account for a correction in the cost of packing.
3. We corrected the product code and control number for a specific transaction.

Scope of the Review

The product covered by this review is collated roofing nails made of steel, having a length of 13⁄16 inch to 1 13⁄16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

Collated roofing nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Fair Value Comparisons

To determine whether sales of the subject merchandise sold by Dinsen and exported to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual

U.S. transactions to the weighted-average NVs of the foreign like product.

Consistent with our July 29, 1999, preliminary determination that stainless steel collated roofing nails are not within the scope of the antidumping duty order on collated roofing nails from Taiwan (*see* Memorandum for Richard Moreland from Louis Apple regarding ''Preliminary Scope Ruling-Antidumping Duty Order on Collated Roofing Nails from Taiwan Requested by the Stanley Bostitch Fastener Division of Stanley Works, Inc.'' dated July 29, 1999), we have excluded all U.S. sales of such merchandise from our preliminary margin analysis in this review.

Export Price

We based United States price on EP, as defined in section 772(a) of the Act, because the merchandise was sold directly by Dinsen to unaffiliated U.S. purchasers prior to importation or sold to unaffiliated purchasers in Taiwan for exportation to the United States, and constructed export price was not otherwise indicated by the facts of record.

We calculated EP based on packed, FOB Taiwan port or C&I (cost and insurance) U.S. port prices to customers in the United States, or FOB at Taiwan port for trading companies in Taiwan that purchase the subject merchandise from Dinsen and export the subject merchandise to its U.S. customers. We made deductions, where applicable, for inland freight expenses, brokerage and handling expenses (inclusive of marine insurance charges) and harbor maintenance fees, in accordance with section 772(c) of the Act.

Home Market or Third Country Viability

In order to determine whether there was a sufficient volume of sales in the home market or third country to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market or third country sales of the foreign like product are equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market and third country sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(B) and (C) of the Act. Because the respondent's aggregate volume of home market and third country sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that its home and third country markets were not viable. Therefore, we used constructed value (''CV'') as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

Normal Value

After testing home market viability, we calculated NV as noted in the ''Price-to-CV Comparisons'' section of this notice.

Calculation of CV

We calculated CV for the respondent in accordance with section 773(e)(1) of the Act, which indicates that CV shall be based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs.

Because there are no viable comparison markets for the respondent and, hence, no actual company-specific profit and selling expense data available for the respondent, we calculated these items in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong, 2d Sess (1994), at 841. Dinsen reported general and administrative expenses in its questionnaire response.

Specifically, the SAA provides that where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (i) or (ii) of section 773(e)(2)(B) of the Act or a ''profit cap'' under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available. In this case, we are unable to determine an amount for profit under alternatives (i) or (ii), or a ''profit cap'' under alternative (iii) because the respondent does not have a viable home market. *See* 19 CFR 351.405(b)(2) (clarifying that under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced) (62 FR 27296, 27412–13 (May 19, 1997)). The statute directs us to use an amount which reflects profit in connection with sales for consumption in the foreign country of the same general category of products as the subject merchandise. *See* section 773(e)(2) of the Act. Because Dinsen did not have a viable home market, the profit and selling expenses shown on its financial statement do not reflect profit and selling expenses realized in the home market. Therefore, we did not rely on the profit or selling expense data in the respondent's financial statements in calculating CV. Instead, we applied alternative (iii) and determined profit and selling expense on the basis of the facts available consistent with the SAA (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72273, (December 31, 1998)). As facts available, we calculated Dinsen's profit and selling expenses for CV based on the weighted-average selling expenses and profit contained in the 1998 financial statement of Chun Yu Works & Company, Ltd. (''Chun Yu''), a Taiwan producer of fasteners, lug nuts and steel bars. *See* Calculation Memorandum dated August 2, 1999.

Price-to-CV Comparisons

For price-to-CV comparisons, we did not make a circumstance-of-sale adjustment, pursuant to section 773(a)(6)(C)(iii) of the Act, because the Department was unable to distinguish between home market direct and indirect selling expenses based on the 1998 financial statement of Chun Yu.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Dinsen Fastening System, Inc	11/20/97–10/31/98	0.02 (*de minimis*).

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final 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. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis* (*i.e*, at or above 0.5 percent) (*see*, 19 CFR 351.106(c)(2)). For assessment purposes, if applicable, we intend to calculate an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity sold.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Dinsen will be that established in the final results of this review, except if the rate is less than 0.5 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the final determination; or (3) if the manufacturer or exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.98 percent, the ''All Others'' rate made effective by 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) 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. *See* 19 CFR 351.402(f)(3).

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20559 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In response to a request by the respondents, Makita Corporation and Makita U.S.A., Inc., the U.S. Department of Commerce is conducting an administrative review of the antidumping duty order on professional electric cutting tools from Japan. The period of review is July 1, 1997, through June 30, 1998.

We have preliminarily found that no sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by Makita Corporation. Furthermore, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to Makita Corporation, based on three consecutive review periods of sales at not less than normal value (*see* 19 CFR 351.222(b)(i)). *See Intent to Revoke* section of this notice.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith, at (202) 482–1766, Barbara Wojcik-Betancourt at (202) 482–0629, or Brian Ledgerwood, at (202) 482–3836, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the U.S. Department of Commerce's (''the Department's'') final regulations at 19 CFR Part 351 (1998).

Case History

On July 12, 1993, the Department published in the **Federal Register** an antidumping duty order on professional electric cutting tools from Japan. *See* 58 FR 37461. On July 1, 1998, the Department published a notice providing an opportunity to request an administrative review of this order for the period July 1, 1997, through June 30, 1998 (63 FR 35909). On July 24, 1998, we received a timely request for an administrative review from Makita Corporation (''Makita Japan'') and Makita U.S.A. Inc. (''Makita USA''), Makita Japan's affiliated selling agent in the United States. In addition, Makita

Japan and Makita USA (hereafter ''Makita'' when referenced collectively) requested that the Department revoke the antidumping duty order with respect to Makita. On August 27, 1998, we published the notice of initiation of this review (63 FR 45796).

On August 31, 1998, we issued an antidumping questionnaire to Makita. Because the Department disregarded sales below the cost of production (''COP'') in the last completed review (*see Notice of Final Results of Fourth Antidumping Duty Review: Professional Electric Cutting Tools from Japan*, 63 FR 54441 (October 9, 1998)), the Department had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value (''NV'') in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether Makita Japan made home market sales during the POR at prices below its COP, and required Makita Japan to respond to the COP section of the questionnaire issued in August 1988.

The Department received the questionnaire responses in October 1998. We issued supplemental questionnaires in January 1999. We received responses to these questionnaires in February 1999. Because Makita requested revocation of the order, the Department verified the company's response pursuant to section 782(i)(2) of the Act.

In December 1998, the Department requested submissions of factual information regarding revocation of the antidumping order in part. Such submissions were received from the petitioner and Makita in February and March, 1999, and were also verified by the Department.

On March 5, 1999, the Department published a notice postponing the preliminary results of this review until August 2, 1999 (64 FR 10621).

Scope of Review

Imports covered by this review are shipments of professional electric cutting tools (''PECTs'') from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term ''electric'' encompasses electromechanical devices, including tools with electronic variable speed features. The term ''assembled'' includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term ''unassembled'' means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. These are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECTs order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

''Corded'' and ''cordless'' PECTs are included within the scope of this order. ''Corded'' PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular ''corded'' tool, then that tool must have at least four of the six characteristics to be considered a ''corded'' PECT.

''Cordless'' PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company, Makita, and the period July 1, 1997 through June 30, 1998.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Makita. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Duty Absorption

On September 24, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Makita Japan sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding. As we have preliminarily found that there is no dumping margin for Makita with respect to its U.S. sales, we have also preliminarily found that there is no duty absorption. *See Preliminary Results of Antidumping Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany*, 64 FR 16703 (April 6, 1999).

Fair Value Comparisons

We compared the constructed export price (''CEP'') to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual transactions to contemporaneous monthly weighted-average prices of sales of the foreign like product (where there were sales that passed the COP test, as discussed in the *Cost of Production Analysis* section below, and were otherwise in the ordinary course of trade).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Makita Japan covered by the description in the *Scope of the Review* section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate, in a month within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: configuration, capacity, number of battery cells, power, speed, housing type and size.

Level of Trade/CEP Offset

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (''SG&A'') expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine the stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP Offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In order to determine whether Makita warrants a LOT adjustment or CEP offset, as claimed, we compared the CEP sales to the HM sales in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and Japanese markets, including the selling functions, classes of customers, and selling expenses for the company.

In this review, Makita Japan reported two channels of distribution in the home market: (1) Sales made at the wholesale/distributor price level; and (2) sales made at the dealer/retail price level. Makita Japan based the channels of distribution on the entity (*i.e.*, wholesaler, subwholesaler or retailers) in the distribution chain to which Makita Japan had billed or shipped the merchandise. We preliminarily determine that these sales constitute two LOTs in the home market. As explained below, we found that while Makita Japan performs some of the same selling functions for both distribution channels, the level of activities performed varies.

Makita Japan reported only CEP sales in the U.S. market. For the U.S. market, Makita reported three channels of distribution from Makita USA to unaffiliated customers, as follows: (1) Sales made at the wholesaler price level; (2) sales made at the retailer price level, and (3) sales made directly to the end user. However, the LOT of the CEP sales was based on sales made by Makita Japan to its wholly-owned U.S. subsidiary, Makita USA. Because Makita Japan's sales to the United States were all CEP sales made by an affiliated company, we considered only the parent company's selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Act, and determined that they were the same for all three reported channels of distribution. Therefore, we preliminarily determine that all CEP sales constitute a single LOT in the United States.

To determine whether sales in the comparison market were at a different LOT than CEP sales, we first compared the relevant selling functions performed in the different channels of distribution in the home market. We then examined the relevant selling functions performed at the CEP level and compared those selling functions to the selling functions performed in each home market LOT.

Makita Japan reported thirteen separate selling functions which it performed with respect to sales in the home market and five selling functions performed in the United States at the CEP level (see chart in Addendum 1 to Section A of Makita's October 26, 1998 questionnaire response). The home market selling functions are: (1) Inventory maintenance, (2) market research, (3) after sales service and warranties, (4) technical advice, (5) advertising, (6) R&D/product development, (7) freight/delivery arrangement, (8) procurement and sourcing, (9) competitive pricing (offering discounts, rebates, and other price incentives), (10) pricing negotiations with customers, (11) sales calls and demonstrations, (12) interaction with end users, and (13) processing of daily order updates.

In contrast, Makita Japan only performs the following selling functions in the U.S. market: (1) Inventory maintenance, (2) technical advice, (3) R&D/product development, (4) procurement and sourcing, and (5)

processing daily order updates. Thus, Makita Japan performs eight selling functions with respect to its home market channels of distribution that it does not perform in the U.S. market. (*See*, Makita Japan / Makita USA Sales and Cost Verification report dated July 9, 1999, at pages 24–33; hereafter ''Sales Verification Report.'')

In comparing the two home market LOTs claimed by Makita (*i.e.*, wholesaler, subwholesaler or retailers), we noted that, although Makita Japan performs some of the same selling functions in both LOTs, the level of activities performed varies. For example, Makita Japan's interaction with retailers is higher in the following sales functions than for wholesalers and subwholesalers: inventory maintenance, freight/delivery arrangements, and sales calls and demonstrations (see Sales Verification Report at pages 24–33). Therefore, we preliminarily determine that sales to wholesalers/subwholesalers and sales to retailers constitute separate LOTs.

When we compare the CEP LOT to either the home market wholesale LOT or the home market retail LOT, we note that there is only one selling function which is similar in both function and level of activity performed: R&D/ product development (*see* Sales Verification Report at pages 31–33). We noted at verification that of the five selling functions performed in the United States, four of those functions involved substantially less selling activity than in the home market. For example, evidence reviewed at verification indicates that inventory maintenance is an important function in the home market, where products are frequently purchased (by both retailers and wholesalers/subwholesalers) directly from inventory. In contrast, we found at verification that inventory maintenance activities are minimal in the U.S. market, since production is primarily requested through specific purchase orders (*i.e.*, produced to order). Similarly, with respect to technical advice, procurement and sourcing, and processing of daily order updates, we found that Makita Japan performs more significant activities in the home market (for sales to both wholesalers and retailers) than in the U.S. market (*see* Sales Verification Report at pages 24—33). Based on our analysis of the selling functions, which include differences in levels of activity performed, we find that both home market LOTs are at a more advanced stage of distribution than that of the CEP level. Therefore, we agree with Makita Japan's assertion that there is no home market level equivalent to the CEP LOT.

Based on our verification findings and the data on this record, the Department determines for the preliminary results that (1) significant differences exist in the selling functions associated with each of the two home market LOTs, and the CEP LOT, and (2) the CEP LOT is at a less advanced stage of distribution than either home market LOT. Because there is not a common LOT between the two home market and the CEP LOTs, we were unable to quantify a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Consequently, we have granted Makita's request for a CEP offset adjustment in accordance with section 773 (a)(7)(B) of the Act (the CEP offset provision).

Constructed Export Price

We calculated CEP, in accordance with section 772(b) of the Act, because the sale to the first unaffiliated purchaser took place after importation to the United States. We based CEP on packed and delivered prices to all unaffiliated purchasers in the United States. Where appropriate, we added to the starting price revenues earned from drop-ship fees. Where appropriate, we made deductions from the starting price for discounts and rebates. We also made deductions, where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act. These expenses included foreign and U.S. inland freight, ocean freight, foreign and U.S. brokerage, and handling expenses.

In accordance with section 772(d)(1) of the Act, we deducted from CEP those direct and indirect selling expenses associated with Makita Japan's economic activities occurring in the United States. These expenses included credit expenses, inventory carrying costs, and other indirect selling expenses. Finally, in accordance with section 772(d)(3) of the Act, we deducted from CEP an amount for profit.

Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Makita Japan's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Makita Japan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable, and, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in Japan.

2. Affiliated-Party Transactions and Arm's-Length Test

It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether such sales to affiliated parties are appropriate to use as the basis for calculating NV (*i.e.*, whether such sales are made at arm's-length prices). *See Final Results of Antidumping Duty Administrative Reviews, Partial termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 60 FR 10899, 10900 (February 28, 1995) and 19 CFR 351.403(c). To test whether Makita Japan's sales to affiliated parties were made at arm's-length prices, we compared, on a model-specific basis, prices of sales to its affiliated and unaffiliated customers at the same LOT net of all movement charges, direct selling expenses, discounts, and packing. Where, for the tested models, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 5308, 53817 (October 16, 1997); 19 CFR 351.403(c); and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). In this instance all sales to affiliated parties passed the arm's-length test.

3. Cost-of-Production Analysis

As we stated above in the *Case History* section, because we disregarded sales below the COP in the last completed segment of the proceeding (*i.e.*, the fourth administrative review), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Makita Japan in the home market. We

conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Makita Japan's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses and packing costs in accordance with section 773(b)(3) of the Act. We generally relied on the COP information provided by Makita Japan it its questionnaire responses. However, based on our verification findings, we adjusted the reported COP amounts to correct errors made in calculating cost of manufacturing (''COM''), including factory overhead expenses (*see* Sales Verification Report at page 5).

B. Test of Home Market Prices

We compared the weighted-average COP for Makita Japan, adjusted where appropriate, to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales at prices below the COP, we examined (1) whether within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts and rebates.

C. Results of the COP Test

Pursuant to 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales are not being made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we are comparing prices to POR-average costs, we also determine that such sales are not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregard the below-cost sales.

In this case, we found that, for certain models of PECTs, more than 20 percent of Makita Japan's home market sales within an extended period of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of PECTs for which there were no comparable home market sales in the ordinary course of trade, we compared CEPs to constructed value (''CV'') in accordance with section 773(a)(4) of the Act.

Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the Makita Japan's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, and profit. As noted above, we adjusted Makita Japan's COP by recalculating total COM, including factory overhead expenses (*see* Sales Verification Report at page 5).

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Makita Japan in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Japan. We used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We based NV on packed, delivered prices to unaffiliated home market customers and prices to affiliated customers that we have determined to be at arm's length. We made adjustments to the starting price for discounts and rebates, where appropriate. We also made deductions, where appropriate, for inland freight (*i.e.*, plant to warehouse and warehouse to customer) pursuant to section 773(a)(6(B) of the Act. In addition, we made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also deducted the home market direct selling expenses, including credit, in accordance with section 773 (a)(6)(C)(iii) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

For the reasons stated in the *LOT/CEP Offset* section of this notice and pursuant to section 773(a)(7)(B) of the Act, we have allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted from NV the indirect selling expenses included on home market sales which were compared to CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP under section 772(d)(1)(D) of the Act.

No other adjustments to NV were claimed or allowed.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses, including credit, in accordance with section 773(a)(6)(C)(iii) of the Act. Also, pursuant to section 773(a)(7)(B) of the Act, we made a CEP offset adjustment as described above in the *Price-to-Price Comparisons* section above.

Intent To Revoke

On July 24, 1998, Makita Japan requested that, pursuant to 19 CFR 351.222(b), the Department revoke the antidumping duty order in the above-referenced proceeding with respect to Makita Japan at the conclusion of this administrative review. Makita Japan submitted along with its revocation request a certification stating that: (1) the company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(i)); (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV (*see* 19 CFR 351.222(b)(iii)).

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation,

sold subject merchandise at less than NV. (*See* 19 CFR 351.222(e)(1).) Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that: (1) The company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. See 19 CFR 351.222(b)(2). *See Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada* (''Pure Magnesium''), 64 FR 12977, 12982 (March 16, 1999).

We allowed parties to comment on Makita Japan's request for revocation. Petitioner opposes the request for revocation, arguing that it is likely that Makita Japan will resume selling subject merchandise below NV if the order is revoked. Specifically, petitioner argues that Makita Japan has avoided dumping margins in the past by drastically reducing its import volumes, and Makita Japan's pricing practices and loss in market share indicate that Makita Japan is not able to compete effectively in the U.S. market without lowering prices. Additionally, petitioner argues that Makita Japan could easily expand its production capacity in Japan in order to begin selling at below NV in the future. Finally, petitioner purports that market demand in Japan is in decline, thereby increasing Makita's dependance on the U.S. market. As these comments and the relevant analysis require discussion of proprietary information, please *see* the *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999).

In response, Makita Japan argues that its sales have in fact been in commercial quantities, and that the record clearly indicates that it is not likely that Makita Japan will sell at below NV in the future if the order were revoked. In particular, Makita Japan argues that it has experienced a drastic change in circumstance as a result of the building of its U.S. manufacturing facility, where a majority of Makita Japan's electric cutting tools are now produced. Thus, Makita Japan stresses, most of its production of ''subject merchandise'' occurs in the United States, and consequently such products are no longer subject to the antidumping duty order. Makita Japan notes that it has made substantial investment in the U.S. facility, and that maintaining the U.S. facility is consistent with the company's objective of producing in close proximity to its customers. Finally, Makita Japan states that, while it has expanding capacity in its U.S. production facility, it has limited remaining production capacity in its facilities in Japan. As such, Makita Japan claims that it is not likely that Makita Japan would ever shift production of its power tools back to Japan.

With regard to the market conditions and pricing levels, Makita Japan argues that it has no need to sell at below NV, because the U.S. electric power tool and electric cutting tool markets are healthy, growing, and stable, and the Japanese electric power tool market is relatively stable. Makita Japan further argues that it is able to charge premium prices because of its reputation for quality. Thus, Makita Japan contends, it can make sales in the U.S. market, even when its prices are higher than its competitors' prices. As these comments and the relevant analysis require discussion of proprietary information, please *see* the *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999).

Upon review of the three criteria outlined at section 351.222(b) of the Department's regulations, the comments of the parties, and all of the evidence in the record, we have preliminarily determined that the Department's requirements for revocation have been met. Based on the preliminary results in this review and the final results of the two preceding reviews, Makita Japan has preliminarily demonstrated three consecutive years of sales at not less than NV. Furthermore, we find that Makita Japan's aggregate sales to the United States have been made in commercial quantities during all segments of this proceeding. Finally, our review of the record and the comments of the parties indicates that it is not likely that Makita Japan will sell at below NV in the future.

First, although Makita Japan's sales to the United States have decreased substantially since the imposition of the antidumping order, its exports to the United States remain significant. Thus, regardless of any decrease in shipments during the course of this proceeding, Makita Japan is currently selling in commercial quantities. Additionally, Makita has maintained consistent sales levels since 1995. (*See* Sales Verification Report at pages 34–40, and Appendices 2 and 4 of Makita's March 15, 1999, submission). Based on these facts (confirmed at verification) and our review of Makita Japan's sales practices, we find that we can reasonably conclude that the *de minimis* margins calculated for Makita Japan are reflective of the company's normal commercial experience. *Compare Pure Magnesium* 64 FR 12977, 12982 (March 16, 1999) (finding that because sales and volume figures were so small, both in absolute terms and in comparison with the period of investigation (''POI''), the Department could not conclude that the reviews were reflective of what the company's normal commercial experience would be without the discipline of an antidumping duty order); *see* also *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999), at 10–11.

With respect to whether it is not likely that Makita Japan will in the future sell merchandise at less than NV, we have considered various factors. As we stated in *Brass Sheet and Strip from Germany, Final Results of Antidumping Administrative Review and Determination to Revoke in Part,* 61 FR 49728, 49731 (Sept. 23, 1996), ''[i]n prior cases where revocation was under consideration and the likelihood of resumption of dumped sales was at issue, the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales.'' *See also Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part,* 63 FR 6519, 6523 (Feb. 9, 1998).

Based upon the relevant factors in this case, we find that it is not likely that Makita Japan will sell at less than NV if the order is revoked. First, the record indicates that the electric power tool industry, including PECTs, in the United States and around the world is stable and/or growing, as applicable (*see* Sales Verification Report at pages 34–39; the July 13, 1999, Makita Corporation of America (''MCA'') verification report at pages 14; Makita's February 9, 1999, submission at pages 33–42; and *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999), at 14–15). Thus, the price stability characteristic of the electric power tool industry mitigates against the heightened possibility of dumping, as

compared to other industries where market prices are volatile.

Second, with regard to capacity utilization, the record establishes that Makita Japan has very limited remaining capacity in its Japanese facilities, while it has significant (and growing) remaining capacity at MCA. Makita has made significant investments in its U.S. facility, and all evidence in the record indicates that MCA intends to produce PECTs in the United States for the long-term. The majority of the cutting tools sold by Makita USA is now being produced in the United States. Moreover, as confirmed at verification, Makita Japan has never shifted production of any tool from MCA back to Japan. Additionally, Makita Japan is currently producing only specialty tools for export to the U.S. market, and there is no evidence on the record indicating that it would be economically advantageous for Makita to shift existing production in Japan, which is primarily geared toward production for the home market, to production of non-specialty tools for export to the United States.

Third, with respect to specialty tools (imports from Makita Japan), Makita has consistently priced its products higher than its competition in the United States. Thus, the record indicates that Makita has not needed to lower prices of its Japan-produced tools in order to remain competitive or to maintain a consistent level of sales (i.e., quantity). Although Makita has lost U.S. market share in recent years, it has maintained consistent annual sales in significant quantities.

Based upon these factors, and other proprietary information discussed in the *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (Aug. 2, 1999), at 11–16, we find that it is not likely that Makita will sell at less than NV in the future.

Because all three requirements under the regulation have been satisfied, we preliminarily intend to revoke the antidumping duty order with respect to Makita Japan. If these preliminary findings are affirmed in our final results, we intend to revoke the order with respect to all PECTs produced by Makita Japan and that are also exported by Makita Japan. In accordance with 19 CFR 351.222 (f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct Customs to refund any cash deposit.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period July 1, 1997—June 30, 1998:

Manufacturer/exporter	Margin (percent)
Makita Corporation	0.07 (*de minimis*).

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Request should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Cash Deposit and Assessment Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. If these preliminary results are adopted in our final results, we will instruct the Customs Service liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis (i.e.*, at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the antidumping duty margins calculated for all U.S. sales examined and dividing the amount by the total entered value of the sales examined.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PECTs from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) No cash deposit will be required for PECTs from Japan that are produced by Makita Corporation and that are also exported by Makita Corporation (unless the margin established for the company in the final results of this review is above *de minimis*); (2) for previously reviewed or investigated companies noted above, the cash deposit rate will continue to be the company specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 54.5 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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 administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 351.213.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20560 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 27, 1999.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–4–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.quality.nist.gov.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020, telephone 301–975–2361, FAX–301–948–3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

1. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary

2. The Board shall provide a written annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on January 1 and end on December 31 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 et seq.

2. The Board will meet annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to two days in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination acknowledge the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: August 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20569 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 27, 1999.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.quality.nist.gov.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX–301–948–3716; or via e-mail at harry.hertz@nist. gov.

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app. 2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Pub. L. 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of nine members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on January 1 and end on December 31 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 et seq.

2. The Judges Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to three days in duration.

3. Committee meetings are closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, and in accordance with Section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldridge applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: August 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20570 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 97–047US.

Title: Implementation of Role/Group Permission Association Using Object Access Type.

Abstract: Security administration in a computer system is simplified by defining a new and independent entity called an Object Access Type (OAT). OATs comprise access control specifications associating roles with

permissions, and associating the roles with a set of objects, such as resources or files. Different roles may have differing permissions to objects associated with an OAT, and objects may be assigned to plural OATs. A mechanism is also presented whereby system administrators are provided with the capability to display and manipulate access designations by operating only on the independent OATs.

NIST Docket Number: 98–010US.

Title: Planar Geometry Superconducting Coil Having Internal Damping Resisters.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and the University of Colorado. The operation of a planar geometry superconducting coil used in conjunction with a ground plane is improved by intracoil damping. This damping reduces coil resonances. The improvement consists of an intracoil shunt, which damps the resonances of the coil by connecting each turn, or loop, of the multiturn/multiloop coil with resistors. One example of a planar geometry superconducting coil which is effectively damped according to the present invention is the input coil to a superconducting quantum interference device (SQUID). The intracoil shunt may be added to the SQUID at the same time in the SQUID fabrication as the junction shunts.

NIST Docket Number: 98–072US.

Title: Method For The Chemical Precipitation Of Metallic Silver Powder Via A Two Solution Technique.

Abstract: A method for the chemical precipitation of metallic silver powder employs a two solution technique in which a solution of a tin salt and a solution of a silver salt are mixed in the presence of an inorganic or organic acid, alumina, an anionic surfactant, and a colloid to form a precipitation solution at a temperature and pH suitable to effect the chemical precipitation of silver. Almost 80% by weight of the precipitated powder agglomerate is less than 25 microns in diameter, and the individual powder particles which compose the agglomerate range in size from 0.2 to 2.0 microns. In addition to the favorable size distribution, silver particles precipitated in the presence of a gelatin colloid can be used with a minimal amount of sieving so that little work hardening is imparted to the particles. The powder can be annealed at a temperature of up to 750 degrees C for two hours in air with minimal sintering, and the acid-assisted hand consolidated of powder produced according to the present technique is capable of producing silver compacts which are nearly 80% dense. Advantageously, a hand consolidated silver compact which comprises the powder of the present invention equals or exceeds the transverse rupture strength, shear strength, creep, toughness, corrosion resistance, microleakage, and wear properties of conventional silver amalgam.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20571 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Public Meeting of the Industry Usability Reporting Project (IUSR)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Third Workshop of the Industry Usability Reporting Project will be held as a forum for introducing a newly developed format for reporting usability testing results and for explaining the requirements for participating in an eighteen-month pilot testing of this format. Industry partners are invited to join this effort to standardize the method by which software usability reports are generated. The goal of the on-going effort is to develop a Common Usability Format (CIF), which, if used for exchanging information between software vendors and software consumer organizations, will have positive impacts on the Total Cost of Ownership of software. More information about the IUSR Project can be obtained at: http://www.nist.gov/itl/div894/vvrg/iusr.

Pursuant to 15 U.S.C. 272 et seq., the National Institute of Standards and Technology (NIST) cooperates with industry to accelerate the development of technologies that allow intuitive, efficient access, manipulation and exchange of complex information by facilitating the creation of measurement methods and standards.

DATES: The meeting will be held September 14(8:30 am—5 pm) and September 15 (8:30 am—12:30 pm), 1999.

ADDRESS: The meeting will take place at the Oracle Conference Center, 350 Oracle Parkway, Redwood Shores, CA 94065.

FOR FURTHER INFORMATION CONTACT: Sharon Laskowski, NIST, 100 Bureau Drive, Stop 8940, Gaithersburg, Maryland 20899–8940. Telephone (301) 975–4535 or E-mail sharon.laskowski@nist.gov.

Dated: August 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20572 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Partially Closed Meeting of the Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's (NIST's) Manufacturing Extension Partnership National Advisory Board (MEPNAB) will meet to hold a meeting on Thursday, September 9, 1999. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up, under the direction of the Director of NIST, to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by a state, federal, and local partnership. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to delve into areas of operation determined by the Board. The agenda includes an MEP overview status, leveraging of the ATP results for smaller manufacturers, and ideas for moving towards performance-based operations. The portion of the meeting, which involves personnel and propriety budget information, will be closed to the public. All other portions of the meeting will be open to the public.

DATE AND ADDRESS: The meeting will convene on September 9, 1999, at 8 a.m. and will adjourn at 3:30 p.m. and will be held at the National Institute of Standards and Technology, Building 101, 10th floor conference room, Gaithersburg, Maryland. The closed

portion of the meeting is scheduled from 8–9:30 a.m.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on December 21, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, that these portions of the meeting may be properly closed because they are concerned with matters that are within the purview of 5 U.S.C. 522(c)(4), (6) and (9)(b). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

MEP's services to small manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally based experts to be incorporated into its national plans. The MEPNAB was established at the direction of the NIST Director to maintain MEP's focus on local and market-based needs. The MEPNAB was approved on October 24, 1996, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2., to provide advice on MEP programs, plans, and policies; to assess the soundness of MEP plans and strategies; to assess the current performance against MEP program plans, and to function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the third meeting of the MEPNAB in 1999.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–5033.

Dated; August 4, 1999.

Karen H. Brown,

Deputy Director, National Institute of Standards and Technology.

[FR Doc 99–20573 Filed 8–9–99; 8:45 am]

BILLING CODE 3150–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990125029–9205–02]

RIN 0648–ZA55

Dean John A. Knauss Marine Policy Fellowship National Sea Grant College Program Federal Fellows Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration. Commerce.

ACTION: Notice, correction.

SUMMARY: The National Oceanic and Atmospheric Administration published a document in the **Federal Register** on March 5, 1999, announcing that applications must be submitted for a Fellowship program which was initiated by the National Sea Grant College Program Office (NSGCPO). The document contained information that has since been revised to increase the Fellowship award and to meet the NSGCPO's legislative requirements with respect to prohibiting indirect costs.

FOR FURTHER INFORMATION CONTACT: Dr. Sharon H. Walker, Acting Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 extension 148.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of March 5, 1999, 64 FR 10628, on page 10629, in the second column, correct the ''Stipend and Expenses'' section to read:

Stipend and Expenses: The local Sea Grant program receives and administers the overall award of $38,000 on behalf of the fellow. Of this award, the university will provide $32,000 to each fellow for salary (stipend) and living expenses (per diem). The additional $6,000 will be used by the university to cover mandatory health insurance for each fellow and other expenses, including travel funds for arrival to and departure from the host office, and moving expenses. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships, according to 15 CFR 917.11(e), Guidelines for Sea Grant Fellowships. During the year, the host may provide supplemental expenses for work-related travel by the fellow.

Dated: August 5, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99–20532 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080399F]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Special Ad Hoc Bycatch Reduction Devise Advisory Panel (SBAP).

DATES: The SBAP meeting is scheduled to begin at 8:30 a.m. on Thursday, August 26, 1999, and adjourn at 3:30 p.m.

ADDRESSES: The meeting will be held at the at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, at the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SBAP will convene to review the bycatch reduction criterion for red snapper that was established for bycatch reduction devices (BRDs) in ''Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters with Supplemental Environmental Impact Statement, Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and Social Impact Assessment.'' The current criterion of 44 percent was the minimum reduction in fishing mortality for age 0 and age 1 red snapper from the average level of fishing mortality during the 1984–89 period. Amendment 9 established a framework procedure for modifying this criterion, if needed, and included a review with recommendations from a SBAP.

Copies of the agendas can be obtained by calling 813–228–2815. Although other issues not on the agenda may come before the SBAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in the agendas listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 19, 1999.

Dated: August 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–20534 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080299A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Strategic Plan Development Committee (Committee) will hold a work session which is open to the public.

DATES: The meeting will begin Thursday, August 26, 1999, at 10 a.m., and may go into the evening until business for the day is completed. The meeting will reconvene at 8 a.m. on Friday, August 27, 1999, and continue throughout the day until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to confer with the consultant to refine the process for development of a strategic plan for the West Coast groundfish fishery.

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

Special Accommodations

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

Dated: August 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–20535 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB, Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: CHAMPUS Claim Patient's Request for Medical Payment; DD Form 2642; OMB Number 0720–0006.

Type of Request: Extension.

Number of Respondent: 956,000.

Responses Per Respondent: 1.

Annual Responses: 956,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 239,000.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. The information collected is used by TRICARE to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received care, and reimbursement for the medical services received.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD (Health Affairs), Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20479 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday September 1, 1999 from 0900 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include a presentation on the most recent efforts to reorganize the University into a unified structure.

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

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20482 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 12 August 1999 (9 am to 4 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discussion several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20480 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows.

DATES: 17 August 1999 (8 am to 4 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill BLVD, Washington, DC, 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20481 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 7, 1999, September 14, 1999, September 21, 1999, and September 28, 1999, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rossyln, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20483 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Record of Decision for Long-Term Management and Use of Depleted Uranium Hexafluoride

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (''DOE'' or ''the Department'') issued the Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (Final PEIS) on April 23, 1999. DOE has considered the environmental impacts, benefits, costs, and institutional and programmatic needs associated with the management and use of its approximately 700,000 metric tons of depleted uranium hexafluoride (DUF_6). DOE has decided to promptly convert the depleted UF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. The depleted uranium oxide will be used as much as possible and the remaining depleted uranium oxide will be stored for potential future uses or disposal, as necessary. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. Pursuant to this Record of Decision (ROD), any proposal to proceed with the siting, construction, and operation of a facility or facilities will involve additional review under the National Environmental Policy Act (NEPA). DOE anticipates that approximately 4,700 cylinders containing depleted UF_6 that are located at the East Tennessee Technology Park (formerly known as the K–25 Site), in Oak Ridge, Tennessee, would be shipped to a conversion facility. Uses for the converted product potentially include Government applications and applications that may be developed by the private sector.

ADDRESSES: The Final PEIS and ROD are available on the Office of Environment, Safety and Health NEPA home page at *http://www.eh.doe.gov/nepa* or on the Office of Nuclear Energy, Science and Technology (NE) home page at *http://www.ne.doe.gov*. You may request copies of the Final PEIS and this ROD by calling the toll-free number 1–800–517–3191, by faxing requests to (301) 903–4905, by making requests via the depleted UF_6 home page at *http://web.ead.anl.gov/uranium/finalpeis.cfm*, via electronic mail to scott.harlow@hq.doe.gov., or by mailing them to: Scott E. Harlow, NE, U.S. Department of Energy, 19901 German-

town Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: For information on the alternative strategies for the long-term management and use of depleted UF_6, contact Scott Harlow at the address listed above. For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

Depleted UF_6 results from the process of making uranium suitable for use as fuel for nuclear power plants or for military applications. The use of uranium in these applications requires increasing the proportion of the uranium-235 isotope found in natural uranium through an isotopic separation process called uranium enrichment. Gaseous diffusion is the enrichment process currently used in the United States. The depleted UF_6 that is produced as a result of enrichment typically contains 0.2 percent to 0.4 percent uranium-235 and is stored as a solid in large metal cylinders at the gaseous diffusion facilities.

Large-scale uranium enrichment in the United States began as part of atomic bomb development during World War II. Uranium enrichment activities were subsequently continued under the U.S. Atomic Energy Commission and its successor agencies including DOE. The K–25 Plant (now called the East Tennessee Technology Park) at Oak Ridge, Tennessee, was the first of the three gaseous diffusion plants constructed to produce enriched uranium. The U.S. program to enrich uranium was conducted first to support U.S. national security activities and later (by the late 1960s) to provide enriched uranium-235 for fuel for commercial nuclear power plants in the United States and abroad. The K–25 plant ceased operation in 1985, but uranium enrichment continues at both the Paducah Site in Kentucky and the Portsmouth Site in Ohio. These two plants are now operated by USEC Inc. (formerly known as the United States Enrichment Corporation), created by law in 1993 to privatize the uranium enrichment program. Depleted UF_6 is stored as a solid at all three sites in steel cylinders. Each cylinder holds approximately 9 to 12 metric tons of material. The cylinders usually are stacked two layers high in outdoor areas called ''yards.''

DOE maintains an active cylinder management program to improve storage conditions in the cylinder yards, to monitor cylinder integrity by conducting routine inspections for breaches (leaks), and to perform cylinder maintenance and repairs as needed. The results of these management activities ensure that cylinders are stored with minimum risks to workers, members of the general public, and the environment at the sites. Because storage began in the early 1950s and the cylinders are stored outdoors, many of the cylinders now show evidence of external corrosion. Eight cylinders out of the 46,422 that were filled by DOE or its predecessor agencies have developed leaks. Because the depleted UF_6 is a solid at outdoor ambient temperatures and pressures, it is not readily released from a cylinder following a breach.

DOE has an integrated program plan that has been in place since December 1994 to ensure the safe management of these cylinders. Under this program plan, if alternative uses for the depleted uranium were not found to be feasible by approximately the year 2010, DOE would take steps to convert the depleted UF_6 to triuranium octaoxide (U_3O_8) beginning in the year 2020. U_3O_8 would be more chemically stable than the depleted UF_6 and would be safely stored pending a determination that all or a portion of the depleted uranium was no longer needed. At that point, the U_3O_8 would be disposed of as low-level waste (LLW). This program plan was based on reserving depleted UF_6 for future defense needs and for other potential productive and economically viable purposes including possible reenrichment in an atomic vapor laser isotope separation plant, conversion to depleted uranium metal for fabricating antitank weapons, and use as fuel in advanced liquid metal nuclear reactors. Since the time when that program plan was put into place, several developments have occurred prompting the need for its revision. These developments include the passage and implementation of the Energy Policy Act of 1992 that assigned responsibility for uranium enrichment to the United States Enrichment Corporation. Also, the demand for antitank weapons has diminished, and the advanced liquid metal nuclear reactor program has been canceled. In addition, stakeholders near the current cylinder storage sites have expressed concern about the environmental, safety, health, and regulatory issues associated with the continued storage of the depleted UF_6 inventory. The selection of a new management strategy constituted a major Federal action and required preparation of a PEIS.

The Final Plan for the Conversion of Depleted Uranium Hexafluoride (herein referred to as the ''Plan'') submitted to Congress in July 1999 was prepared in accordance with Public Law 105–204, which required the Department to prepare and submit a plan to construct conversion facilities at both the Paducah and Portsmouth gaseous diffusion plants. The Plan was also consistent with the preferred alternative of the Final PEIS, to begin conversion of the depleted UF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. The Department currently expects that conversion to depleted uranium metal would be performed only if uses become available. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. DOE plans to use the resources and expertise of the private sector to convert the depleted UF_6 inventory. The Department has proceeded to implement its procurement strategy to award one or more contracts for the design, construction, operation, and decontamination and decommissioning of conversion facilities and support functions. The draft request for proposals for this procurement, scheduled to be issued in the summer of 1999, will be based on responses received from the Department's request for expressions of interest issued March 4, 1999, input from Congress and stakeholders, the draft Plan, and the Final PEIS.

Work on the PEIS began in 1994 with a request for recommendations for management strategies for depleted UF_6 published in the **Federal Register** designed to solicit ideas from industry and the general public for the management and use of depleted UF_6. The responses were evaluated and those that appeared reasonable provided the basis for the alternatives that were subsequently assessed in the PEIS. The technologies that were suggested were described in The Technology Assessment Report for the Long-Term Management of Depleted Uranium Hexafluoride (UCRL–AR–120372) and The Engineering Analysis Report for the Long-Term Management of Depleted Uranium Hexafluoride (UCRL–AR–124080). The costs associated with the alternatives analyzed in the PEIS are provided in the Cost Analysis Report for the Long-Term Management of Depleted

Uranium Hexafluoride (UCRL–AR–127650). Public scoping meetings for the PEIS were held in Portsmouth, Ohio; Paducah, Kentucky; and Oak Ridge, Tennessee. The Draft PEIS was issued in December 1997. Public hearings on the Draft PEIS were held in Portsmouth, Ohio; Paducah, Kentucky; Oak Ridge, Tennessee; and Washington, D.C. Based on the comments received, a revised version of the document was produced that included a revision of the preferred alternative. The Final PEIS was mailed to interested parties and was made available to the public using the World Wide Web on April 16, 1999.

II. Purpose and Need for the Agency Action

The purpose of the PEIS was to reexamine DOE's long-term management strategy for depleted UF_6 and alternatives to that strategy. DOE needs to take this action to respond to economic, environmental, and legal developments. The PEIS examined the environmental consequences of alternative strategies for long-term storage, use, and disposal of the entire inventory as well as the no-action alternative.

III. Alternatives Analyzed in Detail

DOE evaluated the following alternative strategies for the long-term management and use of depleted UF_6.

No Action. Under this alternative, depleted UF_6 cylinder storage was assumed to continue at the three current storage sites indefinitely. Potential environmental impacts were estimated through the year 2039. The activities assumed to occur at the sites under the no-action alternative include a comprehensive cylinder monitoring and maintenance program with routine cylinder inspections, ultrasonic thickness testing of cylinders, radiological surveys, cylinder painting to prevent corrosion, cylinder yard surveillance and maintenance, construction of four new or improved cylinder yards at Paducah and one at K–25, and relocation of some cylinders at Paducah and K–25 to the new or improved yards. Cylinders were assumed to be painted every ten years, which is consistent with current plans.

Long-Term Storage as Depleted UF_6. This alternative includes long-term storage at a single location and could involve storage of cylinders in newly constructed yards, buildings, or an underground mine. The location of such a long-term storage facility could be at a site other than a current storage site. Continued storage of depleted UF_6 cylinders at the three current storage sites, with existing cylinder management of the entire inventory, would occur through 2008, and the inventory would decrease through 2034 as cylinders are being consolidated at a long-term storage facility. Cylinders would be prepared for shipment at the three current storage sites with transportation of cylinders to a long-term storage facility by truck or rail. The long-term storage facility would include yards, buildings, or an underground mine. Transportation and disposal of any waste created from the activities listed above would occur under this alternative.

Long-Term Storage as Uranium Oxide. Under this alternative, the depleted UF_6 would be converted from depleted UF_6 to depleted uranium oxide prior to placement in long-term storage. Storage in a retrievable form in a facility designed for indefinite, low-maintenance operation would preserve access to the depleted uranium. Storage in the form of an oxide would be advantageous in view of long-term stability and the material preferred for use or disposal at a later date. Conversion of the depleted UF_6 to depleted uranium oxide was assumed to take place in a newly constructed stand-alone plant dedicated to the conversion process. Two forms of uranium oxide, U_3O_8 and uranium dioxide (UO_2), were considered. Both oxide forms have low solubility in water and are relatively stable over a wide range of environmental conditions. Two representative conversion technologies were assessed for conversion to U_3O_8 and three for conversion to UO_2. In addition to producing depleted uranium oxide, conversion would result in the production of considerable quantities of hydrogen fluoride (HF) as a byproduct. HF could be converted to anhydrous hydrogen fluoride (AHF), a commercially valuable chemical. AHF is toxic to humans if exposed at high enough concentrations. HF is typically stored and transported as a liquid, and inventories produced from the conversion process potentially could be sold for use. Alternatively, HF could be neutralized by the addition of lime to form a solid fluoride salt, CaF_2, which is much less toxic than HF. CaF_2 potentially could be sold for commercial use or could be disposed of either in a landfill or LLW disposal facility depending on the uranium concentration and the applicable regulations at the time of disposal. Following conversion, the depleted uranium oxide was assumed to be stored in drums in buildings, below ground vaults, or an underground mine. The storage facilities would be designed to protect the stored material from natural forces/degradation by environmental forces. Once placed in storage, the drums would require only routine monitoring and maintenance activities.

Use as Uranium Oxide. Under this alternative, depleted UF_6 would first be converted to depleted uranium oxide (UO_2 or U_3O_8). For assessment purposes, conversion to depleted UO_2 was assumed. There is a variety of current and potential uses for depleted uranium oxide including use as radiation shielding, use in dense materials applications other than shielding, use in light water reactor fuel cycles, and use in advanced reactor fuel cycles. Radiation shielding was selected as the representative use option for detailed analysis in the PEIS. A conversion facility would be required to convert UF_6 to depleted uranium oxide. The conversion facility would also produce either AHF or CaF_2 as a byproduct. These materials would be used or disposed as discussed above.

Use as Uranium Metal. In this alternative, depleted UF_6 would first be converted to depleted uranium metal. Similar to use as depleted uranium oxide, the depleted uranium metal was assumed to be used as the primary shielding material in casks designed to contain spent nuclear fuel or high-level waste. The depleted uranium metal would be enclosed between the stainless steel shells making up the body of the casks. A conversion facility would be required to convert depleted UF_6 to depleted uranium metal. The conversion facility would also produce either AHF or CaF_2 as a byproduct. These materials would be used or disposed as discussed above. In addition, some metal conversion technologies would also produce large quantities of magnesium fluoride as a byproduct. The magnesium fluoride would be disposed of either in a sanitary landfill or LLW disposal facility depending upon the uranium concentration and applicable disposal regulations at the time. The manufacture of depleted uranium metal casks was assumed to take place at a stand-alone industrial plant dedicated to the cask manufacturing process. The plant would be capable of receiving depleted uranium metal from a conversion facility, manufacturing casks, and storing the casks until shipment by rail to a user such as a nuclear power plant or DOE facility.

Disposal. Under the disposal alternative, depleted UF_6 would be chemically converted to a more stable depleted uranium oxide form and disposed of below ground as LLW.

Compared with long-term storage, disposal is considered to be permanent with no intent to retrieve the material for future use. Prior to disposal, conversion of depleted UF_6 was assumed to take place at a newly constructed stand-alone plant dedicated to the conversion process. This activity would be identical to that described under the long-term storage as oxide alternative. Potential impacts were evaluated for both UO_2 and U_3O_8. The conversion facility would convert depleted UF_6 to depleted uranium oxide and would produce either AHF or CaF_2 as a byproduct. These materials would be used or disposed as discussed above. Several disposal options were considered including disposal in shallow earthen structures, below ground vaults, and an underground mine. In addition, two physical waste forms were considered, ungrouted waste and grouted waste.

Grouted waste refers to the solid material obtained by mixing the depleted uranium oxide with cement and repackaging it in drums. Grouting is intended to increase structural strength and stability of the waste and to reduce the solubility of the waste in water. However, because cement would be added to the depleted uranium oxide, grouting would increase the total volume requiring disposal. Grouting of waste was assumed to occur at the disposal facility.

DOE's Preferred Alternative. DOE's preferred alternative for the long-term management and use of depleted UF_6 is to begin conversion of the depleted UF_6 inventory, as soon as possible, to depleted uranium oxide, depleted uranium metal, or a combination of both. The conversion products, such as fluorine, would be used as much as possible, and the remaining products would be stored for future uses or disposal. The Department currently expects that conversion to depleted uranium metal would be performed only if uses become available. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. DOE's preferred alternative in the Draft PEIS was to begin to convert the depleted UF_6 inventory to uranium oxide or depleted uranium metal only as uses for the material became available. Several reviewers expressed a desire for DOE to start conversion as soon as possible. After consideration of the comments, DOE revised the preferred alternative in the Final PEIS to call for the prompt conversion of the material to depleted uranium oxide, depleted uranium metal, or a combination of both and long-term storage of that portion of the depleted uranium oxide that cannot be put to immediate use. Any proposal to proceed with the location, construction, and operation of a facility or facilities will involve additional review under NEPA and will be subject to availability of funding. DOE expects that in the future, uses would be found for some portion of the converted material. The value of depleted uranium and HF or CaF_2 for use is based on their unique qualities, the size of the inventory, and the history of uses already implemented. DOE plans to continue its support for the development of Government applications for depleted uranium products and to continue the safe management of its depleted uranium inventory as long as such inventory remains in storage prior to total conversion.

IV. Alternatives Dismissed From Detailed Consideration

Storage and Disposal as Depleted Uranium Metal. Conversion of depleted UF_6 to depleted uranium metal for long-term storage and conversion to depleted uranium metal for disposal were not analyzed in depth as reasonable alternatives in the Final PEIS. These alternatives were rejected because of higher conversion cost for some processes used to convert UF_6 to metal, the lower chemical stability of uranium metal as opposed to uranium oxide thus requiring different considerations for handling and storage, and uncertainty over the suitability of depleted uranium metal as a final disposal form. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further.

Storage and Disposal as Depleted Uranium Tetrafluoride (UF_4). Long-term storage as depleted UF_4 and disposal as depleted UF_4 were also not analyzed in depth as reasonable alternatives in the Final PEIS. Although more stable than UF_6, UF_4 has no identified direct use, offers no obvious advantage in required storage space, and is less stable than oxide forms. Further, as a disposal form, UF_4 is soluble in water.

V. Summary of Environmental Impacts

The PEIS analyses indicated that the areas of potential adverse environmental impacts include human health and safety impacts, impacts to ground water, air quality, and waste management under certain conditions. In addition, the Final PEIS identified net positive socioeconomic impacts in terms of employment and income for all alternatives. The most important potential impacts in these areas are summarized in the following paragraphs (detailed discussions are provided in the Final PEIS). For all alternatives, potential impacts in other areas, including ecological resources, resource requirements, land use, cultural resources, and environmental justice, it was determined to be low to negligible or entirely dependent on the actual sites where the alternatives would be implemented that are, as yet, unidentified.

Human Health and Safety. Potential impacts to the health and safety of workers and members of the public are possible during construction activities, during normal facility operations, in the long-term if ground water contamination occurs, from facility accidents, and from transportation. During normal facility operations, under all alternatives, impacts to human health and safety would be limited to involved workers (persons directly involved in the handling of radioactive or hazardous materials). Involved workers could be exposed to low-level radiation emitted by depleted uranium during the normal course of their work activities. The overall radiation exposure of workers was estimated to result in one cancer fatality under the no-action alternative, from one to two cancer fatalities under the long-term storage as UF_6 and the two use alternatives, and up to three cancer fatalities under the disposal and preferred alternatives. For all alternatives, except the disposal as oxide alternative, these exposures were estimated to be within applicable public health standards and regulations.

For the disposal as oxide alternative, if the disposal facility were located in a ''wet'' environment (typical of the Eastern United States), the estimated dose from the use of groundwater at 1,000 years after the assumed failure of the facility would be about 100 mrem/year, which would exceed the regulatory dose limit of 25 mrem/year specified in 10 CFR Part 61 and DOE Order 5820.2A for the disposal of LLW. In a ''dry'' environment typical of the Western United States, the analysis indicated that disposal would not exceed regulatory limits for over 1,000 years in the future even if the facility leaked.

Under all alternatives, workers (including involved and noninvolved) could be injured or killed from on-the-job accidents unrelated to radiation or

chemical exposure. Using statistics from similar activities, under the no-action alternative, it was estimated that zero fatalities and about 180 injuries might occur over the period from 1999 through 2039. Under all other alternatives, it was estimated that from one to five fatalities and from 310 to 4,100 injuries might occur over the same period.

Accidents are possible that could release radiation or chemicals to the environment potentially causing adverse health effects among workers and members of the public under all alternatives. Accidents involving cylinders are possible under all alternatives and could have severe consequences (depending on the amount of DUF_6 released) that would be primarily limited to on-site workers even under the worst conditions. During a severe cylinder accident, it was estimated that up to three fatalities from HF exposure would occur among noninvolved workers, with the additional possibility of fatalities among those directly involved in the accident. However, because the probability of such accidents occurring is low, they would not be expected to occur during the operational periods considered in the Final PEIS.

Low probability accidents involving chemicals at a conversion facility were estimated to have potential consequences that are much greater than accidents involving cylinders. Such accidents would be possible under the long-term storage as oxide, use as oxide, use as metal, disposal, and preferred alternatives because they would require conversion of UF_6 to another chemical form with rupture of tanks containing AHF or ammonia estimated to have the largest potential consequences. Such accidents are expected to occur with a frequency of less than once in one million per year of operation. If such a severe event were to occur, it was estimated that up to 30 fatalities among the public and four fatalities among noninvolved workers would be possible. Although the consequences of cylinder and chemical accidents could be severe, these types of accidents are expected to be extremely rare. The maximum calculated risk for these accidents would be zero fatalities and irreversible adverse health effects expected for noninvolved workers and the public combined and one adverse effect (mild and temporary effects such as temporary decrease in kidney function or respiratory irritation) expected for the general public.

Transportation activities could also potentially result in adverse health and safety impacts. Although specific sites for some of the management activities (conversion, for example) have not been identified, the Final PEIS analyzed the potential impacts associated with shipping UF_6 cylinders to alternative locations using representative shipment lengths and routes. The primary impacts from transportation are related to accidents. The total number of traffic fatalities was estimated on the basis of national traffic statistics for shipments by both truck and rail modes for all alternatives. If shipments were predominantly by truck, it was estimated that zero fatalities would be expected for the no-action alternative, approximately two fatalities for the long-term storage as depleted UF_6 alternative, and up to four fatalities for each of the other alternatives. Shipment by rail would result in similar, but slightly smaller, impacts. Severe transportation accidents could also cause a release of radioactive material or chemicals from a shipment that could have adverse health effects. All alternatives, other than no action and long-term storage as UF_6, could involve the transportation of relatively large quantities of chemicals such as ammonia and AHF because conversion would be required. Severe accidents involving these materials could result in releases that caused fatalities with HF posing the largest potential hazard. For example, if a severe accident involving a railcar containing HF occurred in an urban area under unfavorable weather conditions, it was estimated that up to 30,000 people would experience irreversible adverse effects (such as lung damage) and 300 fatalities could occur. However, because of the low probability of such accidents, the maximum calculated risk for these accidents would be zero fatalities. If HF were to be neutralized to CaF_2 at the conversion facility, the risks associated with its transportation would be eliminated.

Ground Water Quality. For operations under all alternatives, uranium concentrations in ground water at the three current storage sites would remain below guidelines throughout the project duration if cylinder maintenance and painting activities are performed as expected. Ground water impacts are possible under the disposal alternative if the disposal facility were located in a ''wet'' environment. In a dry environmental setting, ground water impacts for the severe situation would be unlikely for at least 1,000 years.

Air Quality. Under all alternatives, impacts to air quality from construction and facility operations would be within existing regulatory standards and guidelines. Under the no-action alternative, however, if cylinder maintenance and painting do not reduce cylinder corrosion rates, it is possible that cylinder breaches could result in HF air concentrations greater than the regulatory standard level at the K–25 storage site around the year 2020; HF concentrations at the Paducah and Portsmouth Sites were estimated to remain within applicable standards or guidelines.

Waste Management. Under all alternatives requiring conversion, there is the potential that significant amounts of fluorine-containing wastes could be generated. If the HF produced from conversion were not used, CaF_2 generated from the neutralization of HF might have to be disposed of as low-level radioactive waste.

Socioeconomics. Positive socioeconomic impacts would occur under all alternatives. The no-action alternative would create about 140 direct jobs and generate about $6.1 million in direct income per operational year. The storage as UF_6 alternative would create about 610 to 1,200 direct jobs and generate about $35 to $65 million in direct income per year. The other alternatives (long-term storage as oxide, use as oxide, use as metal, disposal, and preferred alternatives) would have more beneficial socioeconomic impacts, creating about 970 to 1,600, 1,250 to 1,600, 1,260 to 1,600, 900 to 2,100, and 1,600 to 1,840 direct jobs per year, respectively, and generating about $55 to $85 million, $79 to $93 million, $79 to $93 million, $55 to $120 million, and $89 to $110 million in direct income per year, respectively. Continued cylinder storage under all alternatives would result in negligible impacts on regional growth and housing.

Cumulative Impacts. The continued cylinder storage and cylinder preparation components of the depleted UF_6 management alternatives would result in environmental impacts that would be expected to be relatively minor. The estimated cumulative doses to members of the general public at all three sites would be below levels expected to result in a single cancer fatality over the life of the project, and the annual dose to the off-site maximally exposed individual would be considerably below the Environmental Protection Agency (EPA) maximum standard of 10 mrem/year from the air pathway. The cumulative collective dose to workers at the three sites would result in one to three additional cancer fatalities over the duration of the program. Cumulative demands for water, wastewater treatment, and power would be well within existing capacities at all three sites. Relatively small amounts of additional land would be

needed for depleted UF_6 management at the three current storage sites. The cumulative impacts of conversion, long-term storage, and disposal activities could not be determined because specific sites and technologies have not been designated for these options. Further analyses of cumulative impacts would be performed as required by NEPA regulations for any technology or siting proposals that would involve these facilities.

VI. Environmentally Preferred Alternative

Overall, the potential for adverse environmental impacts tends to be the smallest for the no-action and long-term storage alternatives primarily because they do not require construction and operation of conversion facilities or significant transportation operations. Although the potential impacts tend to be small for all alternatives, differences do exist among the alternatives. The presence of a conversion facility results in the potential for both facility and transportation accidents involving hazardous chemicals that could have severe consequences. However, it must be recognized that the probability of such accidents is low, and accident prevention and mitigative measures are well established for these types of industrial activities. In addition, beneficial socioeconomic impacts tend to be smallest for the no-action and long-term storage as UF_6 alternatives and greatest for those alternatives involving conversion. Finally, the differences in impacts among the alternatives tend to be small when considering the uncertainties related to the actual processes and technologies that will be used and the fact that actual sites have not been identified. In general, because of the relatively small risks that would result under all alternatives and the absence of any clear basis for discerning an environmental preference, DOE concludes that no single alternative analyzed in depth in the Final PEIS is clearly environmentally preferable compared to the other alternatives.

VII. Mitigation

Specific mitigation measures may need to be developed as part of the design of the particular conversion facilities. Such measures would be addressed during the preparation of project-specific NEPA reviews.

VIII. Comments on Final PEIS

The Final PEIS was mailed to stakeholders in mid-April 1999, and the EPA issued a notice of availability in the April 23, 1999, **Federal Register**. In addition, DOE issued a notice of availability in the April 29, 1999, **Federal Register**. The entire document was also made available on the World Wide Web. Comments were received by five reviewers, and at the same time, about two dozen responses to the aforementioned expression of interest were received. The following is a summary of the comments received by reviewers of the Final PEIS:

- *Comments related to the preferred alternative.* One reviewer, BNFL Inc., reiterated their previous comments that DOE should have analyzed in depth, the environmental impacts of conversion of the depleted UF_6 to depleted uranium metal for long-term storage and disposal. DOE addressed these comments in volume 3 of the Final PEIS and earlier in this ROD. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. Should the Department be persuaded that it is reasonable to convert the depleted UF_6 to depleted uranium metal for long-term storage or disposal, these alternatives would be analyzed in detail in future NEPA reviews, as necessary.
- *General comments.* The U.S. Environmental Protection Agency commented that the Department has adequately addressed its concerns on this project and suggested that DOE use a single location for a conversion pilot plant as it conducts its further planning and environmental analysis. The Kentucky Heritage Council recommended that any previously undisturbed areas impacted by the proposed project be surveyed by a professional archaeologist. Should the Department decide to construct a conversion facility in the State of Kentucky, the decision to conduct the requested survey would be addressed at that time. The Kentucky Department for Environmental Conservation, Division of Water, affirmed that the concerns they raised on the Draft PEIS have been addressed in the Final PEIS. The Kentucky Department for Environmental Conservation, Division of Waste Management, reiterated the concerns that were raised in their April 23, 1998, letter regarding the Draft PEIS. These comments were addressed in volume 3 of the Final PEIS. The Kentucky Department for Environmental Conservation, Underground Storage Tank Branch, is currently waiting for closure reports and documentation for several tanks from the Paducah Site. This comment was forwarded to the site for appropriate action. Finally, should the Department decide to construct a conversion facility in the State of Kentucky, the Department would address the issue of using on-site landfills for disposal of waste generated by such a facility at that time.

IX. Other Factors

Public Law 105–204. In accordance with this law, the Secretary of Energy submitted to Congress a plan for the construction of plants at Paducah, Kentucky, and Portsmouth, Ohio, to convert its large inventory of depleted uranium hexafluoride. These proposed activities would be subject to review under NEPA. The preferred alternative is consistent with this legislation.

Cost. As part of the analysis done to develop a long-term management plan, the comparative costs associated with representative technologies for each of the alternatives were calculated. The Cost Analysis Report provided life-cycle cost estimates for each of the alternatives and estimates the primary capital and operating costs for each alternative reflecting all development, construction, operating, and decontamination and decommissioning costs as well as potential offsetting revenues from the sale of recycled materials. The costs are estimated at a preconceptual design level. Depending on the technology and the option selected for disposal, conversion, long-term storage, and cylinder preparation, there was a wide variation in the cost of various alternatives. In general, the no-action alternative was the least costly, while the disposal and use as metal alternatives were the most costly.

Atomic Vapor Laser Isotope Separation (AVLIS). USEC Inc. announced on June 9, 1999, that it would suspend AVLIS technology development activities. The Final PEIS had identified that the AVLIS process could potentially be used to re-enrich depleted UF_6. USEC Inc. has announced that it will move forward with evaluating potentially more economical technology options, such as the Silex laser enrichment process and gas centrifuge technology.

X. Decision

DOE has decided that it will select the preferred alternative from the Final PEIS. This decision includes the following actions:

- DOE will take the necessary steps to promptly convert the depleted UF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. Conversion to depleted uranium metal would occur

only when uses for the converted material are identified.

- The depleted uranium oxide will be used as much as possible and the remaining depleted uranium oxide will be stored for potential future uses or disposal, as necessary.
- Any proposal to proceed with the location, construction, and operation of a facility or facilities for conversion of the depleted UF_6 to a form other than depleted UF_6 will involve additional NEPA review (i.e., project-specific EIS).
- The proposed facilities to be constructed to support this conversion decision would be built consistent with the plan submitted as required by Public Law 105–204.
- DOE anticipates that approximately 4,700 cylinders containing depleted UF_6 that are located at the East Tennessee Technology Park at Oak Ridge would be shipped to a conversion facility.
- Depleted UF_6 will be available for use until all of it has been converted to another form.

XI. Conclusion

DOE believes conversion of the depleted UF_6 inventory to depleted uranium oxide as soon as possible is the prudent and proper decision. Several factors, including increased chemical stability, socioeconomic benefits associated with the conversion, and public and congressional desire to move forward with conversion, have contributed to this decision. Conversion to depleted uranium metal would be performed only when uses for the converted material are identified. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. DOE will continue to safely maintain the depleted UF_6 cylinders while moving forward to implement the decisions set forth in this ROD.

Issued in Washington, D.C. this second day of August, 1999.

Bill Richardson,

Secretary of Energy.

[FR Doc. 99–20471 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Information on Potential Studies in the Russian Federation of Low Dose-Rate Radiation Health Effects

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE), announces a request for information (RFI) on potential studies in the Russian Federation of low dose-rate radiation health effects. Specifically, DOE is interested in receiving information on new ideas for epidemiologic, dosimetric/biodosimetric, and/or molecular epidemiologic studies that would: (1) Build upon collaborative research already conducted on workers and populations in the Southern Urals; or (2) utilize information on other similar cohorts in the Russian Federation. Information submitted in response to this RFI will be used to define the scope of a Request for Applications (RFA) that may be issued in late calendar year 1999.

DATES: The deadline for receipt of submissions is October 5, 1999.

ADDRESSES: U.S. Department of Energy, Office of International Health Programs, EH–63/270CC, 19901 Germantown Road, Germantown, Maryland 20874–1290

FOR FURTHER INFORMATION CONTACT: Requests for further information on this announcement may be directed to Elizabeth White, Office of International Health Programs (EH–63), U.S. Department of Energy, telephone: (301) 903–7582; facsimile: (301) 903–1413; electronic mail: elizabeth.white@eh.doe.gov. Responses may be submitted, preferably by electronic mail or facsimile, to Ms. White.

SUPPLEMENTARY INFORMATION:

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I. Purpose

The Office of International Health Programs, Office of Environment, Safety and Health, in partnership with ministries of the Russian Federation, funds epidemiologic studies of cohorts of workers and populations to evaluate the health consequences (cancer and other diseases) of exposure to low dose-rate ionizing radiation. These ongoing studies are coordinated through the Joint Coordinating Committee for Radiation Effects Research (JCCRER). Section II (''Background'') provides a description of the JCCRER and Section III (''Description of Ongoing Projects'') sets forth a description of the populations currently being studied in the Russian Federation under the auspices of the JCCRER.

The purpose of this Notice is to encourage the submission of information on potential radiation health effects research. The Office of International Health Programs is interested in ideas for new epidemiologic, dosimetric/biodosimetric, and/or molecular epidemiologic studies that would: (1) Build upon low dose-rate radiation health effects research already conducted under the auspices of the JCCRER in the Southern Urals. In particular, DOE is looking for ideas for new projects involving the worker and population cohorts (See Section II) affected by radiation emitted from the Mayak Production Association; or (2) use other similar epidemiologic and dosimetric databases in the Russian Federation to further elucidate the health effects of chronic low dose-rate radiation exposure. In particular, we are interested in learning about other cohorts or potential cohorts of radiation-exposed workers and populations, and the potential scientific studies that could be developed for these cohorts.

DOE, with the help of its standing Scientific Review Group, will review the information submitted in response to this RFI for use in defining the scope of an RFA that may be issued in late calendar year 1999. DOE anticipates that approximately $1,000,000 may be available in fiscal year 2000 to initiate new feasibility projects.

II. Background

The JCCRER is a bilateral Government committee representing agencies from the United States and ministries from the Russian Federation. It was established to implement the Agreement on Cooperation in Research on Radiation Effects for the Purpose of Minimizing the Consequences of Radioactive Contamination on Health and the Environment signed on January 1, 1994, by U.S. Secretary of State Warren Christopher and Russian Foreign Minister Andrey Kozyrev to support and facilitate joint cooperative research.

Radiation research conducted jointly with the Russian Federation provides a unique opportunity to learn more about possible risks to groups of people from lengthy exposure to radiation. This could include people receiving exposure from uranium mining, operations of nuclear facilities, transport and disposal of radioactive materials, the testing and dismantling of nuclear weapons, radiation accidents, and grossly contaminated sites or facilities.

Currently, the JCCRER and DOE are focusing on population and worker studies in the Southern Urals region of

the Russian Federation. In 1948, a nuclear weapons production complex, the Mayak Production Association, was established by the Soviet Union in Southern Urals, about 100 km northwest of the city of Chelyabinsk. Large amounts of radioactive materials were released into the environment between 1948 and 1957. Liquid discharges into the Techa River from the Mayak Production Association occurred from 1949–1956. As a result, thousands of square kilometers have been contaminated and hundreds of thousands of people have received significant radiation exposures. Furthermore, because of limited and inadequate (by today's standards) radiation protection measures and procedures, thousands of MAYAK workers and the population along the Techa River were seriously overexposed to radiation.

The studies of Southern Urals' and other Russian Federation populations may provide an opportunity to answer the question of whether chronic low-level exposures pose a risk different from that previously assumed from studies of atomic bomb survivors in Japan and patients treated with radiation therapy. The atomic bomb survivors were exposed to very short bursts of external radiation, unlike the pattern of exposure normally encountered or expected in the nuclear industry and with other uses of radiation. The Southern Urals' populations experienced chronic exposures over a much longer period. The exposures were also from both external radiation and internally deposited radioactive compounds. Studies on these and similar populations in the Russian Federation, coupled with comparisons with U.S. nuclear worker data, may prove to be a key factor in future development of radiation protection standards and regulations in the United States and worldwide.

The current U.S. JCCRER members are the:

—U.S. Department of Energy (DOE);
—U.S. Nuclear Regulatory Commission (NRC);
—U.S. Department of Health and Human Services (HHS);
—U.S. Department of Defense (DoD);
—U.S. National Aeronautics and Space Administration (NASA); and
—U.S. Environmental Protection Agency (EPA).

The current Russian JCCRER members are the:

—Ministry for Civil Defense Affairs, Emergencies and Elimination of Consequences of Natural Disasters (EMERCOM);
—Ministry of Atomic Energy (MINATOM); and
—Ministry of Health (MINZDRAV).

The Russian institutions currently participating in JCCRER-coordinated radiation health effects research are the:

—Branch Number 1 of Biophysics Institute (FIB–1), Ozersk;
—Mayak Production Association, Ozersk;
—Urals Research Center for Radiation Medicine (URCRM), Chelyabinsk; and
—Institute of Marine Transport Hygiene, St. Petersburg.

III. Description of Ongoing JCCRER Projects

A. Description of Cohorts

Two different epidemiologic research directions currently are supported by the JCCRER: (1) studies of populations who live near the Techa River; and (2) studies of workers at the MAYAK facility.

1. Techa River Population Cohort

The liquid discharges to the Techa River from the Mayak Production Association (due to inadequate storage of radioactive waste) occurred from 1949–56, with 95 percent released in an 18-month period (March 1950 to November 1951), for a total release of about 3 million Ci.

The cohort registry consists of individuals born in 1949 or earlier, who lived for at least one (1) month during 1950 to 1952 in the villages along the Techa River. The cohort includes 28,000 individuals, about 20 percent of which have been estimated to have had average effective doses of exposure of more than 0.5 sievert (Sv). Thirty (30) percent of the cohort members were 0 to 14 years old at the time of exposure.

The external exposure was due from contaminated sediments in the river; the internal exposure (measured by whole body counts and conducted for half of the members of the cohort) was mainly due to intake of river water and milk and included Sr 89, 90, and Cs 137.

Published reports indicate a statistically significant increase in leukemia in the exposed versus control populations. Other cancers, including stomach, esophagus, and lung were also studied, but the results have not been conclusive.

2. Mayak Workers Cohort

The computerized registry of 19,000 Mayak Production Association workers contains: occupational histories; vital status; current place of residence or date and causes of death; annual and cumulative data doses; plutonium body burdens; and internal doses to the main organs (lungs, liver and bone marrow). In this cohort, 14,000 have known vital status; 4,000 are dead; 1,000 died of cancer; and more than 4,000 have known plutonium body burdens. The average value of the equivalent dose to the lung for all workers with measured plutonium (Pu 239) body burden is 7.06 Sv, with external gamma doses of 0.88 gray (Gy) for all workers included in the registry. Radiation doses decreased significantly with time, for example:

Years hired	Average exposure (Gy)
1948–53	1.57
1954–58	0.57
1959–63	0.27
1964–72	0.15

More than 1,800 occupational diseases were diagnosed by 1959, 92 percent of which were noted between 1949 and 1953. Eighty-three (83) percent of these were diagnosed as ''chronic radiation sickness'' caused by radiation exposures of 1 to 10 Gy. Forty-one (41) cases were diagnosed as ''acute radiation syndrome,'' four of which were fatal. Burns and other local radiation injury were reported for 188 workers. In addition, 110 cases of pnemosclerosis (66 in individuals whose internal lung exposure exceeded 4.0 Gy) were diagnosed.

B. JCCRER Directions

The JCCRER has initiated areas for study called Directions. Direction 1 focuses on the Techa River population and Direction 2 focuses on the MAYAK workers. All projects are jointly conducted by both U.S. and Russian principal investigators and their respective teams of researchers, and are summarized below.

Direction 1: ''Medical Aspects of Radiation Exposure Effects on Population''

1. Project 1.1: ''Dose Reconstruction for the Population Subjected to Radiation in the Urals''

Objectives: To reconstruct, validate and analyze data on individual radiation doses received by the population so that these can be used in studies assessing the risks of developing cancer in exposed populations. (U.S. support from DOE, with supplements from NASA and EPA.)

2. Project 1.2: ''Risk Estimation of the Carcinogenic Effects in the Population Residing in the Region of the Mayak Production Association''

Objectives: To conduct studies to determine the risk of cancer in population groups exposed to

radioactive contaminants in the region, to characterize the quality and validity of the data for conducting such studies, and to preserve the existing data using modern technologies. (U.S. support from DOE on cancer incidence and data preservation projects; from National Cancer Institute (HHS) on cancer mortality project.)

3. Project 1.3: ''Retrospective Reconstruction of Radionuclide Contamination of Techa River Caused by Liquid Waste Discharge from Radiochemical Production at the Mayak Production Association: 1949–1956''

Objectives: To supplement the population dose reconstruction study by determining source term of radioactive materials released into the Techa River. (U.S. support from DOE.)

Direction 2: ''Medical Consequences of Occupational Exposure to Radiation''

1. Project 2.1: ''Metabolism and Dosimetry of Plutonium Industrial Compounds''

Objectives: To conduct a joint analysis of the data collected by the U.S. Transuranium and Uranium Registry (USTUR) and the dosimetry registry at the First Institute of Biophysics/MAYAK on deceased people with occupational exposure to radiation. (U.S. support from DOE.)

2. Project 2.2: ''Risk Estimation for Stochastic (Carcinogenic) Effects of Occupational Exposure''

Objectives: To determine risk estimates for cancer as a result of prolonged occupational exposure to radiation, from both external sources and internally-deposited radioactive compounds. (U.S. support from DOE.)

3. Project 2.3: ''Non-cancerous Effects of Occupational Exposure to Radiation''

Objectives: To validate and analyze the data on acute and chronic effects of radiation, other than cancer, observed in a large number of workers at the Mayak Production Association. (U.S. support from NRC.)

4. Project 2.4: ''Reconstruction of Individual Doses of Exposure to Mayak Production Association Workers''

Objectives: To develop an electronic database of reconstructed doses for external and internal exposures received by the Mayak worker cohort. (U.S. support from DOE.)

DOE Office of International Health Programs-Funded Direction 2 Molecular Epidemiology/Biodosimetry Projects

The Office of International Health Programs awarded five cooperative agreements in August 1998 for 15-month feasibility studies to support ongoing joint U.S.—Russian population-based studies in the Southern Urals on low dose-rate radiation health effects. These new studies are aimed at adding a molecular epidemiology/biodosimetry component to the ongoing epidemiologic and dose reconstruction work of the JCCRER. The feasibility studies have been jointly conducted by the FIB–1 in Ozersk and U.S. institutions, and the following three are being considered for long-term study:

1. ''Improved Dosimetry and Risk Assessment for Plutonium-Induced Lung Disease Using a Microdosimetric Approach''

Objectives: To evaluate the potential for determining plutonium distribution in relation to pathology in preserved tissues.

2. ''Establishment of a Repository Containing Tissues and Organs of Deceased Workers of the Mayak Production Association Who Were Exposed to Actinide Elements''

Objectives: To begin establishing a human tissue repository for cytogenetic and molecular biological research at the First Institute of Biophysics in Ozersk

3. ''Molecular Epidemiology and Lung Cancer in Workers''

Objectives: To examine the potential to use molecular epidemiology approach in establishing in the MAYAK workers' cohort of association of lung cancer, smoking and radiation exposure.

IV. Submissions to this RFI

There are no eligibility requirements for this RFI. Responses should be no longer than 3 pages and should contain 2 sections: (1) A brief description of the cohort(s) and data available for study; and (2) a short summary of potential research topics. As is noted in Section I of this RFI, responses will be used to define the scope of an RFA that may be issued in late calendar year 1999.

Since DOE may use information submitted pursuant to this RFI to define the scope of an RFA, responses should not include business confidential or any other proprietary information.

V. Disclaimer

This RFI should not be construed as: (1) A commitment by the Department to enter into any agreement with any entity submitting response(s); (2) a commitment to issue any RFA concerning the subject of this RFI; or (3) an RFA.

Issued in Washington, DC, on August 4, 1999.

Paul J. Seligman, M.D., M.P.H.

Deputy Assistant Secretary for Health Studies.

[FR Doc. 99–20536 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Development of Technologies and Analytical Capabilities for Vision 21 Energy Plants

AGENCY: Federal Energy Technology Center (FETC), U.S. Department of Energy (DOE).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (Cooperative Agreements) for the program entitled ''Development of Technologies and Analytical Capabilities for Vision 21 Energy Plants.'' Through this solicitation, FETC seeks to support applications in the following areas of interest: development of (A) the enabling and supporting technologies upon which the components and subsystems (''modules'') of Vision 21 plants depend, (B) systems integration capability needed to combine two or more modules in Vision 21 plants, and (C) advanced plant design and visualization software leading to demonstration of ''virtual'' plants. Awards will be made to a limited number of applicants based on an evaluation of the promise of the proposed technology, the quality of prior supporting scientific and engineering studies and of the technical approach to reduce the proposed technology to practice, appropriateness of the project plan, the technical and management capabilities of the applicant organization(s), and availability of DOE funding in the technical areas proposed.

FOR FURTHER INFORMATION CONTACT: Raymond D. Johnson, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh PA 15236–0940, Telephone: (412) 386–6109, FAX: (412) 386–6039, E-mail: johnson@fetc.doe.gov.

DATES: This solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's FETC Internet site (http:/www.fetc.doe.gov/business/solicit) on or about September 30, 1999.

Additional information on the Vision 21 Program is available on DOE FETC's World Wide Web Server Internet System (http:/www.fetc.doe.gov/publications/others/vision21/v21.pdf).

SUPPLEMENTARY INFORMATION:

Title of Solicitation: ''Development of Technologies and Analytical Capabilities for Vision 21 Energy Plants.''

Objectives: Through Program Solicitation No. DE–PS26–99FT40578, the Department of Energy seeks applications for developing the technology basis for Vision 21 energy plants, including developing the enabling and supporting technologies upon which the components and subsystems (''modules'') of Vision 21 plants depend, systems integration capability, and advanced computer design and simulation tools. Examples of technology modules are a gasifier, combustor, an engine or turbine system, fuel cell, or a subsystem for separating air into oxygen-and nitrogen-rich streams. Systems integration knowledge is required to design and construct complete plants. Although the DOE's intent is to focus on technology module development rather than on specific plant configurations, arrangements of modules may need to be considered in order to acquire knowledge of systems integration techniques. Computer models for individual technology modules and for complete Vision 21 plants will be required to reduce development costs by minimizing the number of scales at which new technologies will need to be tested, to aid in design and scaleup, and to increase confidence that new designs will meet performance expectations. It is anticipated that spinoff technologies, available as early as 2005, will also result from R&D supported by this solicitation. Spinoff technologies include low-cost oxygen and hydrogen separation technology, gas purification and cleaning technology, better catalysts for producing fuels and chemicals from low-valued raw materials, more efficient and lower cost environmental control technology, improved low-cost manufacturing techniques for high-technology components, advanced combustion and materials technology for enhancing engine and turbine systems, and improved materials for service under aggressive high-temperature conditions.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical and organizational evaluation factors and the relative importance of each factor.

Areas of Interest: The Department is interested in obtaining applications to develop (A) the enabling and supporting technologies upon which the components and subsystems (''modules'') of Vision 21 plants depend, (B) systems integration capability needed to combine two or more modules in Vision 21 plants, and (C) advanced plant design and visualization software leading to demonstration of ''virtual'' plants.

DOE has, with the help of industry, academic, and government stakeholders, identified ''enabling'' and ''supporting'' technologies that are expected to be important in developing high-performance technology modules for Vision 21 plants. Enabling technologies are those upon which the modules or subsystems that form the building blocks of a Vision 21 plant depend. Enabling technologies include:

- Gas separation, e.g., membranes that can be used to separate oxygen from air and hydrogen from syngas
- High-temperature heat exchangers, e.g., alloy exchangers capable of heating high-temperature steam or air for use in advanced, high-efficiency cycles
- Fuel-flexible, thermally efficient gasification to allow the use of low-cost feedstocks, such as municipal waste, petcoke, biomass
- Gas stream purification systems capable of operating at high temperatures for removing sulfur compounds and other constituents that may corrode or erode downstream components, e.g. turbines, or poison downstream catalysts.
- High-performance combustion systems, including ultra-low-NO_X combustion and combustion systems that burn fuels in O_2/CO_2 mixtures and produce exhaust streams containing only CO_2 and water; both suspension-fired and fluidized bed systems are of interest.
- Fuel-flexible combustion turbines and engine systems, especially turbines and engines capable of operating on coal-derived gases or hydrogen; fuel cell/turbine-engine hybrids capable of 70–80% efficiency; advanced combustion turbines, including ceramic turbines and engines; advanced steam turbines.
- Fuel cells, e.g., high-efficiency, low-cost fuel cells; cascaded fuel cell systems capable of operating at multiple temperatures and pressures; fuel cells bottomed by fuel cells; fuel cell/turbine hybrids; new, low-cost, fuel cell concepts capable of approaching $100/kilowatt stack costs and, when incorporated into a system, 70–80% system efficiency.
- Advanced fuels and chemicals development: systems and catalysts for fuels and chemicals production; hydrogen production and storage.

Supporting technologies are cross-cutting technologies also judged to be important for the design of Vision 21 plants. Supporting technologies include:

- Advanced materials for high-temperature applications in aggressive environments, e.g., boiler tubes for high-temperature steam bottoming cycles, and very high-temperature (>2000°F) heat exchangers for use in indirectly fired cycles and other applications, as well as functional materials needed for turbine/engine hot-gas-path components, and gas cleanup or separation.
- Advanced manufacturing and modularization techniques to reduce costs and improve quality. (Modular design is desired where it can reduce costs by maximizing shop fabrication and minimizing field construction, while maintaining or increasing flexibility in plant design.)

Systems Integration prescribes how to combine high-performance technology modules into safe, reliable, economic Vision 21 plants and, as such, is a critical part of the Vision 21 program. Systems integration can be divided into 3 key subelements: systems engineering, dynamic response and control, and industrial ecology. Systems integration topics of interest to DOE include:

- Systems engineering and compatibility issues related to linking Vision 21 modules and components, e.g., gasifiers with combustion turbines, fuel cells, and gas cleanup devices; development of design modifications and interconnections for major subsystems and components.
- Dynamic response and control of Vision 21 modules and integrated plants; studies of the transient response of subsystems and total plants to changes in load and other operating parameters, startup and shutdown, and upset conditions including component failures; modeling of the dynamic response of Vision 21 systems; design of process control software and hardware.
- Application of industrial ecology principles to Vision 21 systems; development and evaluation of designs to recycle or utilize all process effluents that would otherwise be handled as waste streams.

Computational modeling and virtual demonstration software that provides a cost-effective complement to experimental development is also of interest; advanced models to assist in the design process by providing

physically based simulations of Vision 21 components, modules, and plants are sought; an integrated suite of codes (software) called the ''virtual demonstration'' or ''virtual plant'' is needed to illustrate equipment configuration and orientation and simulate plant operation.

Awards

DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to the funds available. Approximately $5 million -$10 million of DOE funding is planned for this solicitation in each of the three years FY00, FY01, and FY02. Cost sharing by the applicant is required, and details of the cost sharing requirement are contained in the solicitation.

Solicitation Release Date

A draft of this Program Solicitation is available for comment on FETC's World Wide Web Server Internet System at *http:/www.fetc.doe.gov/business/solicit* until August 20, 1999. The final Program Solicitation is expected to be ready for release on or about September 30, 1999. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Raymond D. Johnson,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–20472 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 9, 1999: 1:30 a.m.–5:00 p.m.; Friday, September 10, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: Radisson Hotel, 17001 Pacific Highway South, Seattle, WA, ph: 206–244–6000.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda

—Spent Fuel
  Issues associated with the Cask Loadout System and potential schedule impacts
  Brief overview of Accelerated Approach
—Office of River Protection
  Status on implementation of initiatives
  Status and discussion of Tri-Party Agreement (TPA) negotiations on privatization
—100 Area Burial Grounds
  Informational session discussion
—Hanford Advisory Board FY2000 Workplan
  Identification of issues for FY2000
—Election of EM SSAB Hanford Vice Chairperson
—Discussion of Issues to be Raised at the September Site-Specific Advisory Board
  (SSAB) Chair' Meeting
  SSAB Transportation Working Group
—Committee Updates
  Dollars and Sense
  Environmental Restoration
  Health, Safety and Waste Management
  Public Involvement
  Tank Waste Treatment Ad Hoc

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

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on August 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–20473 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, August 25, 1999: 6:00 p.m.–9:00 p.m.

ADDRESSES: 1474 Rodeo Road, Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda:

1. Public Comment, 6:30 p.m.–7:00 p.m.
2. Committee Reports: Environmental Restoration
   Monitoring and Surveillance
   Waste Management
   Community Outreach
   Budget
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Dated: Issued at Washington, DC on August 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–20474 Filed 8–9–99; 8:45 am]

BILLING CODE 6405–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant; Notice of Open Meeting

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, August 24, 1999: 1:00 p.m.–5:00 p.m.

ADDRESSES: Amarillo College Business Center, Exhibit Hall 1314 South Polk Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m.—Welcome—Agenda Review—Approval of Minutes
1:15 p.m.—Co-Chair Comments
1:30 p.m.—Ex-Officio Reports
1:45 p.m.—Task Force/Subcommittee Minutes
2:30 p.m.—Updates—Occurrence Reports—DOE
3:00 p.m.—Presentation (Epidemiological Report or Sealed Insert Update)
4:00 p.m.—Question and Answer
4:30 p.m.—Closing Remarks
4:45 p.m.—Public Comments
5:00 p.m.—Adjourn

Public Participation

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

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 p.m. Monday through Thursday; 7:45 am to 5:00 p.m. on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on August 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–20475 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3656–000]

Avista Corporation; Notice of Filing

July 27, 1999.

Take notice that on July 21, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, and unexecuted Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with The Montana Power Marketing & Trading Company and Enron Power Marketing, Inc.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of July 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 10, 1999. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20497 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–452–000]

Caprock Pipeline Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, Caprock Pipeline Co. (Caprock) tendered for filing tariff sheet(s) of its FERC Gas Tariff, First Revised Volume No. 1, with an effective date of September 1, 1999.

Caprock states that it is submitting this filing to incorporate and/or modify tariff provisions to fit the administration and operation of a new computer system for its Buffalo Wallow system. Caprock states that the tariff sheets affected by this filing are listed in Appendix A to the filing.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

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, NE, Washington, DC 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. This filing by be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20575 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–457–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the tariff sheets listed on Attachment A to the filing. CNG requests an effective date of September 1, 1999 for its proposed tariff sheets.

CNG states that the purpose of the filing is to modify CNG's FERC Gas Tariff to reflect the reclassification of certain transmission lines to gathering and to update the tariff for gathering lines which have been sold, abandoned or newly constructed and to correct certain administrative errors.

CNG states that copies of its letter of transmittal and enclosures are being served upon its customers and to interested state 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, NE, Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20580 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–398–003]

Caprock Pipeline Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, Caprock Pipeline Co. (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff Sheets listed below, with an effective date of August 1, 1999:

Substitute Second Revised Sheet No. 6A
Second Substitute Sixth Revised Sheet No. 29A

Caprock states that it is submitting this filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in ''by reference'' tariff sheet.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20593 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–365–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Columbia Gas Transmission corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of August 1, 1999:

Substitute Eighth Revised Sheet No. 456

Columbia states that this filing is being submitted in compliance with the Commission Letter Order issued on July 23, 1999. On June 30, 1999, Columbia filed tariff sheets in Docket No. RP99–354–000 to conform its Tariff to Version 1.3 of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission directed that pipelines implemented these standards by filing revised tariff sheets not more than 60 days and not less than 30 days prior to the August 1, 1999 implementation date required by Order No. 587–K. By letter order dated July 23, 1999, the Commission accepted the filed tariff sheets with one exception and required Columbia to revise its Tariff to incorporate the change within 15 days of the date of the Letter Order.

In the June 30, 1999 filing, Columbia included GISB standard 2.3.18 in Section 37 of its General Terms and Conditions by reference and also included the standard in Section 8.3 of its General Terms and Conditions . The order directed Columbia to revise its Tariff to incorporate the standard either by reference, or verbatim. The instant filing is in response to the Letter Order, wherein Columbia is removing the standard by reference from sheet No. 456.

Columbia states that copies of its filing and have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provide 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20591 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–460–000]

East Tennessee Natural Gas Company; Notice of Cashout Report

August 4, 1999.

Take notice that on August 2, 1999, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its fifth annual cashout report for the November 1997 through October 1998 period.

East Tennessee states that the cashout report reflects a cashout loss during this period of $267,167. East Tennessee's cumulative losses from its cashout mechanism total $816,694. East Tennessee will roll forward this loss into its next annual cashout report.

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 on or before August 11, 1999. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20583 Filed 8–3–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–463–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

August 4, 1999.

Take notice that on August 2, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

First Revised Sheet No. 170
First Revised Sheet No. 171
First Revised Sheet No. 172
First Revised Sheet No. 173

Any person desiring to be heard or to protect 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–20586 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP94–72–009, FA92–59–007 and RP97–126–015]

Iroquois Gas Transmission System, L.P.; Notice of Informal Settlement Conference

August 4, 1999.

Take notice that an informal conference will be convened in this proceeding on Wednesday, August 11, 1999, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Any person, as defined by 18 CFR 385.102(c), or any participant, as defined by 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, please contact Hollis J. Alpert at (202) 208–

0783 or Lorna J. Hadlock at (202) 208–0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20589 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–453–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, KN Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1–C and 1–D, the tariff sheets listed on Appendix A to the filing, with an effective date of September 1, 1999.

KNI states that it is submitting this filing to incorporate and/or modify tariff provisions to fit the administration and operation of a new computer system for its Buffalo Wallow system.

KNI states that copies of this filing have been served upon all affected firm customers of KNI and applicable state agencies.

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, NE Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20576 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–454–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourth Revised Sheet No. 1700, to become effective September 1, 1999.

Koch Gateway is proposing a change to Section 10.2(a) of it's General Terms and Conditions that provides customers the flexibility to eliminate transportation imbalances during the month in which the imbalance is created. The proposed change will require shippers to obtain Koch's approval before they can nominate out of balance. Thus, requiring Koch's approval before a customer can nominate out of balance will provide Koch and the customer the opportunity to develop strategies that will result in reduced imbalance.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

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, NE, Washington, DC 20426, in accordance with Sections 383.214 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. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20577 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–455–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Volume No. 1, the following tariff sheets, to become effective September 1, 1999:

Third Revised Sheet No. 3700,
Second Revised Sheet No. 3704
First Revised Sheet No. 3705
Original Sheet No. 3706
Original Sheet No. 3707
Original Sheet No. 3708
Original Sheet No. 3709

Koch states that it is proposing to create a new Right of First Refusal (ROFR) process for it's Firm Storage Service (FSS). The proposed tariff changes will create an interactive auction whereby interested shippers will be able to bid on various packages of FSS capacity and thus, will reduce the price risks that are inherent with Koch's current cumbersome FSS ROFR process. This proposed tariff change, however, will not affect the ROFR process utilized by FTS, FTS–SCO, NNS or NNS–SCO customers.

Koch states that the new ROFR process would include:

1. an expanded notification period to inform existing customers of the upcoming expiration of their existing FSS agreements.
2. an automatic grant of the ROFR to existing FSS customers with a contract term of one year or greater.
3. an interactive auction for storage capacity on Kochs web page, and
4. a shortened bid period and a shortened time for customers to exercise their right of first refusal and execute agreements, each of which are designed to reduce the price exposure a customer faces in the market.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

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, NE, Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20578 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–461–000]

Midwestern Gas Transmission Company; Notice of Cashout Report

August 4, 1999.

Take notice that on August 2, 1999, Midwestern Gas Transmission Company (Midwestern) tendered for filing its fifth annual cashout report for the September 1997 through August 1998 period.

Midwestern states that the cashout report reflects a cashout gain during this period of $83,394. Midwestern's cumulative losses from its cashout mechanism are thereby reduced to $197,274. Midwestern will roll forward this loss into its next annual cashout report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal 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 on or before August 11, 1999. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20584 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–383–002]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Mississippi Canyon Gas Pipeline, LLC (MCGP), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheet numbers 151 and 152 proposed to become effective August 1, 1999.

MCGP states that the purpose of this filing is to comply with the Letter Order issued July 27, 1999 in Docket Nos. RP99–383–000 and RP99–383–001 whereby MCGP was directed to reflect version 1.3 standards for all standards and definitions. The tariff sheets filed herein reflect version 1.3 for all standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.c. 20426, in accordance with Section 385.211 of the Commission's 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20592 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–450–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 29, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain revised tariff sheets to be effective September 1, 1999.

Natural states that the purpose of this filing is to establish procedures under which it could reserve certain categories of existing capacity for future expansions. Natural states that an ''expansion'' may include a facility extension such as a delivery lateral where potential shippers may also require mainline capacity on Natural's existing system. Natural also states that the reservation of such capacity would promote the efficient use of existing capacity, minimize the costs of constructing new facilities and minimize environmental impacts.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective September 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

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, NE, Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20597 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–459–000]

Portland Natural Gas Transmission System; Notice of Tariff Filing

August 4, 1999.

Take notice that on August 2, 1999, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

First Revised Sheet No. 323
First Revised Sheet No. 380

PNGTS states that the purpose of this filing is to comply with Order No. 587–K Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

PNGTS states that copies of the filing were mailed to all affected customers of Maritimes and interested state 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20582 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–405–003]

TCP Gathering Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, TCP Gathering Co. (TCP) tendered for filing of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 88D
Second Substitute Fourth Revised Sheet No. 103A

TCP is submitting this filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in ''by reference'' tariff sheet.

TCP states that copies of this filing have been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20594 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–328–000]

Tennessee Gas Pipeline Company; Notice Granting Late Interventions

August 4, 1999.

Motions to intervene in the above-captioned proceeding were due on June 14, 1999. Baltimore Gas and Electric Company and Conoco Inc., filed motions to intervene out of time. No party filed an answer in opposition to the motions.

The petitioners appear to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenors shall be limited to matters set out in its motion to intervene. The admission of the late intervenors shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20590 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–449–0000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 28, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets to which tariff sheets are enumerated in Appendix A to the filing. The referenced tariff sheets are proposed to be effective August 1, 1999.

Transco states that the purpose of the instant filing is to revise certain of Transco's currently effective tariff sheets to correct various spelling, wording and reference errors.

Transco states that copies of the filing are being mailed to its affected customers and interested State 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, NE, Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20596 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–456–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective September 1, 1999:

Tenth Revised Sheet No. 1
122 Revised Sheet No. 5
27 Revised Sheet No. 5A
17 Revised Sheet No. 5A.01
19 Revised Sheet No. 5A.02
19 Revised Sheet No. 5A.03
24 Revised Sheet No. 5B
Original Sheet No. 20A
Original Sheet No. 20B
Original Sheet No. 20C
Original Sheet No. 20D
Original Sheet No. 20E
Eighth Revised Sheet No. 51A
Third Revised Sheet No. 69
First Revised Sheet No. 72B
Eighth Revised Sheet No. 79
Ninth Revised Sheet No. 80A
Thirteenth Revised Sheet No. 81
Second Revised Sheet No. 92B
Third Revised Sheet No. 95
Fifth Revised Sheet No. 95G
Sixth Revised Sheet No. 95H
Fourth Revised Sheet No. 95L
Original Sheet No. 115
Original Sheet No. 115A

Transwestern states that it is submitting these tariff sheets to implement a Limited Firm Transportation Service under new Rate Schedule LFT. Under this Rate Schedule, firm transportation service would be available subject to Transwestern's right to not schedule service in whole or in part on any day (a Limited Day), but not more than a maximum number of Limited Days per month (not to exceed ten) agreed to by Transwestern and Shipper in the LFT Service Agreement. Transwestern is proposing this service to offer greater flexibility to shippers, and to address the needs of shippers that generally require firm service but are able to accommodate periodic interruption of service.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State 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, NE, Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us//online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–20579 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised No. 1, the following tariff sheets, to become effective September 1, 1999:

Thirtieth Revised Sheet No. 6
Twenty-Ninth Revised Sheet No. 7
Thirtieth Revised Sheet No. 8
Thirtieth Revised Sheet No. 9
Twelfth Revised Sheet No. 9A
Second Revised Sheet No. 9B
Twenty-Ninth Revised Sheet No. 10
Fifteenth Revised Sheet No. 10A

Trunkline states that this filing is being made in accordance with Section 23 (Miscellaneous Revenue Flowthrough Surcharge Adjustment) of the General Terms and Conditions of trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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, NE, Washington, DC 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20587 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–462–000]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on August 2, 1999 U–T Offshore System (U–TOS), tendered for filing a part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Sub Eleventh Revised Sheet No. 73
Sub Sixth Revised Sheet No. 73A
Sub Fifth Revised Sheet No. 73B
Original Sheet No. 73C
Original Sheet No. 73D

U–TOS asserts that the purpose of this filing is to comply with the Commission's April 2, 1999, letter order in the captioned proceeding regarding

Order No. 587–K, Docket No. RM96–1–011. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims,htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–20585 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–458–000]

Viking Gas Transmission Company; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to be effective September 1, 1999.

Viking states that the purpose of this filing is to establish a new Rate Schedule FT–D, which will be applicable to the expansion capacity approved by the Commission on april 15, 1999 in ''Order Issuing Certificate and Granting Abandonment,'' Docket No. CP98–761–000, 87 FERC ¶ 61,068. Rate Schedule FT–D is identical in all respects to Viking's existing FT–A rate schedule, except that it applies only to firm shippers using the expansion capacity. Viking is also filing to implement the initial incremental demand rate of $10.65 per Dth/month for service from Emerson to any Zone 1 delivery point and $13.69 per Dth/month for service from Emerson to any Zone 2 delivery point approved by the Commission in the April 15, 1999 certificate order.

As provided in the Commission's order, this initial rate for FT–D service will be subject to a retroactive ''true-up'' filing after a final accounting for the project has been completed. Viking is also making miscellaneous tariff modifications so that its tariff properly reflects the existence of Viking's new Rate Schedule FT–D.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected 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. This filing may be viewed on the seb at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20581 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–410–002]

Williston Basin Intestate Pipeline Company; Notice of Compliance Filing

August 4,1999

Take notice that on August 2, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

Sub Second Revised Sheet No. 176A

Williston Basin states that the tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Letter Order issued July 22, 1999 regarding Commission Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011. The tariff sheets reflect the Gas Industry Standards Board (GISB) Version 1.3 standards adopted by the Commission in such Order.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistamce).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20595 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2665–000]

Wisconsin Electric Power Company; Notice of Filing

August 4, 1999.

Take notice that on July 30, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amended response based on further discussions with Commission staff in the above captioned docket. The response constitutes an amendment to the filing submitted by Wisconsin Electric on June 25th.

Copies of the filing have been served on customers under the market-based rate tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). All such motions and protests should be filed on or before August 13, 1999. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A Watason, Jr.,

Acting Secretary.

[FR Doc. 99–20498 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–207–000, et al.]

Casco Bay Energy Company, LLC, et al. Electric Rate and Corporate Regulation Filings

August 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Casco Bay Energy Company, LLC

[Docket No. EG99–207–000]

Take notice that on July 29, 1999, Casco Bay Energy Company, LLC (Casco Bay), tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Casco Bay, a Delaware limited liability company, will own and operate the Maine Independence Station located in Veazie, Maine. Casco Bay will sell power exclusively at wholesale. Duke Energy North America LLC is the sole owner of Casco Bay. DENA is a wholly owned subsidiary of Duke Energy Global Asset Development, Inc., and an indirect subsidiary of Duke Energy, an exempt electric utility holding company.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Statoil Energy Trading, Inc., ConAgra Energy Services, Inc., Texaco Natural Gas Inc., Power Providers, Inc., AEP Power Marketing, Inc., DPL Energy, and NESI Power Marketing, Inc.

[Docket Nos. ER94–964–022 and ER94–964–023, ER95–1751–015, ER95–1787–014, ER96–2303–012, ER96–2495–011, ER96–2601–012, ER97–841–010]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Anker Power Services, Inc., Statoil Energy Services, Inc., NEV Midwest, L.L.C., Starghill Alternative Energy Corporation, LG&E Power Inc., AIE Energy Inc., and ONEOK Power Marketing Company

[Docket Nos, ER97–3788–007, ER97–4381–003, ER97–4654–007, ER97–4680–006, ER98–1278–005, ER98–3164–004, ER98–3897–004]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. SEI Wisconsin, L.L.C., Elwood Marketing LLC, New Energy Partners, L.L.C., SIGCORP Energy Services, LLC, Central Vermont Public Service Corporation, American Electric Power Service Corporation, LG&E Power Inc., Cleveland Electric Illuminating Company, The Toledo Edison Company, and FirstEnergy Operating Companies

[Docket Nos. ER99–669–003, ER99–1465–002, ER99–1812–002, ER99–2181–001, ER99–3802–000, ER99–3805–000, ER99–3806–000, ER99–3807–000, ER99–3808–000, and ER99–3809–000]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. FPH Electric, L.L.C.,

[Docket No. ER99–3142–000]

Take notice that on July 29, 1999, FPH Electric, L.L.C., doing business as Energy Risk Solutions (FPH), amended its petition to the Commission for acceptance of FPH 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.

FPH intends to engage in wholesale electric power and energy purchases and sales as a marketer. FPH is not in the business of generating or transmitting electric power. FPH has no members who own or control any electric generation, transmission, franchised retail service territories, generation sites, natural gas fuel supplies, or any other potential barriers to entry.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–3278–000]

Take notice that on July 29, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an amendment to its proposed Power Sales Agreement for the provision of electric service to CNG Retail Service Corporation (CNG Retail) under its market-based rate schedule accepted for filing by the Commission in Docket No. ER98–3771–000.

The Power Sales Agreement was originally filed with the Commission on June 16, 1999. The proposed amendment modifies the Power Sales Agreement to more fully incorporate the Commission's requirements regarding sales by a public utility to affiliated entities.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Alliance Energy Services Partnership

[Docket No. ER99–3690–000]

Take notice that on July 22, 1999, Alliance Energy Services Partnership (AESP), pursuant to Section 35.15 of the Commission's Regulations, tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1.

AESP has requested an effective date for the proposed rate schedule

cancellation of July 23, 1999. Accordingly, AESP requests waiver of the 60-day prior notice requirement.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER99–3800–000]

Take notice that on July 29, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Public Service Company of Colorado (Public Service), dated July 12, 1999, and a Non-Firm Transmission Service Agreement with Public Service, dated July 12, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 12, 1999, for the Agreements with Public Service, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Public Service, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Unitil Power Corp., Yakin, Inc., Bridgeport Energy, L.L.C., Dayton Power & Light Company, Orange and Rockland Utilities, Inc., Virginia Electric and Power Company, PacifiCorp, Public Service Electric and Gas Company and Florida Power & Light Company,

[Docket Nos. ER99–3810–000, ER99–3811–000, ER99–3812–000, ER99–3813–000, ER99–3814–000, ER99–3815–000, ER99–3816–000, ER99–3817–000 and ER99–3818–000]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Elwood Energy LLC, Potomac Electric Power Company, Montana Power Company, State Line Energy, L.L.C., Southwood 2000, Inc., Wisconsin Public Service Corporation, Genesee Power Station L.P., El Paso Electric Company, Cleco Utility Group Inc. and Western Resources, Inc.

[Docket Nos. ER99–3819–000, ER99–3823–000, ER99–3854–000, ER99–3868–000, ER99–3877–000, ER99–3884–000, ER99–3892–000, ER99–3901–000, ER99–3855–000 and ER99–3856–000]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. FirstEnergy Operating Companies

[Docket No. ER99–3820–000]

Take notice that on July 29, 1999, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (collectively, the FE Operating Companies), tendered for filing a Service Agreement under their FERC Electric Tariff, Original Volume No. 2, for sales of up to 50 MW of capacity and associated energy to the City of Painesville, Ohio.

The FE Operating Companies have asked that the Service Agreement be permitted to become effective on August 1, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER99–3821–000]

Take notice that on July 29, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, filed a revision to the capacity entitlements under the Unit Power Sales (UPS) Agreement with the City of Tallahassee, Florida. The revision is proposed to become effective from the beginning of service under the contract (December 8, 1990), and was submitted pursuant to a contractual provision that specifically contemplated such a filing to restore the economic bargain of the parties in the event of regulatory modification to their original agreement. A copy of the filing was sent to Tallahassee.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Casco Bay Energy Company, LLC

[Docket No. ER99–3822–000]

Take notice that on July 29, 1999, Casco Bay Energy Company tendered for filing an Application of Casco Bay Energy Company, LLC for Approval of Market-based Power Sales Tariff, for Waivers of Commission Regulations, and for Authorization to Sell Ancillary Services at Market Rates and to Reassign Transmission Capacity.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER99–3824–000]

Take notice that on July 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 10 executed service agreements for transmission service under the PJM Open Access Transmission Tariff. The agreements are as follows: 1 umbrella agreement for network integration transmission service under state required retail access programs with Commodore Gas and Electric, Inc.; 4 umbrella agreements for firm point-to-point transmission service agreements with Commodore Gas and Electric, Inc., Commonwealth Edison Co., Econnergy Energy, Inc., and Reliant Energy Services, Inc.; and 5 umbrella non-firm point-to-point transmission service agreements with Commodore Gas and Electric, Inc., Commonwealth Edison Co., Econnergy Energy, Inc., Reliant Energy Services, Inc., and TransCanada Power Mkt., Ltd.

Copies of this filing were served upon the parties to the service agreements.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3825–000]

Take notice that on July 29, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Enron Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission

Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas and Electric Corporation

[Docket No. ER99–3826–000]

Take notice that on July 29, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and NRG Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Central Hudson Gas and Electric Corporation

[Docket No. ER99–3827–000]

Take notice that on July 29, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Engage Energy US, L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Great Bay Power Corporation

[Docket No. ER99–3828–000]

Take notice that on July 29, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Energy Atlantic, LLC and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective July 23, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER99–3829–000]

Take notice that on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of July 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER99–3830–000]

Take notice that on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of July 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–3831–000]

Take notice that on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of July 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20495 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene and Protests

August 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2309–006.

c. *Date Filed:* June 10, 1999.

d. *Applicants:* Public Service Electric and Gas Company, Public Service Enterprise Group Incorporated, and PSEG Fossil LLC.

e. *Name of Project:* Yards Creek.

f. *Location:* The project is located in Warren County, New Jersey. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Richard P. Connified., General Solicitor, Public Service Electric and Gas Company, 80 Park Plaza, Newark, New Jersey 07012.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715 or by e-mail at thomas.papsidero@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 2, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (2309–006) on any comments or motions filed.

k. *Description of Transfer:* Public Service Electric and Gas Company (PSE&G), a co-licensee under the license for the Yards Creek Project, Public Service Enterprise Group Incorporated (PSEG), the parent corporation of PSE&G and PSEG Fossil LLC, and PSEG Fossil LLC request approval of the partial transfer of the license from PSE&G to PSEG Fossil LLC. The applicants state that this partial transfer of license will not affect the status of the other co-licensee, Jersey Central Power & Light Company.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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 applications.

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, 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.

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 Applicants's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20588 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6416–9]

Agency Information Collection Activities; Measuring Success of EPA Compliance Assistance

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 EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Measuring Success of EPA Compliance Assistance, EPA ICR number 1921.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 12, 1999.

ADDRESSES: Tracy Back (2224A), U.S. EPA, 401 M St., S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by calling Tracy Back at (202) 564–7076.

FOR FURTHER INFORMATION CONTACT: Tracy Back, (202) 564–7076. Facsimile number: (202) 564–0009.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are businesses and other members of the regulated community, technical assistance providers that receive or access EPA compliance assistance tools, regulating agencies and state/local committees that are recipients of required compliance reports. Technical assistance providers are comprised of such groups as: state pollution prevention programs, state small business assistance programs, small business development centers, manufacturing extension partnership programs, and trade associations. The request for information from these affected entities will be voluntary.

Title: Measuring Success of EPA Compliance Assistance.

Abstract: This will be a voluntary collection of information to gather

customer satisfaction and behavioral change feedback on EPA compliance assistance, as well as data on the resulting impact on compliance.

This effort complies with the mandate of the ''Government Performance and Results Act of 1997'' (GPRA), the goal of which is to ''improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.'' EPA provides compliance assistance to help the regulated community understand and comply with federal environmental requirements. Through the development of compliance assistance tools and initiatives, EPA strives to build the capacity for more effective compliance within the regulated community. To accomplish this goal, EPA must target resources to the development of compliance assistance tools and initiatives that meet the needs of the regulated community and are effective in helping the regulated community achieve compliance.

In order to comply with GPRA, the Office of Compliance needs to collect certain information that is currently not collected and which does not exist in our current databases. In accordance with the GPRA, which asks that Federal Agencies determine the outcome of their activities, EPA would like to determine if the compliance assistance it provides is achieving the goal of helping members of the regulated community understand and comply with federal regulatory requirements, as well as improving technical assistance providers' understanding of the industries they serve. In order to target EPA resources to implement the most effective compliance assistance activities, it is necessary to request voluntary feedback from members of the regulated community, compliance assistance providers, and state co-regulators. There are four components to this voluntary collection of information.

First, EPA proposes to include a brief customer satisfaction survey with compliance assistance material developed by the Office of Enforcement and Compliance Assurance to enable recipients of the material to readily provide the Agency with feedback on the material's usefulness. Moreover, survey respondents will be asked what actions they took or intend to take to improve their compliance status and environmental performance, in whole or in part, as a result of the compliance assistance provided by EPA. The survey will likely take the form of a post-card which can be readily returned to the Agency. Compliance assistance material received through the Internet will also include this survey tool that can be completed electronically and E-mailed to the appropriate Agency contact. Secondly, EPA proposes to seek feedback on compliance assistance seminars and workshops delivered to the regulated community. A seminar evaluation form will be developed to voluntarily obtain this feedback from seminar participants. The feedback will focus on the compliance assistance seminar's usefulness and whether it will impact actions which the seminar participants intend to take to improve their compliance. Thirdly, EPA proposes to seek information from state/local regulating agencies and committees regarding the impact of EPA's compliance assistance activities on the state of compliance. The regulating agencies and state/local committees will be asked whether EPA's compliance assistance initiatives resulted in improved compliance. The fourth component involves questions which will be asked of technical assistance providers and state/local agencies to obtain feedback on how well EPA is performing its role as a wholesaler of compliance assistance.

The survey instruments will provide options for responses to facilitate quick completion of the survey. The survey responses will be taken into account in revising compliance assistance materials, seminars, and in developing new tools or initiatives which better address customer needs.

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 EPA is soliciting comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that approximately 4,780 members of the regulated community and 100 regulating agencies and/or committees may voluntarily complete and return EPA's customer satisfaction survey on an annual basis. EPA estimates that participating members of the regulated community may need to spend three minutes to complete either the complete compliance assistance or seminar/workshop customer satisfaction survey. Therefore, a total of 239 person hours within the regulated community may be expended to provide EPA with data to evaluate the effectiveness of its compliance assistance activities. This burden hour estimate translates to a cost of $1.05 per facility who voluntarily completes the survey and a total cost to industry of $5,019. The facility costs were calculated based on $21.00 per hour, plus 110 percent overhead.

EPA estimates that participating regulating agencies and or committees may need to spend 45 minutes to complete the survey (30 minutes of staff time and 15 minutes of a supervisor's time). Therefore, a total of 4500 person hours within the regulating agencies and/or committees may be expended to provide EPA with data to evaluate the effectiveness of its compliance assistance activities. This burden hour estimate translates to a cost of $16.53 per regulating agency and/or committees that voluntarily completes the survey and a total cost of $1653. for the regulating agencies. The costs to the regulating agencies were calculated based on labor rates of $17.48 per hour, plus $30.34 supervisory time from the United States Department of Commerce, Bureau of Labor Statistics, March 1998, Table 4: Employment Costs of State and Local Government. 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.

Dated: July 27, 1999.

Elaine Stanley,

Director, Office of Compliance.

[FR Doc. 99–20549 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–6]

Agency Information Collection Activities; Notification of Chemical Exports; Submission of ICR No. 0795.10 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that the Information Collection Request (ICR) entitled: ''TSCA Section 12(b) Notification of Chemical Exports,'' (EPA ICR No. 0795.10; OMB Control No. 2070–0030) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which was scheduled to expire on April 30, 1999. However, OMB granted an emergency extension for this ICR until September 30, 1999. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2486). EPA received a number of comments on this ICR during the comment period, which are addressed in a memorandum accompanying the ICR.

DATES: Additional comments may be submitted on or before September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0795.10.

ADDRESSES: Send comments, referencing EPA ICR No. 0795.10 and OMB Control No. 2070–0030, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW, Washington, DC 20460; and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0795.10; OMB Control No. 2070–0030.

Current Expiration Date: Current OMB approval expires on September 30, 1999.

Title: TSCA Section 12(b) Notification of Chemical Exports.

Abstract: Section 12(b)(2) of the Toxic Substances Control Act (TSCA) requires that any person who exports or intends to export to a foreign country a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6 and/or 7 submit to EPA notification of such export or intent to export. Upon receipt of notification, EPA will advise the government of the importing country of the U.S. regulatory action with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country.

Responses to the collection of information are mandatory (see 40 CFR part 707). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.945 hours per response for an estimated 350 respondents making one or more submissions of information annually. These estimates include 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. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that export or engage in wholesale sales of chemicals.

Estimated No. of Respondents: 350.

Estimated Total Annual Burden on Respondents: 10,400 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is an increase (from 3,800 hours to 10,400 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. In response to comments and based on interviews with several firms, the Agency has increased the estimated burden hours allocated to compiling lists of products containing TSCA section 12(b) regulated chemicals, and has also added burden hours for checking shipments that do not ultimately result in TSCA 12(b) notices, an aspect of burden that had not been included in the previous collection. Finally, this increase also reflects EPA's experience over the last three years with the number of notices received and the number of companies submitting notices associated with this information collection.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: August 2, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–20553 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–1]

Notice of Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Carroll & Dubies Superfund Site, Town of Deer Park, Orange County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Carroll & Dubies Superfund Site in the Town of Deer Park, Orange County, New York with the following settling parties: Kolmar Laboratories, Inc. and Wickhen Products, Inc. The settlement requires the settling parties to pay $650,000 to the Hazardous Substances Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a) for all costs incurred by the United States through April 8, 1998. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Town Hall, Drawer A, Huguenot, New York 12746 and at U.S. Environmental Protection Agency, Region II, 290 Broadway, 18th floor, New York, NY 10007.

DATES: Comments must be submitted on or before September 9, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at U.S. Environmental Protection Agency, Region II, 290 Broadway, 18th floor, New York, NY 10007. A copy of the proposed settlement may be obtained from Sharon Kivowitz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, 17th floor, New York, NY 10007. Comments should reference the Carroll & Dubies Superfund Site, Town of Deer Park, Orange County, New York and EPA Docket No. CERCLA–02–99–2003 and should be addressed to Sharon Kivowitz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, 17th floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Sharon Kivowitz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, 17th floor, New York, NY 10007, 212–637–3183.

Dated: July 30, 1999.

Janet Feldstein,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 99–20552 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of Eight (8) Counties in North Dakota as Part of the Midwest High Intensity Drug Trafficking Area

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists the counties of Burleigh, Cass, Grand Forks, Morton, Ramsey, Richland, Walsh, and Ward in North Dakota designated by the Director of The Office of National Drug Control Policy, as additions to the Midwest High Intensity Drug Trafficking Area (HIDTA). The Midwest HIDTA currently consists of 40 counties and municipalities in Kansas, Iowa, Missouri, Nebraska, and South Dakota. HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated pursuant to 21 U.S.C. 1706(b), to promote more effective coordination of drug control efforts. This action will support local, North Dakota, and Federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluation of the effectiveness of these coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Joseph C. Peters, National HIDTA Director, Office of National Drug Control Policy (ONDCP), Executive Office of the President, Washington, DC 20503; 202–395–6755.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users and the Puerto Rico/U.S. Virgin Islands HIDTA based upon the significant amount of drugs entering the United States through this region. In 1995, HIDTAs were designated in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas. In 1997, the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi), the Lake County HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with the focus on methamphetamine), the Northwest HIDTA (includes seven counties of Washington State), the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming), and the San Francisco HIDTA were designated. In 1998, new HIDTAs were designated in Appalachia (includes parts of Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, North Texas, and Southeast Michigan.

The HIDTA Program supports over 250 collocated joint task forces in twenty regions of the country, including the entire Southwest Border. The HIDTA Program strengthens local, state, and federal drug trafficking and money laundering task forces, bolsters drug enforcement information networks and, improves integration of law enforcement, drug treatment, and drug abuse prevention programs, where appropriate.

Signed at Washington, DC, this 2nd of August 1999.

Barry R. McCaffrey,

Director.

[FR Doc. 99–20561 Filed 8–9–99; 8:45 am]

BILLING CODE 3115–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2349]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 4, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 25, 1999. See Section 1.4(b)(1) of the

Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Definition of the Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules (CS Docket No. 95–178).

Number of Petitions Filed: 2.

Subject: Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96–18). Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PR Docket No. 93–253).

Number of Petitions Filed: 3.

Subject: 1998 Biennial Regulatory Review (CS Docket No. 98–61). ''Annual Report of Cable Television Systems,'' Form 325, filed pursuant to Section 76–403 of the Commission's Rules.

Number of Petitions Filed: 1.

Subject: Amendment of Parts 2 and 15 of the Commission's Rules to Further Insure that Scanning Receivers Do Not Receive Cellular Radio Signals (ET Docket No. 98–76).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20537 Filed 8–9–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michele Pilipovich, Human Resources Director, Federal Labor Relations Authority (FLRA), 607 Fourteenth Street, NW; Washington, D.C. 20424–0001; (202) 482–6690, extension 423.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the Federal Labor Relations Authority's (FLRA) Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Edward Davidson, Office of the General Counsel, FLRA

Gloria Joseph, National Labor Relations Board

Darrel Netherton, Merit Systems Protection Board

Diedre Flippen, Equal Employment Opportunity Commission

Dated: August 5, 1999

Michele Pilipovich,

Human Resources Director.

[FR Doc. 99–20554 Filed 8–9–99; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Kenneth H. Rayborn, Cleveland, Tennessee; to retain voting shares of First Citizens Bancorp, Inc., Cleveland, Tennessee, and thereby indirectly retain voting shares of Bank/Citizens Bank, Cleveland, Tennessee; The Home Bank, fsb, Ducktown, Tennessee; The Home Bank of Tennessee, Maryville, Tennessee; and Infinity Mortgage Group, Incorporated, Knoxville, Tennessee.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Rolla Dean Phillips, Quincy, Illinois; to acquire additional voting shares of Mercantile Bancorp, Inc., Quincy, Illinois, and thereby indirectly acquire additional voting shares of State Bank of Augusta, Augusta, Illinois; Security State Bank of Hamilton, Hamilton, Illinois; Mercantile Trust & Savings Bank, Quincy, Illinois; Marine Trust Company of Carthage, Carthage, Illinois; Perry State Bank, Perry, Missouri; Brown County State Bank, Mount Sterling, Illinois; and Golden State Bank, Golden, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Donaghey Investment Company, Ltd., Trenton, Texas; to acquire voting shares of Trenton Bankshares, Inc., Tenton, Texas, and thereby indirectly acquire First National Bank of Trenton, Trenton, Texas.

Board of Governors of the Federal Reserve System, August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20493 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Clyde Vinson Alexander, Jr., Jackson, Tennessee; to acquire additional voting shares of Hometown Bancorp, Inc., Milan, Tennessee, and thereby indirectly acquire additional voting shares of The Bank of Milan, Milan, Tennessee.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen,

Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Ethel I. Hanson, Mahnomen, Minnesota; to acquire voting shares of Mahnomen Bancshares, Inc., Mahnomen, Minnesota, and thereby indirectly acquire voting shares of First National Bank in Mahnomen, Mahnomen, Minnesota.

2. Kofam Investments, LLP, Sioux Falls, South Dakota, with Howard Kosel as General Partner; to acquire additional voting shares of Empire Bancshares, Incorporated, Sioux Falls, South Dakota, and thereby indirectly acquire additional voting shares of Founders Trust National Bank, Sioux Falls, South Dakota.

Board of Governors of the Federal Reserve System, August 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20600 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern Financial Bancorp, Inc., Warrenton, Virginia; to acquire 100 percent of the voting shares of The Horizon Bank of Virginia, Merrifield, Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of Farmers & Merchants Bank, Summerville, Georgia.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of River Bancorp, Inc., Ramsey, Minnesota, and thereby indirectly acquire Northland Security Bank, Ramsey, Minnesota.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central of Kansas, Inc., Junction City, Kansas; to acquire 100 percent of the voting shares of FSB, Inc., Superior, Nebraska; and thereby indirectly acquire Farmers State Bank and Trust Company of Superior, Superior, Nebraska, and Farmers State Bank, Mankato, Kansas.

Board of Governors of the Federal Reserve System, August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20494 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FLAG Financial Corporation, LaGrange, Georgia; to merge with First Hogansville Bankshares, Inc., Hogansville, Georgia, and thereby indirectly acquire The Citizens Bank, Hogansville, Georgia.

Board of Governors of the Federal Reserve System, August 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20599 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated.

The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First M&F Corporation, Kosciusko, Mississippi; to acquire Community Federal Bancorp, Inc., Tupelo, Mississippi, and its subsidiary, Community Federal Savings Bank, Tupelo, Mississippi, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y. Comments regarding this application must be received no later than September 3, 1999.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire Community Insurance, Fargo, North Dakota, and thereby indirectly acquire B & I Insurance, Inc., Gordon, Nebraska, and thereby engage in general insurance activities in a community with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20492 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* through a joint venture, MSC Mortgage,LLC, Sarasota, Florida, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20601 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR H–76]

Utilization and Disposal

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin provides all Federal agencies with information on the disposal of excess biomedical equipment and IT equipment with potential Y2K defects.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Personal Property Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone (202) 501–3846; e-mail martha.caswell@gsa.gov.

GSA Bulletin FPMR H–76—Utilization and Disposal

To: Heads of Federal agencies

SUBJECT: Disposal of Year 2000 (Y2K) Noncompliant Biomedical Equipment and Information Technology (IT) Equipment

1. *What is the purpose of this bulletin?* Federal Property Management Regulations (FPMR) part 101–42 provides policy direction with respect to hazardous materials, which includes excess biomedical equipment. It also provides for the reporting of IT equipment as described in FPMR 101–43.304. The purpose of this bulletin is to provide further information for agencies on the disposal of excess biomedical and IT equipment with potential Y2K defects.

2. *When does this bulletin expire?* This bulletin contains information of a continuing nature and will remain in effect until canceled or revised.

3. *What is the background?* The Y2K technology problem relates to the inability of some automated equipment to correctly recognize dates after 1999. This inability may affect the normal operation of information technology equipment and biomedical equipment. In biomedical equipment, the Y2K problem may present a potential risk to public health and safety if not corrected. In response to this potential risk, GSA is providing guidance to executive agencies on the disposal of such equipment when it becomes excess.

4. *What does this bulletin cover?* This bulletin applies to (1) biomedical equipment listed on the Food and Drug Administration (FDA) critical list, and (2) IT equipment. The FDA critical list includes biomedical equipment identified by the FDA as having the greatest potential for presenting a risk to patients if a date problem is not corrected. Federal agencies should consult the FDA's Federal Y2K Biomedical Clearinghouse (Y2K Clearinghouse) located at http://www.fda.gov/cdrh/yr2000/year2000.html for information on equipment on the FDA list.

5. *Disposal of biomedical equipment.*

a. *What is extremely hazardous biomedical equipment?* For disposal purposes, Y2K noncompliant biomedical equipment may be identified as ''extremely hazardous'' in accordance FPMR 101–42.001. Extremely hazardous in this instance is Y2K noncompliant biomedical equipment that has been determined by the holding agency to endanger public health or safety, or the environment, if it is not rendered harmless before being used by other agencies or released outside the government.

b. *Who determines the status of biomedical equipment?* Biomedical

engineers/technicians within the holding agency must determine if the biomedical equipment is:

(1) Y2K compliant;

(2) Y2K noncompliant; or

(3) Y2K status unknown.

c. *How do we dispose of biomedical equipment if it is Y2K compliant?* If Y2K compliant, excess biomedical equipment must be identified as ''Y2K compliant'' on the equipment itself and on the reporting document (SF 120) and disposed of through normal disposal procedures described in FPMR 101–43.3, 101–44.2 and 101–45.3. Executive agencies obtaining excess Y2K compliant biomedical equipment must reflect the ''Y2K compliant'' status on all inventory control documentation pertaining to such equipment.

d. *How do we dispose of biomedical equipment that is not Y2K compliant?* If Y2K status of biomedical equipment is noncompliant, the holding agency must determine whether the equipment can be economically repaired (refer to FDA's critical item list at http://www.fda.gov/cdrh/yr2000/year2000.html) or whether it must be destroyed in accordance with FPMR 101–45.9. Destruction means rendering the equipment completely inoperable for its intended use. For items that can be economically repaired, the recipient should bear the cost for remediation and testing. In no case should excess or surplus Y2K noncompliant biomedical equipment be transferred for use without the assurance that Y2K remediation and testing will be performed. Otherwise, the equipment will be destroyed.

e. *What do we do with biomedical equipment when the Y2K status cannot be determined?* Excess biomedical equipment that is Y2K status unknown may not be transferred. If the Y2K status cannot be economically determined by the holding agency, it should be destroyed in accordance with FPMR 101–45.9 and 101–42.403(e).

6. *IT equipment.*

a. *Do we also report the status of IT equipment?* Yes, all IT equipment must also be identified by the holding agency as Y2K compliant, Y2K noncompliant, or Y2K status unknown. The Y2K status must be visible on the equipment and all reporting documents.

b. *What are the disposal procedures for IT equipment?* IT equipment will be disposed of through normal disposal procedures as described in FPMR 101–43.3, 101–44.2 and 101–45.3.

7. *Who should we contact for further information?* Martha Caswell, Personal Property Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone (202) 501–3846; e-mail martha.caswell@gsa.gov.

Dated: August 4, 1999.

Stanley C. Langfeld,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–20562 Filed 8–9–99; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0493]

Gerard T. O'Brien; Denial, Response to Objections

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; order denying objection.

SUMMARY: The Food and Drug Administration (FDA) is denying an objection to the agency's denial of a petition (FAP 7A4530) proposing that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. The objector did not request a hearing, and thus waives the right to such a hearing.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 2, 1997 (62 FR 101), FDA announced that a food additive petition (FAP 7A4530) had been filed by Gerard T. O'Brien, 2162 Skyline Dr., Gainesville, GA 30501. The petitioner requested that FDA amend the food additive regulations to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. In the **Federal Register** of September 26, 1997 (62 FR 50617), FDA published an order denying this petition, in accordance with § 171.100(a) (21 CFR 171.100(a)), because FDA concluded that the petition did not contain sufficient data and information to allow the agency to determine either that the food additive is safe for its proposed use or that the additive will have its intended technical effect.

In its denial, the agency explained that the petitioner had failed to provide data and information to demonstrate that the hydrogen peroxide and sodium bicarbonate mixture would significantly reduce pathogenic bacterial contamination on the surface of fresh poultry, e.g., *Salmonella*, *Escherichia coli*, and psychrophiles, and that the petitioner had failed to provide data and information on whether oxidative effects of hydrogen peroxide would occur on poultry as a result of the proposed use. FDA noted that the agency had requested certain data from the petitioner on several occasions during its review of the petition, including laboratory data to demonstrate that there is reduced bacterial contamination on poultry processed with hydrogen peroxide and sodium bicarbonate, TBA (2-thiobarbituric acid) values (an indicator of oxidation) in skin/fat and meat from processed poultry, and a basis to estimate the amount of hydrogen peroxide that reacts with poultry during the proposed treatment. Because the petitioner failed to provide these data and information, FDA did not have a sufficient basis to determine whether the food additive would achieve its intended technical effect or was safe for the intended use. Accordingly, FDA denied the petition.

Under § 171.110 of the food additive regulations, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Section 12.22(a) sets forth the conditions that each objection must meet for filing. Section 12.22(a) provides that each objection must: (1) Be submitted on or before the 30th day after the date of publication of the final rule; (2) be separately numbered; (3) specify with particularity the provision of the order objected to; (4) state whether a hearing is requested; and (5) for each objection for which a hearing is requested, include a detailed description of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

In response to the agency's denial of FAP 7A4530, the petitioner, on October 22, 1997, submitted material within the 30-day objection period challenging the denial. The petitioner submitted, as its objection, references to three complaints filed in various legal proceedings in Federal court. Such complaints were filed before the date of the agency's denial of the petition, and therefore, were not written in response to the agency's denial, but were submitted as ''objections.'' A copy of one of the referenced complaints, filed on August 25, 1997, in the U.S. District Court for the Northern District of Georgia, was included in the submission. In addition,

the petitioner submitted a copy of the agency's September 26, 1997, order that had been annotated (apparently by the petitioner) with words and statements that asserted that FDA's findings were wrong. The petitioner provided no explanation for its assertions.

FDA has reviewed the material submitted by the petitioner. The submitted material is not in the form that is required for the filing of objections under § 12.22(a). Although the petitioner submitted material that he characterized as ''objections,'' he failed to identify the specific provisions of the agency's order to which he objected. Further, the petitioner did not request a hearing for any ''objection'' and therefore, waived the right to a hearing under § 12.22(a)(4). Even if the agency assumed that the petitioner, in his submission, made an implicit request for a hearing, the petitioner did not provide a detailed description and analysis of the factual information to be presented in support of each of his objections, as required under § 12.22(a)(5). Therefore, the material submitted did not meet the conditions for filing objections under § 12.22(a).

Moreover, even if the petitioner's submission is assumed to be an objection that meets the requirements of filing and contains an implicit request for a hearing, the petitioner has not met the requirements for the grant of a request for a hearing under § 12.24(b). Specifically, the petitioner has not identified any genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1)). The petitioner has not provided a factual basis for why the data and information that FDA requested, but that were not provided in the petition, are not necessary in order for the agency to determine whether the proposed use of the food additive is safe, or to determine that the proposed use of the additive will achieve its intended technical effect. The petitioner merely asserted that the agency's determination was wrong, but failed to provide a basis for this assertion. Furthermore, because the petitioner did not provide a detailed description and analysis of the specific factual information intended to be presented in support of any objection, the agency will not use its discretion under § 12.30(b) to order a hearing.

In summary, the petitioner alleges no misapplication of the law by FDA in the agency's order of denial. Moreover, the petitioner has provided the agency with no genuine or substantial issue of fact that could form the basis for FDA to reconsider its decision denying FAP 7A4530. Furthermore, the petitioner's submission provides no basis for granting a hearing because no such request was made, and even if such a request is implied, the petitioner did not include specifically identified reliable evidence that could lead to resolution of any factual issue in dispute. A hearing will not be granted on the basis of mere allegations or denials, or general descriptions of positions and contentions (§ 12.24(b)(2)). Therefore, in accordance with §§ 12.28 and 12.30(b), FDA is denying in its entirety the petitioner's objection to the agency's order denying FAP 7A4530.

Dated: August 3, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20487 Filed 8–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program: Final Notice of Availability of Formula Allocation Funding for FY 1999 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Final notice of availability of formula allocation funding for FY 1999 targeted assistance grants to States for services to refugees [1] in local areas of high need.

SUMMARY: ORR announces the availability of funds and award procedures for FY 1999 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources. The final notice reflects adjustments in final allocations to States as a result of additional arrival data.

A notice of proposed allocations of targeted assistance funds was published for public comment in the **Federal Register** on March 10, 1999 (64 FR 11927).

DATES: The closing date for submission of applications is September 9, 1999. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Gayle Smith, Acting Director, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447 Telephone (202) 205–3590, or e-mail: *gsmith@acf.dhhs.gov.*

For Further Information on Application Procedures: States should contact their State Analyst in ORR.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I. General Information
- Background—program purpose and scope, legislative authority.
- Discussion of Comments Received, Funding Availability, Use of Funds, Assurances/Information, Local Program Administration.
- Project and Applicant Eligibility—Qualification and Allocation, Funding Priorities, Eligible Applicants, project and budget periods, multiple applications.

Part II: The Project Description

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and application review.

Part IV: The Application—application materials, development and submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000, and OMB Approval No. 0970–0036, ORR–6, Quarterly Performance Report (QPR), which expires 7/31/2002. 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.

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[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for targeted assistance includes (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Part I. General Information/ Background

Purpose and Scope

This notice announces the availability of funds for grants to States for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

Legislative Authority

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA) which provides that targeted assistance grants shall be made available ''(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.''

Discussion of Comments Received

Ten letters of comment were received in response to the notice of proposed availability of FY 1999 funds for targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Comment: Eight commenters requested that ORR consider the impact that loss of targeted assistance funding will have on large counties with large number of refugee arrivals. These same commenters indicated that several arbitrary decisions by ORR, such as use of concentration rate as an index of impact, the weighting of concentration rate in the calculations, and the failure of ORR to use some assessments of impact such as welfare dependency and median household income in the formula make it possible for large counties to be disqualified. One commenter requested a modification of the proposed targeted assistance allocation methodology based on an increase in arrivals during FY 1998 and heavy utilization of public assistance by refugees in a county.

Resonse: ORR understands that discontinuance of targeted assistance program (TAP) funds in the counties that no longer qualify will have an impact on the services in those counties. Counties losing targeted assistance formula funds may wish to apply for ORR targeted assistance discretionary funds through their States.

Regarding the suggestion that ORR use welfare dependency or median household income as qualifying criteria, ORR must take into account all eligibility factors which are outlined in the statute for which data are available.

In section 412(c)(2) of the Immigration and Nationality Act, the three factors listed for targeted assistance are high population, high refugee concentration, and high use of public assistance. While we do not have welfare dependency data, data are available on refugee population and refugee concentration. Therefore, ORR is required to use both factors in determining county qualification. As stated in the notice of proposed allocations, ORR assigns a double weight to population because we believe that large numbers of refugee/entrant arrivals to a county create a significant impact, regardless of the ratio of refugees to the county general population.

Regarding the suggestion that ORR use median household income as a qualifying criterion for targeted assistance funds, this criterion is not one of the factors outlined in the statute governing the targeted assistance allocation formula.

Comment: Two commenters questioned the number of Havana parolees credited to each county in the proposed notice.

Response: At the time of the proposed notice, ORR had received no data on FY 1998 Havana parolees other than the gross number reported (13,442) for the fiscal year by the Immigration and Naturalization Service (INS). Rather than delay publication of the Proposed Notice, ORR credited each county in the U.S. with a portion of the FY 1998 arrivals according to its share of the five-year population of entrant arrivals. During the comment period, ORR obtained additional records from the Florida Department of Health on parolees arriving in Florida counties. The Final Notice reflects these data. As was done in the FY 1998 Final Notice, each Florida country is credited with the number of arrivals identified by the Florida Department of Health; each non-Florida county is credited with a proportional share of the remaining Havana Parolees according to its share of the five-year entrant population.

Funding Availability

The Office of Refugee Resettlement (ORR) has available $49,477,000 in FY 1999 funds for the targeted assistance program (TAP) as part of the FY 1999 appropriation for the Department of Health and Human Services (Pub. L. 105–277).

The Director of the Office of Refugee Resettlement (ORR) will use the $49,477,000 in targeted assistance funds as follows:

- $44,529,300 will be allocated to States under the five-year population formula, as set forth in this notice.
- $4,947,700 (10% of the total) will be used to award discretionary grants to States under separate grant announcements.

Use of Funds

Targeted assistance funding must be used to assist refugee families to achieve economic independence.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in

certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used ''primarily for the purpose of facilitating refugee employment'' (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that ''employable refugees should be placed on jobs as soon as possible after their arrival in the United States'' (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Allowable services include those listed under 45 CFR 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must ''insure that women have the same opportunities as men to participate in training and instruction.'' In addition, in accordance with 45 CFR 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care should be limited to one year after the refugees becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

When planning targeted assistance services, States must take into account the reception and placement (R&P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative. See 45 CFR 400.156(b).

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served.

Assurances/Information

The State's application for FY 1999 funding shall provide:

1. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR Part 400.

2. Assurance that the targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. Of the FY 1999 targeted assistance formula allocation used for services, States must indicate the percentage that will be used for employment services.

3. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, *e.g.*, social services, cash and medical assistance, etc.

4. Assurance that local administrative budgets will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to clients.

5. Assurance that the State will make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in the plan, except in the case of a State that administers the program locally as described below.

6. Assurance that the State and its contractors or sub-recipients will follow appropriate State procurement and contracting requirements in the acquisition, administration and management of targeted assistance service contracts and sub-grants.

7. Identification of the contracting cycle for targeted assistance service contracts in each county. States with more than one qualified county are encouraged to ensure that all counties participating in TAP in the State use the same contracting cycle dates.

8. A description of the State's plan for conducting fiscal and program monitoring of the targeted assistance program, including frequency of on-site monitoring.

9. Identification of the local administering agency.

States Administering the Program Locally

States that propose to administer the program locally or propose to provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component, including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, and cost per placement. In addition, the program component summary must describe any ancillary services or sub-components such as day care, transportation, or language training.

Qualification and Allocation

Qualifying New Counties

In order to qualify for application for FY 1999 targeted assistance funds, a county (or group of counties with the same Standard Metropolitan Statistical Area, or SMSA) or independent city is required to rank above a selected cut-off point of jurisdictions for which data were reviewed, based on two criteria: (1) The number of refugee/entrant arrivals placed in the county during the most recent 5-year period (FY 1994–1998); and (2) the 5-year refugee/entrant population as a percentage of the county's overall population. County arrival numbers have been adjusted based on updated refugee and entrant arrival data.

Welfare dependency will no longer be used as a qualifying criterion since welfare dependency data for refugee AFDC and now TANF recipients have not been available at the national level since FY 1989.

Each county was ranked on the basis of its 5-year arrival population and its concentration of refugees, with a relative weighting of 2 to 1 respectively, because we believe that large numbers of refugee/entrant arrivals into a county create a significant impact, regardless of the ratio of refugees to the general population.

Each county was then ranked in terms of the sum of a county's rank on refugee/entrant arrivals and its rank on concentration. In order to target a sufficient level of funding to the most impacted counties, a county had to rank within the top 50 counties in order to qualify. It is ORR's intent that the 50 counties listed as qualified for TAP funding in the FY 1999 final TAP notice will remain qualified for TAP funding through FY 2001.

ORR has screened data on all counties that have received awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria in this notice. Analysis of these data indicates that: (1) 40 counties which have previously received targeted assistance continue to qualify; (2) 7 counties which have previously received targeted assistance no longer qualify; and (3) 10 new counties qualify.

Table 1 provides a list of the counties that remain qualified and the new counties that qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula described above.

Table 2 lists the counties that have previously received targeted assistance funding which no longer qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula.

Allocation Formula

Of the funds available for FY 1999 for targeted assistance, $44,529,300 is allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants, and Kurdish asylees in these counties during the 5-year period from FY 1994 through FY 1998 (October 1, 1993–September 30, 1998).

With regard to Havana parolees, we are crediting 13,442 Havana parolees who arrived in FY 1998 to qualified counties in Florida based on data the State submitted to ORR during the public comment period. We have credited FY 1998 Havana parolee arrivals to the remaining qualified targeted assistance counties based on the counties' proportion of the 5-year entrant arrival population. For FY 1995 and FY 1996, Florida's Havana parolees for each qualified county are based on actual data submitted by the State of Florida, while Havana parolees credited to counties in other States were prorated based on the counties' proportion of the 5-year entrant population in the U.S. The allocations in this notice reflect these additional parolee numbers.

Allocations

Table 3 lists the qualifying counties, the number of refugee and entrant arrivals in those counties during the 5-year period from October 1, 1993–September 30, 1998, the prorated number of Havana parolees credited to each county based on the county's proportion of the 5-year entrant population in the U.S., the sum of the first 3 columns, and the amount of each county's allocation based on its 5-year total population.

Table 4 provides State totals for targeted assistance allocations.

Table 5 indicates the areas that each qualified county represents.

TABLE 1.—TOP 50 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE

County	State	5-year arrival total	Concentration (in percent)	Sum of ranks
Targeted Assistance Counties Eligible for Continuation				
Dade County	FL	67,889	3.5047	3
Sacramento County	CA	11,795	1.1328	30
New York	NY	55,411	0.7567	30
City of St. Louis	MO	7,672	1.9340	32
Multnomah	OR	12,231	0.8660	36
King/Snohomish	WA	14,507	0.7353	38
DeKalb County	GA	6,584	1.2062	41
Santa Clara County	CA	10,899	0.7278	49
Oneida County	NY	4,125	1.6445	50

TABLE 1.—TOP 50 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE—Continued

County	State	5-year arrival total	Concentration (in percent)	Sum of ranks
Fulton County	GA	5,681	0.8754	55
Orange County	CA	12,858	0.5334	58
Jefferson County	KY	5,155	0.7753	65
Suffolk County	MA	4,757	0.7165	72
Dallas/Tarrant	TX	12,652	0.4185	77
San Francisco	CA	8,108	0.5056	78
Polk County	IA	3,435	1.0500	79
Hennepin County	MN	5,323	0.5156	86
District of Columbia	DC	3,889	0.6408	86
Cook/Kane	IL	17,362	0.3202	90
Maricopa County	AZ	8,686	0.4093	91
Duval County	FL	3,851	0.5722	94
Monroe County	NY	3,863	0.5411	94
San Diego County	CA	9,332	0.3736	97
Denver County	CO	3,246	0.6942	102
Harris County	TX	9,382	0.3329	103
Bernalillo County	NM	3,226	0.6713	106
Davidson County	TN	3,249	0.6361	107
Philadelphia County	PA	5,794	0.3654	109
Ingham County	MI	2,514	0.8918	113
City of Richmond	VA	2,335	1.1499	115
Lancaster County	NE	2,335	1.0930	116
Hudson County	NJ	2,991	0.5408	125
Ramsey County	MN	2,700	0.5558	129
Fairfax County	VA	3,610	0.3764	129
Los Angeles County	CA	17,313	0.1953	129
Fresno County	CA	3,014	0.4515	136
Cass County	ND	1,669	1.6224	139
Pierce County	WA	2,658	0.4534	147
Cuyahoga County	OH	3,817	0.2703	152
Broward County	FL	3,449	0.2747	156
New Counties That Qualify				
Spokane County	WA	3,009	0.8327	99
Davis/Salt Lake	UT	4,605	0.3911	113
Clark County	NV	3,462	0.4669	118
Hillsborough County	FL	3,084	0.3698	148
Guilford County	NC	2,093	0.6024	153
Minnehaha County	SD	1,430	1.1550	154
Kent County	MI	2,372	0.4738	154
Erie County	PA	1,873	0.6797	155
Hampden County	MA	2,239	0.4907	157
Yolo County	CA	1,433	1.0156	158

TABLE 2.—COUNTIES THAT NO LONGER QUALIFY

County	State	5-year arrival total	Concentration (in percent)	Sum of ranks
Alameda County	CA	3,329	0.2602	165
Oakland County	MI	2,826	0.2608	180
Palm Beach County	FL	2,398	0.2777	190
Baltimore City	MD	2,105	0.2860	198
Broome County	NY	1,098	0.5175	222
San Joaquin County	CA	1,221	0.2540	259
Merced County	CA	690	0.3868	296

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY

[FY 1999]

	County	State	Refugees [1]	Entrants	Havana parolees [2]	Total arrival FY 94–98	Total FY 1999 final allocation
1	Maricopa County	Arizona	7,394	780	512	8,686	$979,275

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY—Continued

[FY 1999]

	County	State	Refugees [1]	Entrants	Havana parolees [2]	Total arrival FY 94–98	Total FY 1999 final allocation
2	Fresno County	California	3,011	2	1	3,014	339,804
3	Los Angeles County	California	16,581	434	298	17,313	1,951,899
4	Orange County	California	12,817	23	18	12,858	1,449,634
5	Sacramento County	California	11,788	4	3	11,795	1,329,790
6	San Diego County	California	8,476	517	339	9,332	1,052,107
7	San Francisco	California	8,028	48	32	8,108	914,111
8	Santa Clara County	California	10,815	51	33	10,899	1,228,773
9	Yolo County	California	1,425	5	3	1,433	161,559
10	Denver County	Colorado	3,241	3	2	3,246	365,960
11	District of Columbia	District of Columia	3,866	14	9	3,889	438,453
12	Broward County	Florida	978	1,578	893	3,449	388,847
13	Dade County	Florida	8,426	33,125	26,338	67,889	7,653,928
14	Duval County	Florida	3,788	28	35	3,851	434,169
15	Hillsborough County	Florida	1,525	767	792	3,084	347,696
16	DeKalb County	Georgia	6,562	13	9	6,584	742,292
17	Fulton County	Georgia	5,334	209	138	5,681	640,486
18	Cook/Kane	Illinois	16,699	399	264	17,362	1,957,424
19	Polk County	Iowa	3,433	1	1	3,435	387,268
20	Jefferson County [3]	Kentucky	3,605	934	616	5,155	581,184
21	Hampden County	Massachusetts	2,224	9	6	2,239	252,429
22	Suffolk County	Massachusetts	4,648	63	46	4,757	536,313
23	Ingham County	Michigan	1,785	440	289	2,514	283,433
24	Kent County	Michigan	2,304	41	27	2,372	267,424
25	Hennepin County	Minnesota	5,318	3	2	5,323	600,125
26	Ramsey County	Minnesota	2,683	10	7	2,700	304,403
27	City of St. Louis	Missouri	7,670	1	1	7,672	864,955
28	Lancaster County	Nebraska	2,272	38	25	2,335	263,252
29	Clark County [4]	Nevada	1,363	1,264	835	3,462	390,312
30	Hudson County	New Jersey	1,605	809	577	2,991	337,211
31	Bernalillo County	New Mexico	1,137	1,261	828	3,226	363,705
32	Monroe County	New York	2,723	688	452	3,863	435,522
33	New York	New York	54,272	682	457	55,411	6,247,137
34	Oneida County	New York	4,123	1	1	4,125	465,060
35	Guilford County	North Carolina	2,081	7	5	2,093	235,969
36	Cass County	North Dakota	1,664	3	2	1,669	188,166
37	Cuyahoga County	Ohio	3,805	6	6	3,817	430,336
38	Multnomah	Oregon	11,216	613	402	12,231	1,378,945
39	Erie County	Pennsylvania	1,873	0	0	1,873	211,165
40	Philadelphia County	Pennsylvania	5,708	52	34	5,794	653,226
41	Minnehaha County [5]	South Dakota	1,430	0	0	1,430	161,221
42	Davidson County	Tennessee	3,160	54	35	3,249	366,298
43	Dallas/Tarrant	Texas	11,479	707	466	12,652	1,426,410
44	Harris County	Texas	9,065	189	128	9,382	1,057,744
45	Davis/Salt Lake	Utah	4,603	1	1	4,605	519,176
46	Fairfax County	Virginia	3,595	8	7	3,610	406,998
47	City of Richmond	Virginia	2,153	110	72	2,335	263,252
48	King/Snohomish	Washington	14,423	51	33	14,507	1,635,546
49	Pierce County	Washington	2,641	10	7	2,658	299,668
50	Spokane County	Washington	3,009	0	0	3,009	339,240
Total			313,824	46,056	35,087	394,967	44,529,300

[1] Refugees includes refugees, Kurdish asylees, and Amerasian immigrants from Vietnam.
[2] For all years, Havana parolee arrivals to the qualifying Florida counties (28,058) are based on actual data, while parolees in the non-Florida counties (7,029) are prorated based on the counties' proportion of the five-year (FY 1994–1998) entrant population.
[3] The allocation for Jefferson County, Kentucky will be awarded to the Kentucky Wilson/Fish project.
[4] The allocation for Clark County, Nevada will be awarded to the Nevada Wilson/Fish project.
[5] The allocation for Minnehaha County, South Dakota will be awarded to the South Dakota Wilson/Fish project.

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE

[FY 1999]

State	Total FY 1999 allocation
Arizona	$979,275
California	8,427,677

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
Colorado	365,960

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
District of Columbia	438,453

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
Florida	8,824,640
Georgia	1,382,778
Illinois	1,957,424
Iowa	387,268
Kentucky	581,184
Massachusetts	788,742
Michigan	550,857
Minnesota	904,528
Missouri	864,955
Nebraska	263,252
Nevada	390,312
New Jersey	337,211
New Mexico	363,705
New York	7,147,719
North Carolina	235,969
North Dakota	188,166
Ohio	430,336
Oregon	1,378,945
Pennsylvania	864,391
South Dakota	161,221
Tennesee	366,298
Texas	2,484,154
Utah	519,176
Virginia	670,250
Washington	2,274,454
Total	44,529,300

TABLE 5.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area	Definition
Arizona	Maricopa County.	
California	Fresno County.	
	Los Angeles County.	
	Orange County.	
	Sacramento County.	
	San Diego.	
	San Francisco	Marin, San Francisco, and San Mateo Counties.
	San Clara County.	
	Yolo County.	
Colorado	Denver.	
District of Columbia.		
Florida	Broward County.	
	Dade County.	
	Duval County.	
	Hillsborough County.	
Georgia	DeKalb County.	
	Fulton County.	
Illinois	Cook and Kane Counties.	
Iowa	Polk County.	
Kentucky	Jefferson County.	
Massachusetts	Hampden County.	
	Suffolk County.	
Michigan	Ingham County.	
	Kent County.	
Minnesota	Hennepin County.	
	Ramsey County.	
Missouri	City of St. Louis.	
Nebraska	Lancaster County.	
Nevada	Clark County.	
New Jersey	Hudson County.	
New Mexico	Bernalillo County.	
New York	Monroe County.	
	New York	Bronx, Kings, Queens, New York, and Richmond Counties.
	Oneida County.	
North Carolina	Cuilford County.	
North Dakota	Cass County.	
Ohio	Cuyahoga County.	
Oregon	Multnomah	Clackamas, Multnomah, and Washington Counties, Oregon, and Clark County, Washington.
Pennsylvania	Erie.	
	Philadelphia.	
South Dakota	Minnehaha County.	
Tennesee	Davidson County.	
Texas	Dallas/Tarrant.	
	Harris County.	
Utah	Davis/Salt Lake	Davis, Salt Lake, and Utah Counties.
Virginia	Fairfax	Fairfax County and the cities of Falls Church, Fairfax, and Alexandria.
	City of Richmond.	
Washington	King/Snohomish.	
	Pierce Count.	

TABLE 5.—TARGETED ASSISTANCE AREAS—Continued

State	Targeted assistance area	Definition
	Spokane County.	

Eligible Applicants

ORR invites eligible entities to submit grant applications for Targeted Assistance Grants for Services to Refugees in Local Areas of High Need.

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1999 targeted assistance awards.

Under the FY 1999 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans. The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in this notice, in accordance with 45 CFR 400.319, the FY 1999 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 1999 targeted assistance funds in a manner different from the formula set forth in this notice, the FY 1999 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

This announcement is inviting applications for project periods up to 3 years. Awards will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Part II: The Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, to carry out the proposed project, and it is important that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an intergral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participation/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions

or activities identified in the applications. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a ''collection of information'' that is ''conducted or sponsored'' by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Part III: The Review Process

A. Intergovernmental Review

This program is not covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.''

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instruction in this announcement and (2) the applicant is eligible for funding.

C. Application Review and Review Criteria

Applications which pass the initial ACF screening will be evaluated and rated based on the completeness of the application as described below.

Criteria 1: Objectives and Need

States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g)). Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) a determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan that incorporates both targeted assistance and refugee social services may be developed for a family.

In instances where a State received targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of the coordination and planning activities undertaken with the State Refugee Coordinator of the neighboring State in which the impacted county or counties are located. These planning and coordination activities should result in a proposed allocation plan for the equitable distribution of targeted assistance funds by county based on the distribution of the eligible population by county within the SMSA. The proposed allocation plan must be included in the State's application to ORR.

Criteria 2: Approach

A description of the State's guidelines for the targeted assistance plans for the required content of county targeted assistance plans or requests for proposals (RFPs), in the case of States that administer the program directly on behalf of an impacted county, and a description of the State's review/approval process for such county plans or RFPs. Acceptable county plans must minimally include the following:

a. Assurance that targeted assistance funds will be used in accordance with the requirements of 45 CFR Part 400.

b. Procedures for carrying out a local planning process for determining targeted assistance priorities and service strategies. All local targeted assistance plans will be developed through a planning process that involves, in addition to the State Refugee Coordinator, representatives of the private sector (for example, private employers, the private industry council, Chamber of Commerce, etc.), leaders of refugee/entrant community-based organizations, voluntary resettlement agencies, refugees from the impacted communities, and other public officials associated with the social services and employee agencies that serve refugees. Counties are encouraged to foster coalition-building among those participating organizations.

c. Identification of the refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, and a description of characteristics and needs of targeted populations. (As per 45 CFR 400.314).

d. Description of specific strategies and services to meet the needs of targeted populations. These should be justified where possible through analysis of strategies and outcomes from projects previously implemented under targeted assistance programs, and any other services available to the refugee populations.

e. The relationship of targeted assistance services to other services available to refugees in the county

including State-allocated ORR social services.

f. Analysis of available employment opportunities in the local community. Examples of acceptable analysis of employment opportunities might include surveys of employers or potential employers of refugee clients and reviews of studies on employment opportunities/forecasts which would be appropriate to the refugee populations. Description of the monitoring and oversight responsibilities to be carried out by the county or qualifying jurisdiction.

Criteria 3: Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form (SF–424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitive detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessary, reasonableness, and allocability for the proposed costs. Tnt Office of Refugee Resettlement is particularly interested in the following:

A line item budget and budget, justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. Sates that administer the program locally in lieu of the country, through a mutual agreement with the qualifying county, may request administrative costs that add up to, but may not exceed, 10% of the country's TAP allocation to the State's administrative budget.

Each applicant should describe the amount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan, and the proposed allocation for each county.

In instances where a State receives targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of the coordination and planning activities undertaken with the State Refugee Coordinator.

A line item budget and justification for State Administrative costs limited to a maximum of 5% of the total award to the State. Each budget request must be necessary, reasonable and allocable to the project. States that administer the program locally in lieu of the county may use up to, but not exceed, 10% of the county's TAP allocation for the State's administrative budget.

Criteria 4: Results or Benefits Expected

All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each impacted county's proposed service contracts or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance terminations due to employment, cash assistance reductions due to employment, 90-day employment retentions, average wage at placement, and entered employments with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the Quarterly Performance Report (OMB Approval No. 0970–0036, expires 7/31/2002).

States that are currently grantees for targeted assistance funds should base projected annual outcome goals for each performance measure on past performance.

States identified as new eligible targeted assistance grantees and States that are currently grantees that have new qualifying counties are also required to set proposed outcome goals for each of the 6 ORR performance outcome measures. New grantees may use baseline data, as available, and current data as reported on the ORR–6 for social services program activity to assist them in the goal-setting process. Proposed targeted assistance goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manager prescribed by ACF. Application materials including forms and instructions are available from the ORR State Analyst assigned to your State.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date to DHHS, ACF, Office of Refugee Resettlement, Attention: Shirley B. Parker, ORR Grants Officer, 370 L'Enfant Promenade, S.W., Sixth Floor, Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EDT, at the Department of Health and human Services, Administration for Children and Families, Office of Refugee Resettlement, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: ''Attention: Shirley B. Parker, ORR Grants Officer.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media.

Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications which do not meet the criteria above are considered late applications.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Reporting Requirements

States are required to submit quarterly reports on the outcomes of the targeted assistance program, using schedule A and Schedule C of the ORR–6 Quarterly Performance Report, OMB Approval No. 0970–0036, which expires 7/31/2002.

Pursuant to 45 CFR 400.210(b), FY 1999 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of the State's last filed report.

Catalog of Federal Domestic Assistance No. 93–584.

Dated: August 2, 1999.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 99–20245 Filed 8–9–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refuge Resettlement

Refugee Resettlement Program: Final Notice of Allocations to States of FY 1999 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 1999 funds for refugee [1] social services.

SUMMARY: This notice establishes the allocations to States of FY 1999 funds for social services under the Refugee Resettlement Program (RRP).

This notice includes a $15.5 million set-aside to: (1) Provide outreach and referral to ensure that eligible refugees access the Children's Health Insurance Program (CHIP) and other programs for low income working populations; and (2) provide specialized interpreter training and the hiring of interpreters to enable refugees to have equal access to medical and legal services.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara R. Chesnik, Division of Refugee Self-Sufficiency, (202) 401–4558.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 1999 funds for refugee social services was published in the **Federal Register** on April 27, 1999 (64 *FR* 22626).

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $139,990,000 in FY 1999 refugee social service funds as part of the FY 1999 appropriation for the Department of Health and Human Services (Pub.L. 105–277).

The FY 1999 House Appropriations Committee Report (H.R. Rept. No. 105–635) reads as follows with respect to social services funds:

The bill provides $134,990,000 for social services, an increase of $5,000,000 over the comparable fiscal year 1998 appropriation and the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside $16,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost, benefits including SSI, TANF and Medicaid, in obtaining citizenship. In addition, ORR may initiate planning grants to create alternative cash and medical assistance programs for refugees. The Committee has included funding for health screening of new arrivals.

The Committee encourages ORR to award grants for mental health and other health services for victims of torture if such activities are authorized in law.

The Committee encourages ORR to consider supporting education and outreach activities related to female genital mutilation if such activities are authorized in law.

The FY 1999 Senate Appropriations Committee Report (S. Rept. No. 105–300) adds the following:

The Committee provides $19,000,000 to serve communities affected by the Cuban and Haitian entrants and refugees, the same as the amount contained in last year's appropriation. In addition, the Committee recommends $14,000,000 to address the needs of refugees and communities affected by recent changes in Federal assistance programs, and $16,000,000 to assist communities with large concentrations of refugees whose cultural differences make assimilation difficult. These funds are included in the social services line item.

The FY 1999 Conference Report on Appropriations (H.R. Conf. No. 105–825) reads as follows concerning social services:

The conference agreement provides $139,990,000 for social services, an increase of $5,000,000 over the House and $10,000,000 over the Senate. The conference agreement includes $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance, and $14,000,000 to address the needs of refugees and communities impacted by the recent changes in Federal assistance programs relating to welfare reform. The agreement includes $19,000,000 for assistance to communities impacted by Cuban and Haitian entrants and refugees whose arrivals in recent years have increased.

The Director of the Office of Refugee Resettlement (ORR) will use the $139,990,000 appropriated for FY 1999 social services as follows:

- $68,841,500 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

• $12,148,500 will be awarded as social service discretionary grants through competitive grant announcements that will be issued separately from this notice.

• $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds would be awarded through a discretionary grant announcement that will be issued separately from this notice.

• $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A grant announcement will be issued separately from this notice.

• $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through announcements issued separately from this notice.

In addition, we have added $15,500,000 in unexpended FY 1997 CMA funds to the FY 1999 formula social services allocation as a set-aside for referral and interpreter services, and $20,000,000 in unexpended FY 1997 CMA funds to the FY 1999 formula social services allocation as part of the standard formula allocation, increasing the total amount available for the formula social services program in FY 1999 to $104,341,500.

Congress provided ORR with broad carry-over authority in the FY 1999 HHS appropriations law to use FY 1997 CMA carry-over funds for assistance and other activities in the refugee program in fiscal years 1998 and 1999. The appropriations law states: ''* * * That funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Pub.L. 104–208 for fiscal year 1997 shall be available for the costs of assistance provided and other activities conducted in such year and in fiscal years 1998 and 1999.''

Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $88,841,500, which includes $20,000,000 in unexpended FY 1997 cash and medical assistance (CMA) funds, to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1998 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the ''funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

The Director is also allocating an additional $15.5 million from FY 1997 carry-over funds as a set-aside to: (1) provide referral services, including outreach, to ensure that refugees are able to access the Children's Health Insurance Program (CHIP) and other programs for low income populations; and (2) provide for the hiring of interpreters and special interpreter training to enable refugees to have equal access to medical and certain legal services. Depending upon the existing capacity and need in the community, we encourage States to use the funds equally for both activities. Both types of services are not subject to the 5-year limitation and may be provided to refugees regardless of their length of time in the U.S. See 45 CFR 400.152(b).

Eligible refugee families often are not aware of, or do not know how to access, other Federal support programs available to low income working families in the community. We believe that these programs, including CHIP, Food Stamps, Low Income Home Energy Assistance Program (LIHEAP), Medicaid, Head Start, low-income housing, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), child care assistance, adult day care for aged dependents, and other support programs for low-income families, are important for the well-being of working refugees, particularly refugee families, and are necessary to help these refugees maintain employment and move toward full self-sufficiency.

The organizations funded by the set-aside amount are expected to conduct outreach into the community to identify low-income refugees and to help these refugees enroll in and to be familiar with the services available and the participation requirements of these programs. We expect States to fund community-based organizations, to the maximum extent possible, to provide hands-on assistance, which means having the application forms available and helping refugees to fill out the application, accompanying the refugee to the eligibility office, assisting in the communication between the family and the eligibility worker, closely following the application process until the family has been found eligible, and then helping the family effectively use the service or support program in which they have been enrolled. For example, there may be different levels of medical coverage available to a family, depending on the ages of the children and the income level of the family, each with different requirements. It is important for the caseworkers/advocates funded through this initiative to understand the program requirements (such as a co-payment structure) in order to help the family make decisions and fully participate.

The organizations funded under this set-aside should develop effective ways to provide an on-going link between these services, the population they serve, and the targeted low income programs. Methods might include: partnering with schools to identify refugee children who may be eligible for CHIP by virtue of their eligibility for the school lunch program; connecting with local Head Start programs to help identify refugee children who are

eligible for CHIP and other health care programs; arranging to have Medicaid eligibility workers visit the Mutual Assistance Association (MAA) or other participating organization on a scheduled basis; and working with other groups serving low income families, such as hospitals, WIC programs, low-income housing programs, and food assistance programs to make these services widely known to the refugee community being served.

It is also important that States provide as high a standard as possible in interpretation to non-English speaking and to Limited-English-Proficient (LEN) refugees, particularly in regard to medical and legal issues. As mentioned earlier, we are therefore including funding in the set-aside for States to improve the availability and quality of interpreter services for refugees in their communities. The set-aside funds are to be used by States: (1) to fund specialized interpreter training for medical and legal services; and (2) to pay for the hiring and employment of these trained interpreters by MAAs, voluntary agencies, and other community-based organizations serving refugees, to the maximum extent possible, in order to increase the number of skilled interpreters in the community.

Interpretation requires a great deal of skill—interpreters need to be fluent in English and the language spoken by the refugee. They must have the ability to quickly understand the message and terminology, if technical, in one language and to express it as quickly and correctly in another language. In addition to fluency in two languages, interpreters must have the skills to handle confidential client information and to deal with a variety of professionals in the medical, legal, law enforcement, social services, and other fields.

States should use qualified training programs or trainers to provide the interpreter training. Several strategies may be employed, e.g., the direct training of interpreters in a group setting, paying the course tuition and associated expenses for individuals at a community college or university, and the training of trainers in order to establish and maintain an efficient training capacity in the community. To the extent possible, we would expect States to use an established curriculum rather than incurring costs to develop a new one. Funding of interpreter services should be directed to areas of greatest need and to the most linguistically isolated communities.

States must determine a community's capacity to ensure refugee access to medical and other services, and then examine how best to fund and maintain interpreter services for refugees based upon the need and size of the refugee population. For example, an interpreter bank with dedicated interpreters may be a preferred option if the needs of the community can justify full-time interpreters. However, because the provision of interpreter services may not fully occupy funded staff in some locations or in certain languages, States may choose to train bilingual caseworkers at voluntary resettlement agencies, MAAs and refugee service providers. States may also consider cross-training of interpreters so that they may also assist, for example, in enrolling clients in CHIP, Medicaid, or other services for low-income clients, and/or serve as case managers or in other staff positions. Staff with both bilingual interpreter skills and knowledge of the family services network, such as child protective services and the domestic violence system, are also highly desirable.

We also encourage States to set up creative ways to maintain and expand the availability of interpreter services in the community, such as seeking reimbursement for services from the courts, hospitals, and agencies which may be able to pay for interpreter services but have been otherwise hindered in providing these services by the lack of available and appropriately trained individuals. Fees from low-income refugee clients, however, may not be sought.

In light of the unique position that refugee MAAs have in the communities where refugees reside, we are asking that States give special consideration to MAAs in using the set-aside amount, where possible, to provide these services to refugee families. However, qualified community based organizations with refugee experience, voluntary resettlement agencies, or refugee service providers may be funded as well.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.147, States are required to provide services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) all newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

In the past, a number of States have focused primarily on serving refugee cash assistance (RCA) recipients because of the need to help these refugees become employed and self-sufficient within the 8-month RCA eligibility period. Now, with the passage of welfare reform, refugee recipients of Temporary Assistance for Needy Families (TANF) also face a time limit for cash assistance and need appropriate services as quickly as possible to become employed and self-sufficient. In order for refugees to move quickly off TANF, we believe it is crucial for these refugees to receive refugee-specific services that are designed to address the employment barriers that refugees typically face. We are pleased with the efforts that State Refugee Coordinators have made to date to develop agreements with their State TANF program to utilize the existing refugee service system in a State for refugee TANF participants. We encourage States to continue their efforts in this regard.

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g)). Each family self-sufficiency plan should address a

family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) a determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Some States are doing remarkably well in achieving refugee self-sufficiencies. For this reason, this may be a good time for these States to re-examine the range of services they currently offer to refugees and expand the range of services beyond employment services to address the broader needs that refugees have in order to successfully integrate into the community.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with 45 CFR 400.145(c), States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs to the maximum extent possible and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services, in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.156(e), refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language training, however, need not be refugee-specific (45 CFR 400.156(d)).

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities (45 CFR 400.156(c)).

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative (45 CFR 400.156(b)).

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (64 FR 19793, April 22, 1999).

The Use of MAAs

ORR believes that the use of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, we expect States to use MAAs as service providers to the maximum extent possible. We strongly encourage States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical

assistance and organizational training to strengthen the capability of MAAs to provide employment services and other social services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. Discussion of Comments Received

We received one letter of comment in response to the notice of proposed FY l999 allocations to States for refugee social services. This comment is summarized below and followed by the Department's response.

Comment: The commenter expressed concern about the proposal to allocate $15.5 million as a set-aside to provide referral services to ensure that refugees are able to access the Children's Health Insurance Program (CHIP) and other programs for low income populations; and (2) provide for the hiring of interpreters and special interpreter training to enable refugees to have equal access to medical services and certain legal services. The commenter believes that refugees are able to adequately access public assistance and medical assistance programs. Instead, the commenter recommended that the set-aside funds be allocated to States based upon the estimated number of refugees who have been in the country for over seven years who are losing eligibility for Federal Food Stamps. The commenter recommended that States should be given the discretion on how to use the funds in providing food assistance, employment services, or naturalization services in order to mitigate the loss of Federal Food Stamp eligibility. The commenter also recommended that the funds should be used by states to translate notices and information relating to programs and services which refugees need because translation is more cost-effective and efficient than interpreter services. And lastly, the commenter indicated that the President's budget for Federal Fiscal Year (FFY) 2000 includes $40 million to increase and expand the use of TANF funds for the current Medicaid outreach program to include children newly eligible for CHIP and therefore the ORR set-aside would be duplicative of this initiative.

Response: With the continuing increase in diversity among newly arriving refugee groups, and the increased ability of these groups to become employed soon after arrival, we believe that there is a strong need for refugees to receive specially directed assistance to help them access medical and other assistance programs for low-economic populations. We believe this assistance is critical to helping refugees make the transition from the entry and low level jobs which are obtained soon after arrival, when families are struggling to adjust to their new lives, jobs, and communities, to becoming self-sufficient members of the community.

We also believe that it is vital to have appropriate interpreter services available so that the diverse newly arriving populations receive the services necessary for their well-being and integration into their new communities. While both interpreter and translation services are currently allowable social services for States to fund under ORR regulations, it is our understanding that newly arriving refugees would particularly benefit from having additional interpreter services available in the community. In many communities, it is no longer possible for each local resettlement provider to have on staff a bilingual worker for each arriving refugee group. New strategies and means of addressing the diverse population must be found. It is our intent that the set-aside funds will support that need. And finally, while funding to augment access to CHIP may be provided under the FFY 2000 budget, and we would certainly encourage States to do whatever possible to ensure that refugee populations are served if these funds are included in the final appropriations legislation, we do not believe this to be a duplication because refugee program funds would have been available to serve refugees before next year's appropriation is made available to States.

III. Allocation Formulas

Of the funds available for FY 1999 for social services, $88,841,815 is allocated to States in accordance with the formula specified below. In addition, $15.5 million in set-aside funds are allocated in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1998, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1999 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1998, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants, and Kurdish asylees.

For fiscal year 1999, ORR's formula allocations for the States for social services are based on the numbers of refugees, Amerasians, Kurdish asylees, and entrants who arrived during the preceding three fiscal years: 1996, 1997, and 1998, based on arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1995, and September 30, 1998, who are thought to be living in each State as of October 1, 1998.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1998. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians and Kurdish asylees are included in the refugee figures.

With regard to Havana parolees, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting each State that received entrant arrivals during the 3-year period from FY 1996 through FY 1998 with a prorated share of the 13,442 parolees reported by the Immigration and Naturalization Service (INS) to have come to the U.S. directly from Havana in FY 1998. In addition, we have credited each State with the same share

of FY 1996 and FY 1997 Havana parolees that they were credited with in the final FY 1997 and FY 1998 social service notices. The allocations in this notice reflect these additional parolee numbers.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1998, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); total refugee/entrant population, (col. 4); the formula amounts which the population estimates yield (col. 5); the allocation amounts after allowing for the minimum amounts (col. 6); the set-aside amount (col. 7); and the total final allocation (col. 8).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations. The following amounts are for allocation for refugee social services in FY 1999:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 1999.

State	Refugees [1] (1)	Entrants (2)	Havana parolees [2] (3)	Total population (4)	Proposed formula amount (5)	Proposed allocation (6)	Set-aside	Final allocation
Alabama	484	55	75	614	$198,965	$198,965	$34,829	$233,794
Alaska [3]	0	0	0	0	.....	.....	.....	.....
Arizona	6,105	387	421	6,913	2,240,139	2,240,139	392,139	2,632,278
Arkansas	141	9	9	159	51,524	85,321	9,019	94,340
California	34,833	342	575	35,750	11,584,691	11,584,691	2,027,912	13,612,603
Colorado	3,284	2	6	3,292	1,066,764	1,066,764	186,738	1,253,502
Connecticut	2,362	150	201	2,713	879,140	879,140	153,894	1,033,034
Delaware	58	2	3	63	20,415	75,000	3,574	78,574
Dist. of Columbia	1,498	4	9	1,511	489,635	489,635	85,711	575,346
Florida	12,594	8,201	21,455	42,250	13,690,998	13,690,998	2,396,624	16,087,622
Georgia	8,307	98	155	8,560	2,773,845	2,773,845	485,564	3,259,409
Hawaii	120	1	0	121	39,210	75,000	6,864	81,864
Idaho [4]	1,622	0	0	1,622	525,605	525,605	92,008	617,613
Illinois	11,262	231	304	11,797	3,822,786	3,822,786	669,183	4,491,969
Indiana	1,451	5	7	1,463	474,081	474,081	82,988	557,069
Iowa	5,288	2	3	5,293	1,715,182	1,715,182	300,244	2,015,426
Kansas	1,025	9	11	1,045	338,629	338,629	59,277	397,906
Kentucky [5]	3,375	802	638	4,815	1,560,288	1,560,288	273,130	1,833,418
Louisiana	1,296	79	141	1,516	491,256	491,256	85,995	577,251
Maine	607	0	0	607	196,697	196,697	34,432	231,129
Maryland	3,000	46	95	3,141	1,017,833	1,017,833	178,173	1,196,006
Massachusetts	6,727	85	105	6,917	2,241,435	2,241,435	392,366	2,633,801
Michigan	7,078	347	340	7,765	2,516,227	2,516,227	440,468	2,956,695
Minnesota	8,245	7	15	8,267	2,678,899	2,678,899	468,944	3,147,843
Mississippi	71	10	19	100	32,405	75,000	5,672	80,672
Missouri	6,514	8	13	6,535	2,117,649	2,117,649	370,697	2,488,346
Montana	126	0	0	126	40,830	75,000	7,147	82,147
Nebraska	2,064	36	36	2,136	692,165	692,165	121,164	813,329
Nevada [5]	1,233	609	640	2,482	804,285	804,285	140,791	945,076
New Hampshire	1,095	0	0	1,095	354,832	354,832	62,114	416,946
New Jersey	3,371	365	654	4,390	1,422,568	1,422,568	249,022	1,671,590
New Mexico	346	467	565	1,378	446,537	446,537	78,167	524,704
New York	29,693	756	876	31,325	10,150,782	10,150,782	1,776,905	11,927,687
North Carolina	3,639	29	32	3,700	1,198,975	1,198,975	209,882	1,408,857
North Dakota	1,304	0	2	1,306	423,206	423,206	74,083	497,289
Ohio	4,134	44	44	4,222	1,368,128	1,368,128	239,492	1,607,620
Oklahoma	471	7	10	488	158,135	158,135	27,682	185,817
Oregon	4,616	344	388	5,348	1,733,005	1,733,005	303,364	2,036,369
Pennsylvania	6,893	245	261	7,399	2,397,626	2,397,626	419,707	2,817,333
Rhode Island	331	5	5	341	110,500	110,500	19,343	129,843
South Carolina	226	6	7	239	77,447	100,000	13,557	113,557
South Dakota [4]	750	0	0	750	243,035	243,035	42,544	285,579
Tennessee	3,636	171	179	3,986	1,291,653	1,291,653	226,105	1,517,758
Texas	11,165	778	837	12,780	4,141,325	4,141,325	724,943	4,866,268
Utah	3,163	1	0	3,164	1,025,286	1,025,286	179,477	1,204,763
Vermont	885	0	0	885	286,782	286,782	50,201	336,983
Virginia	4,484	114	163	4,761	1,542,789	1,542,789	270,067	1,812,856
Washington	16,391	45	49	16,485	5,341,920	5,341,920	935,109	6,277,029
West Virginia	8	0	0	8	2,592	75,000	454	75,454
Wisconsin	1,606	9	11	1,626	526,901	526,901	92,235	619,136
Wyoming [3]	0	0	0	0	.....	.....	.....	.....
Total	228,977	14,913	29,359	273,249	88,545,602	88,841,500	15,500,000	104,341,500

[1] Includes: refugees, Kurdish asylees, and Amerasian immigrants from Vietnam adjusted for secondary migration.

[2] For FY 1998, Florida's Havana Parolees (10,183) were based on actual data, while HP's in other States (3,258) were prorated according to their proportions of the three-year (FY 1996–1998) entrant population. For FY 1997, Florida's HP's (3,957) were based on actual data, while HP's in other States (2,035) were prorated according to their proportions of the three-year population. For FY 1996, Florida's HP's (7,315) were based on actual data, while HP's in other States (2,611) were prorated according to their proportions of the three-year entrant population.

[3] Alaska and Wyoming no longer participate in the Refugee Program.

[4] The allocations for Idaho and South Dakota are expected to be awarded to the State designee.

[5] The allocations for Kentucky and Nevada are expected to be awarded to Wilson/Fish projects.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: August 2, 1999.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 99–20246 Filed 8–9–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FA–108–2810–00–24–1E]

Reopening of the Call for Non-Federal Nominations to the Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Reopening of the public call for nominations to the Joint Fire Science Program Stakeholder Advisory Group.

SUMMARY: The Secretary of the Interior and the Secretary of Agriculture are reopening the call for public nominations to the Joint Fire Science Program Stakeholder Advisory Group to allow more time for the public to assemble and submit nomination materials. The initial notice was published in the **Federal Register** on Monday, June 21, 1999 (64 FR 33112).

The purpose of this Stakeholder Advisory Group is to provide advice concerning priorities and approaches for research and implementation of research findings for the management of wildland fuels on lands administered by the Department of the Interior, through the Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705, (208) 387–5349. Internet: bob—clark@blm.gov.

SUPPLEMENTARY INFORMATION: The Stakeholder Advisory Group will consist of 30 members, 15 Federal and 15 nonfederal. This call for nominations will establish the nonfederal membership on the Group. Group membership will be balanced in terms of categories of interest represented.

Any individual or organization may nominate one or more persons to serve on the Joint Fire Science Program Stakeholder Advisory Group. Individuals may also nominate themselves for Group membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the above address. Letters of support should be from interests or groups that nominees claim to represent. This material will be used to evaluate nominees in terms of their expertise and qualifications for advising the Secretaries on matters pertaining to research into wildland fuels problems and implementation of strategies and solutions for managing the increasing fuel loadings on federally administered wildlands.

Nominations may be made for the following categories of interest:

Wildland fire management
Wildland fuels management
Air quality management
Public lands management
Forest ecology
Rangeland ecology
Hydrology
Conservation
Social science
Computer science and modeling
Tribal government
Public-at-large

The specific category that the nominee will represent should be identified in the letter of nomination.

Agency administrators will nominate Federal representatives, including: four (4) members from the U.S. Forest Service, and one member each from the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Geological Survey, the Department of Energy, the Department of Defense, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Natural Resources Conservation Service.

Each Stakeholder Advisory Group Member will be appointed to serve a 2-year term. Members will serve without salary, but non-federal members will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Group will meet at least once annually. Additional meetings may be called in connection with special needs for advice. The Department's Senior Policy Advisor, Office of Managing Risk and Public Safety, will be the Designated Federal Officer who will call meetings of the Group.

Dated: August 2, 1999.

John Berry,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 99–20507 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–04]

Public Hearing; Helicopters and Motorized Vehicle Use During the Gather of Wild Horses and Capture of Wild Horses From the North Piceance Herd Area and the Piceance/East Douglas Herd Management Area; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearing; Capture of wild horses.

SUMMARY: A public hearing regarding the use of helicopters and motorized vehicles has been scheduled in one location in Colorado in 1999. Included is the time and date of this hearing.

SUMMARY: The capture of wild horses from two locations in Colorado in 1999 has been scheduled. Included are dates and locations of the wild horse gather.

DATES AND ADDRESSES: A hearing to discuss helicopter use in the North Piceance Herd Area and the Piceance/East Douglas Herd Management Area, White River Field Office, will be held in Meeker, Colorado at the White River Field Office on September 21, 1999 at 7 P.M.

A wild horse helicopter gather is scheduled to take place in the North Piceance Herd Area and the Piceance/East Douglas Herd Management Area between September 28, 1999 and October 31, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Dobrich; White River Field Office; 73544 Highway 64; Meeker, Colorado; 81641; Telephone (970) 878–3601 extension 5539.

John M. Mehlhoff,

White River Field Office Manager.

[FR Doc. 99–20567 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–09–1220–00]

Notice of Intent, Amendment to the Pony Express Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent; amendment.

SUMMARY: The Bureau of Land Management (BLM), Salt Lake Field Office published in the February 3, 1997 issue of the **Federal Register** a notice of intent to prepare a plan amendment to the Pony Express Resource Management Plan to consider a special recreation management area (SRMA) at Fivemile Pass. This amendment would modify the area boundary and involve an expansion from approximately 31,360 acres to 36,629 approximate acres.

DATES: The comment period for the proposed modification will commence with the date of publication of this notice. Comments must be submitted on or before September 9, 1999.

SUPPLEMENTARY INFORMATION: The Fivemile Pass SRMA was defined as containing at total of 31,360 acres which included 19,020 acres of public lands, approximately 10,740 acres of private land, and 1,600 acres of State lands. The proposed modification would contain a total of 36,629 acres of which would contain 29,611 acres of public lands, approximately 6,171 of private land, and 847 of State Land.

The new boundary will affect all federal lands in:

T5S R3W, Sections 33 and 34;
T6S R3W, Sections 3, 4, 7–11, 13–24, 26–30, 33–35;
T7S R3W, Sections 1, 3–15, 17, 18, 22–27, 34,35;
T8S R3W, Section 3;
T6S R4W, Sections 11–15, 22–26, 35;
T7S R4W, Sections 1, 10–15.

The modification is an effort to incorporate consolidated public lands into an enforceable boundary.

FOR FURTHER INFORMATION CONTACT: Connie Stump, Outdoor Recreation Planner, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah, 84119 telephone 801–977–4363, fax 801–977–4397. Existing planning documents and information are available at the above address. Comments on the proposed plan amendment should be sent to the above address.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–20564 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 31, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 25, 1999.

Patrick Andrus,

Acting Keeper of the National Register.

Alaska

Anchorage Borough-Census Area

Anchorage Depot, 411 W. First Ave., Anchorage, 99001027

Florida

Charlotte County

El Jobean Post Office and General Store, 4370 Garden Rd., El Jobean, 99001028

Georgia

Clarke County

Buena Vista Heights Historic District, Roughly bounded by Park Ave., Prince Ave., Pound St., and Nantahala Extension, Athens, 99001029

Illinois

Carroll County

Savanna—Sabula Bridge, IA 64, US 52 over Mississippi R., (Highway Bridges of Iowa MPS), Sabula vicinity, 99001033

Hancoock County

Fort Madison Bridge, IA 9 over Mississippi R, (Highway Bridges of Iowa MPS), Fort Madison, 99001035

Jo Davies County

Julien Dubuque Bridge, US 20 over Mississippi R., (Highway Bridges of Iowa MPS), Dubuque vicinity, 99001034

Iowa

Buchanan County

Plane, Robert R., and Julia L., House, 301 3rd Ave. SE, Independence, 99001030
State Savings Bank, 103 N. Water St., Quasqueton, 99001031

Dubuque County

Julien Dubuque Bridge, (Highway Bridges of Iowa MPS), US 20 over Mississippi R., Dubuque, 99001034

Jackson County

Savanna—Sabula Bridge, (Highway Bridges of Iowa MPS), IA 64, US 52 over Mississippi R., Sabula, 99001033

Lee County

Fort Madison Bridge, (Highway Bridges of Iowa MPS), IA 9 over Mississippi R., Fort Madison, 99001035

Woodbury County

Knott, Dr. Van Buren, House, 2323 Nebraska St., Sioux City, 99001032

Louisiana

East Baton Rouge Parish

Winans, Fonville, Studio, 409 N. Seventh St., Baton Rouge, 99001052

Orleans Parish

Magnolia Street Housing Project, Roughly bounded by Washington Ave., La Salle St., Louisiana Ave., and Magnolia St., New Orleans, 99001038

St. Landry Parish

Robin House and Barn, (Louisiana's French Creole Architecture MPS), 1616 LA 31, Amaudville vicinity, 99001036

Webster Parish

Bryan House, 2086 Harold Montgomery Rd., Doyline vicinity, 99001037

West Baton Rouge Parish

Sandbar Plantation House, 4234 S. River Rd., Port Allen vicinity, 99001039

Maryland

Wicomico County

Asbury Methodist Episcopal Church, 26679 Collins Wharf Rd., Allen, 99001041

Massachusetts

Berkshire County

Richmond Furnace Historical and Archaeological District, State, Cone Hill, and Furnace Rds., Richmond, 99001044

Franklin County

Conway Center Historic District, 5–38 Academy Hill Rd., 1–59 Elm St., and 8–98 Main St., Conway, 99001043

Missouri

Greene County

Springfield National Cemetery, (Civil War Era National Cemeteries MPS), 1702 E. Seminole St., Springfield, 99001045

North Carolina

Pender County

Burgaw Historic District, Roughly bounded by Cowan St., Fremont St., Dudley St., and Ashe St., Burgaw, 99001047

Wake County

Glen Royall Mill Village Historic District, (Wake County MPS), Roughly bounded by

N. Main St., E. Cedar Ave., CSX RR, and Royall Cotton Mill, Wake Forest, 99001046

North Dakota

Grand Forks County

Metropolitan Opera House, 116 S. Third St., Grand Forks, 99001048

Vermont

Chittenden County

Proctor Maple Research Farm, UVM Rd., Underhill, 99001050

Windsor County

Dewey House, 173 Deweys Mills Rd., Hartford, 99001051

A request for REMOVAL has been made for the following resource:

Arkansas

Sharp County

Maxville School Building, US 167 N of Cave City, (Public Schools in the Ozarks MPS), Cave City vicinity, 92001199

[FR Doc. 99–20488 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 13, 1999 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–846–850 (Preliminary)(Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from the Czech Republic, Japan, Mexico, Romania, and South Africa)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 16, 1999.)
5. Inv. No. 731–TA–851 (Preliminary)(Synthetic Indigo from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 16, 1999.)
6. Inv. Nos. 701–TA–384 and 731-TA–806 and 808 (Final)(Certain Hot-Rolled Steel Products from Brazil and Russia)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 23, 1999.)
7. Outstanding action jackets:

(1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

(2) Document No. GC–99–071: Regarding Inv. No. 337–TA–383 (Certain Hardware Logic Emulation Systems and Components Thereof).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 5, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20721 Filed 8–6–99; 1:30 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit 2 (HBR) located in Darlington County, South Carolina.

The proposed amendment would revise Required Action A.1 of Technical Specification Limiting Condition for Operation 3.7.8 to allow a Completion Time of 72 hours to restore service water (SW) temperature to less than or equal to 95oF prior to entering the required actions for plant shutdown. The amendment request was proposed as a temporary change to be in effect until September 30, 1999.

The licensee requested that this proposed amendment be processed as an exigent request, pursuant to 10 CFR 50.91(a)(6), to permit implementation during this summer. The severe and sustained period of hot weather in the area of HBR, combined with the thermal and hydrological characteristics of the ultimate heat sink (UHS), have resulted in a situation where, on occasion, the existing 8-hour Completion Time is not of sufficient duration to allow UHS temperature to return below 95°F. Additionally, an extended period of this severely hot weather may result in several long temperature excursions above 95°F and could result in unwarranted plant power reductions and shutdowns during a time of record energy demand.

Based on the circumstances described above, the NRC verbally issued a Notice of Enforcement Discretion (NOED) on July 31, 1999. The NOED was documented by letter dated August 3, 1999. The NOED expressed the NRC's intention to exercise discretion not to enforce compliance with the 8-hour Completion Time of TS 3.7.8 until the exigent TS amendment request to revise TS 3.7.8, which the licensee submitted on July 30, 1999, is processed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides a revised allowed time for the plant condition where UHS temperature exceeds the design limit of 95°F. SW system temperature is not assumed to be an initiating condition of any accident analysis evaluated in the safety analysis report (SAR). Therefore, the revised limitation for SW temperature to be in excess of the design limit does not involve an increase in the probability of an accident previously evaluated in the safety analysis report. The SW system supports operability of safety-related systems used to mitigate the consequences of an accident. Plant equipment has been analyzed and determined able to perform its safety-related function through the allowed maximum SW temperature of 99°F. Performance of the containment has not been the subject of a specific re-analysis at the proposed temperatures with current licensing basis methodologies. However, based on engineering judgement, the [effect] on

containment performance from the elevated SW temperature for the proposed period of time would not be significant. The magnitude of any increase in SW temperature in excess of the design limit is expected to be small based on historical data and experience for the UHS. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the SW when near or slightly above the design temperature does not introduce new failure mechanisms for systems, structures or components not already considered in the SAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in SW temperature above the design basis limit for a limited period of time. This will delay the requirement to shutdown the plant for an additional 64 hours beyond the currently 8 hours Completion Time. Design margins are affected which are associated with systems, structures and components which are cooled by the SW system, and system temperature is an input assumption for mitigating the effects of a DBA [design-basis accident]. However, allowing this additional time for SW temperature to exceed the design limit is expected to have a negligible [effect] on containment performance, and no adverse impact on other analyzed plant equipment. Therefore, there is no significant reduction in margin of safety associated with this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final

determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, 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. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 30, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 4th day of August 1999.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20543 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company, FERMI 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43 issued to the Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan.

The proposed amendment would represent a full conversion from the current Technical Specifications (CTSs) to a set of improved Technical Specifications (ITSs) based on NUREG–1433, Revision 1, ''Standard Technical Specifications, General Electric Plants BWR/4,'' dated April 1995. NUREG–1433 has been developed through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve CTSs. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors'' (Final Policy Statement), published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the Fermi 2 CTSs and, using NUREG–1433 as a basis, developed a proposed set of ITSs for Fermi 2. The criteria in the Final Policy Statement subsequently were incorporated in 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953). The rule change became effective August 18, 1995.

The licensee has categorized the proposed changes to the CTSs into four general groupings. These groupings are characterized as administrative changes, technical changes—relocations, technical changes—more restrictive, and technical changes—less restrictive.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1433 and do not involve technical changes to the CTSs. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

Technical changes—relocations are those changes involving relocation of requirements and surveillances from the CTSs to licensee-controlled documents, for structures, systems, components, or variables that do not meet the criteria for inclusion in the ITSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's Final Policy Statement and 10 CFR 50.36, and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Volume 1 of its April 3, 1998, application titled, ''Fermi 2 Improved Technical Specifications Submittal Cover Letter and Split Report.'' The affected structures, systems, components, or variables are not assumed to be initiators of events analyzed in the Updated Final Safety Analysis Report (UFSAR) and are not assumed to mitigate accident or transient events analyzed in the UFSAR. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the CTSs to administratively controlled documents such as the UFSAR, the Bases, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures, which are also subject to 10 CFR 50.59.

Technical Changes—more restrictive are those changes that involve more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent

requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. For each requirement in the Fermi 2 CTSs that is more restrictive than the corresponding requirement in NUREG–1433, which the licensee proposes to retain in the ITSs, the licensee has provided an explanation of why it has concluded that the more restrictive requirement is desirable to ensure safe operation of the facility.

Technical changes—less restrictive are changes where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the ITSs may be appropriate. In most cases, relaxations granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITSs. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design information will be reviewed to determine if its specific design and licensing bases are consistent with the technical justifications contained in NUREG–1433. This will determine if a foundation exists for the ITSs or if relaxation of the requirements in the CTSs is warranted by the justifications provided by the licensee.

In addition to the changes solely involving the conversion, changes are proposed to the CTSs or as deviations from the improved BWR/4 Technical Specifications (NUREG–1433) as follows:

1. Fermi 2 ITS 3.3.1.1, Surveillance Requirement (SR) 3.3.1.1.6, modifies NUREG–1433 SR 3.3.1.1.6 by allowing the source range monitors to be partially withdrawn from the core while obtaining overlap with the intermediate range monitors. This deviation from NUREG-1433 was based on the current usage of the CTS and on the design of the neutron monitoring system.

2. Fermi 2 ITS 3.3.6.3 modifies NUREG–1433 limiting condition for operation (LCO) 3.3.6.3, Condition B, to provide requirements that are less restrictive than the NUREG based on the Fermi 2 design for the low-low-set arming logic.

3. Fermi 2 ITS 3.4.1 LCO 3.4.1 does not include some CTS actions related to single recirculation loop operation. These actions were not in the NUREG–1433 LCO. But the staff reviewed the changes to determine whether retaining the actions was warranted on a plant-specific basis.

4. Fermi 2 ITS 3.4.6 modifies NUREG–1433 LCO 3.4.6 by removing bracketed Action B.2 and adopting bracketed Actions C and D to allow certain reactor coolant system leakage detection instrumentation to be out of service with completion times beyond those in the CTS based on the capabilities of the remaining instrumentation.

5. Fermi 2 ITS 3.4.10 for reactor coolant system pressure and temperature limits modifies NUREG–1433 LCO 3.4.10 by adding two new SRs that were included in CTS 3.4.1.1 for the recirculation loops because the SRs relate more closely to reactor coolant system temperature limits than to limits for recirculation loop operation.

6. Fermi 2 ITS 3.5.1 modifies the NUREG–1433 LCO 3.5.1 by adding new Conditions B and C and revising NUREG–1433 Conditions B and D to allow certain combinations of emergency core cooling system (ECCS) subsystems to be out of service based, in part, on the CTS and the Fermi 2 loss-of-coolant accident (LOCA) analysis.

7. The Fermi 2 ITS adds SR 3.5.1.14 for response time testing of the ECCS functions. The CTS and NUREG–1433 include this SR in the ECCS instrumentation specification (NUREG–1433 LCO 3.3.5.1). This relocation is based on the fact that the CTS state that the ECCS actuation instrumentation response time need not be measured. Therefore, the SR verifies the overall system response time instead.

8. Fermi ITS 3.6.1.3, Condition D, is expanded to include primary containment isolation valves with leakage exceeding the associated limit(s), providing appropriate actions and completion times. NUREG–1433 LCO 3.6.1.3 would have handled the same situation under Condition A, with the leaking valve considered inoperable. But Condition D is written specifically for the case of a leaking valve. In addition, a new Action D.2 is added that requires the licensee to periodically verify the isolation of penetrations that are isolated due to a leaking valve. This action is analogous to STS Action A.2.

9. The Fermi 2 ITSs relocate the requirements for drywell spray (which is not addressed in NUREG–1433) to licensee-controlled documents, because they do not meet the 10 CFR 50.36(c)(2)(ii) screening criteria.

10. Fermi 2 ITSs 3.10.4 and 3.10.5 modify NUREG–1433 3.10.4 and 3.10.5 to clarify the activities associated with single control rod removal based on the actual steps required to complete the task.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings,'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, 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. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment, dated April 3, 1998, as supplemented on September 28, October 19, and December 10, 1998, and January 8, January 26, February 24, March 30, April 8, April 30, May 7, June 2, June 24, June 30, July 7, July 13, and July 26, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20544 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 31, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, August 31, 1999—1:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 4, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–20541 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor

Safeguards will hold a meeting on September 1–3, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64105).

Wednesday, September 1, 1999

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:45 A.M.: Safety Evaluation Report Related to the Oconee Nuclear Power Plant License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Duke Energy Corporation regarding the staff's Safety Evaluation Report associated with the license renewal application for the Oconee Nuclear Power Plant Units 1, 2, and 3, and other license renewal issues.

11:00 A.M.–12:00 Noon: Proposed Resolution of Generic Safety Issue-145, ''Actions to Reduce Common Cause Failures'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed resolution of Generic Safety Issue-145.

1:00 P.M.—3:00 P.M.: Proposed Final Source Term Rule and Associated Draft Regulatory Guide and Standard Review Plan Section (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final rule on the application of alternative source term at operating plants and associated draft regulatory guide and Standard Review Plan Section, and related matters.

3:15 P.M.–4:15 P.M.: Proposed Revision to Regulatory Guide 1.78 (DG–1087), ''Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed revision to Regulatory Guide 1.78.

4:15 P.M.–4:45 P.M.: ACRS Plans for Reviewing the RETRAN–3D Thermal-Hydraulic Transient Analysis Code (Open)—The Committee members will discuss the ACRS plans for reviewing the Electric Power Research Institute RETRAN–3D thermal-hydraulic transient analysis code.

4:45 P.M.–5:45 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

5:45 P.M.–7:15 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a follow-up letter to the NRC Executive Director for Operations' (EDO's) response to the May 19, 1999 ACRS letter on the Modifications Proposed by the Westinghouse Owners Group to the Core Damage Assessment Guidelines and the Post Accident Sampling System Requirements, and a Joint ACRS/ACNW report on the Proposed Framework for Risk-Informed Regulation in the NRC Office of Nuclear Material Safety and Safeguards.

Thursday, September 2, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Application of the Electric Power Research Institute (EPRI) Risk-Informed Methods to Inservice Inspection of Piping (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and EPRI regarding the staff's proposed final Safety Evaluation Report on the application of the EPRI risk-informed methods to inservice inspection of piping at nuclear power plants.

10:15 A.M.–11:45 A.M.: Proposed Guidance for Using Risk Information in the Review of Licensing Actions (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed guidance for using risk information in the review of licensing actions, and related matters.

12:45 P.M.–2:00 P.M.: Proposed Final Revision 3 to Regulatory Guide 1.105, Instrument Setpoints for Safety Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed final revision 3 to Regulatory Guide 1.105.

2:15 P.M.–3:45 P.M.: Office of Nuclear Regulatory Research (RES) Self-Assessment Program (Open)—The Committee will hear presentations by and hold discussions with representatives of RES regarding the status of activities associated with the RES self-assessment program, including the proposed process for prioritizing RES activities.

4:00 P.M.–5:00 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

5:00 P.M.–7:15 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, September 3, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:15 A.M.: Report of the Planning and Procedures Subcommittee (Open)/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:15 A.M.–9:30 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

9:30 A.M.–9:45 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the EDO to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:00 A.M.–5:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

5:00 P.M.–5:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked

only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing 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. EDT 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 facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–20542 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23933; 812–11606]

Amway Mutual Fund Trust et al.; Notice of Application

August 3, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: The requested order would permit applicants, Amway Mutual Fund Trust (the ''Trust''), Amway Management Company (''Amway''), and Activa Asset Management LLC (''Activa'' and together with Amway, the ''Managers''), to enter into and materially amend subadvisory agreements without obtaining shareholder approval.

FILING DATES: The application was filed on February 24, 1999, and was amended on July 13, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of 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 20549–0609; Applicants, 2905 Lucerne SE, Grand Rapids, MI 45546.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company and operates as a series company. The only series of the Trust presently offered to the public is Amway Mutual Fund (''Fund''). The Trust has recently authorized four additional series (''New Funds'') (together with the Fund, the ''Funds'').[1]

2. Anyway is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Amway serves as investment adviser to the Fund under an investment management agreement between Amway and the Fund that was approved by the Trust's board of trustees (''Board''), including a majority of trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the shareholders of the Fund (the ''Management Agreement''). Activa, an investment adviser which will be registered under the Advisers Act, will serve as investment adviser to the Fund and the New Funds under an investment management agreement between Activa and the Funds that was approved by the Board, including a majority of the Independent Trustees, and will be approved by the initial shareholders of the New Funds before they are offered to the public and by shareholders of the Fund at a meeting scheduled to be held on August 30, 1999 (the ''New Management Agreement'').[2] The Managers are under

[1] Applicants also request that the relief apply to all registered open-end management investment companies or series thereof that are now, or in the future will be, advised by the Managers or any entity controlling, controlled by, or under common control with the Managers and which operate in substantially the same manner as the Trust (''Future Funds''). Applicants state that all existing investment companies that currently intend to rely on the requested order have been named as applicants, and any Future Funds that subsequently rely on the requested order will comply with the terms and conditions in the application.

[2] The New Management Agreement will not be effective until the effective date of Activa's registration under the Advisers Act. If the New Management Agreement is not approved by shareholders of the Fund, Amway will continue to serve as investment adviser to the Fund.

common control and have the same principal officers and employees.

3. The investment management responsibilities under the Management Agreement and the New Management Agreement (together the ''Management Agreement'') are essentially the same. Under the Management Agreement, the Managers have overall general supervisory responsibility for the investment management of the Funds and, subject to the supervision of the Board, the power to select subadvisers (''Subadvisers'') to provide portfolio management services for all or a portion of a Fund. The Fund currently has, and each of the New Funds is expected to have, a single subadviser.

4. The Managers will select Subadvisers based on a continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a particular investment style. A Subadviser performs services pursuant to a written investment subadvisory agreement between the Subadviser and the Manager (''Subadvisory Agreement''). The Subadvisers are, and will be, registered under the Advisers Act. The Manager pays the Subadvisers out of the fees the Manager receives from the Trust.

5. Applicants request an order to permit the Managers to enter into, and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will be extend to a Subadviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Trust or the Managers, other than be reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

Applicants's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that investors rely upon the Manager to select one or more Subadvisers for the Fund. Applicants contend that the role of the Subadviser, from the perspective of the investor, is comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants also contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Funds, and could prevent the prompt implementation of actions deemed advisable by the Manager and the Board. Applicants note that the Management Agreements will continue to be fully subject to section 15 of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Managers will provide management and administrative services to the Funds and, subject to the review and approval of the Board will: (i) Set the overall investment strategies of the Funds; (ii) evaluate and recommend Subadvisers; (iii) allocate, and when appropriate, reallocate, the assets of the Funds among Subadvisers in those cases where a Fund has more than one Subadviser; and (iv) monitor and evaluate the investment performance of the Subadvisers, including their compliance with the investment objectives, policies, and restrictions of the Funds.

2. Before any Fund may rely on the order requested in the application, the operation of the Fund in the manner described in this application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 4 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

3. Within 90 days of the hiring of any Subadviser, the Managers will furnish shareholders of the affected Fund with all information about such Subadviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new Subadviser. The Managers will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as amended (''1934 Act''). The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act.

4. The Trust and any Future Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the ''manager of managers'' approach described in the application. The prospectus will prominently disclose that the Managers, subject to Board oversight, have the ultimate responsibility for the investment performance of the Fund due to their responsibility to oversee Subadvisers and recommend their hiring, termination, and replacement.

5. No director, trustee, or officer of the Trust, the Funds, or a Future Fund, or director or officer of the Managers, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a Subadviser except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

6. Neither the Trust nor the Managers will enter into subadvisory Agreements on behalf of a Fund with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

8. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board that any such change of Subadvisers is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Subadviser derives an inappropriate advantage.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20490 Filed 8–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23934; 812–11362]

Elk Associates Funding Corporation and Ameritrans Capital Corporation; Notice of Application

August 3, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants, Elk Associates Funding Corporation (''Elk'') and Ameritrans Capital Corporation (''Ameritrans''), request an order approving their respective Non-Employee Directors Stock Option Plans (the ''Elk Plan'' and the ''Ameritrans Plan,'' collectively, the ''Plans'') and the grant of certain stock options under the Plans.

FILING DATES: The application was filed on October 19, 1998 and amended on July 29, 1999.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o Perri Beth Irvings, Esquire, Stursberg & Veith, 405 Lexington Avenue, Suite 4949, New York, New York 10174–4902.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0528 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Elk, a New York corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act [1] and is licensed as a small business investment company (''SBIC'') under the Small Business Act of 1958, as amended. Ameritrans is a newly-created Delaware corporation that elected to become a BDC on July 29, 1999.

2. Applicants plan to enter into an Agreement and Plan of Share Exchange (the ''Share Exchange Plan''). Under the Share Exchange Plan, Elk would become a wholly-owned subsidiary of Ameritrans, and the holders of all of the outstanding shares of Elk's common stock would receive one share of Ameritrans stock for each share of Elk stock owned (the ''Share Exchange'').[2] The Share Exchange is expected to take place as soon as practicable after issuance of the order by the Commission relating to the Share Exchange Plan. If the Share Exchange is consummated, Ameritrans will have the identical capital structure, management and board of directors (''Board'') that Elk has currently. Elk, as a subsidiary of Ameritrans, would continue to operate as an SBIC and Ameritrans would engage in broader lending and investment operations consistent with its status as a BDC but not subject to SBIC restrictions. Ameritrans will not engage in any substantive business activities prior to the completion of the Share Exchange. Neither applicant has an external investment adviser within the meaning of section 2(a)(20) of the Act.

3. Applicants request an order under section 61(a)(3)(B) of the Act approving the Plans. Each Plan provides for the grant of options to acquire shares of the relevant applicant's common stock to directors who are neither officers, employees nor interested persons (as defined by section 2(a)(19) of the Act) of applicants (''Non-Employee Directors'').[3] Elk has a ten-member Board, six of whom are Non-Employee Directors.

4. The Plans are identical, except that the Ameritrans Plan will not become effective unless and until the Share Exchange is completed. When the Share Exchange occurs, the Ameritrans Plan would become the successor Plan to the Elk Plan and options granted under the Elk Plan would be deemed to have been issued under the Ameritrans Plan and would be exercisable for shares of Ameritrans stock. In the event the Share Exchange is not approved, the Elk Plan would remain in effect.

5. On August 21, 1998, the Board adopted the Elk Plan subject to approval by shareholders and the Commission. On September 28, 1998, Elk's shareholders approved the Elk Plan. The Board adopted the Ameritrans Plan on May 21, 1999 and the sole shareholder of Ameritrans approved the Ameritrans Plan on May 21, 1999. The Elk Plan will become effective on the date that it is approved by the Commission (''Approval Date'').

6. The Elk Plan provides that on the later of the Approval Date or the first anniversary of the election or appointment of a Non-Employee Director to the Board (''Anniversary Date''), each Non-Employee Director then serving will receive an automatic grant of options to purchase a number of shares of Elk common stock (''Options'') determined by dividing $50,000 by the current market value of Elk's common stock on the Approval Date (''Initial Grants''). Following the Initial Grants, each new Non-Employee Director will automatically be granted a number of Options on his or her Anniversary Date to be determined by dividing $50,000 by the current market value of shares of Elk common stock on the date of grant. Based on length of service, four of the six Elk Non-Employee Directors would be granted Options on the Approval Date and the other two Non-Employee Directors upon their Anniversary Date. All Options become exercisable 12 months after the date of the grant if the Non-Employee Director remains on the Board. A total of 75,000 shares of Elk's common stock is issuable to Non-Employee Directors under the Elk Plan.

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Share Exchange Plan must be approved by the shareholders of Elk and by the Commission. Applicants have submitted a separate application to the Commission regarding the Share Exchange (File No. 812–11420).

[3] Each Elk Non-Employee Director currently receives a $2,000 annual fee, $750 for each Board meeting attended and reimbursement for meeting-related expenses.

7. Under the terms of the Elk Plan, the exercise price of the Options will be the current market price of Elk's common stock on the later of the Approval Date or the Anniversary Date. The Plans expire ten years after the Approval Date and the Options expire five years from the date of grant. Options may not be assigned or transferred other than by the laws of descent and distribution. In the event of death of a Non-Employee Director during the Director's service, unexercised Options may be exercised for a period of one year following the date of death (by the Director's personal representative) but in no event after the respective expiration dates of such Options. If a Non-Employee Director ceases to be a director for any reason, other than because of death, any unexercised Options may be exercised within one year from the date the Non-Employee Director ceases to be a director, but in no event later than the expiration date of the Option.

8. As of March 31, 1999, Elk had outstanding 11,745,600 shares of common stock. Elk's officers and employees, including employee directors, are eligible to receive options under Elk's other stock option plan (under which Non-Employee Directors are not entitled to participate) (''Other Plan''). A maximum of 200,000 shares, or 11.5% of Elk's outstanding common stock, may be issued under both the Elk Plan and the Other Plan. Of the 125,000 shares issuable under the Other Plan, 75,000 shares, representing 4.3% of Elk's outstanding common stock, are subject to granted options. Elk has no other warrants, options or rights to purchase its outstanding voting securities.

Applicants' Legal Analysis

1. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(C) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the oustanding voting securities of the BDC.

3. Applicants represent that the Plans would comply with all of the requirements of section 61(a)(3)(B) of the Act. Applicants state in support of their application that the Board actively oversees Elk's affairs, that Elk relies extensively on the judgment and experience of the Board, and that Non-Employee Directors play an important role on budgetary and operational issues, credit and loan policies, asset valuation and strategic direction, as well as serving on Board committees. Applicants believe that the Plans will provide additional incentives to Non-Employee Directors to remain on the Board and devote their best efforts to ensure the success of applicants. Applicants also believe that the Options will provide significant at-risk incentives to the Non-Employee Directors, thereby further ensuring close identification of their interests with those of the applicants and their shareholders. Applicants assert that by providing incentives such as Options, applicants will be able to maintain continuity in the Board's membership and to attract and retain highly experienced and skilled professionals who are critical to each applicant's success as a BDC.

4. Applicants submit that the terms of the Plans are fair and reasonable and do not involve overreaching of applicants or their shareholders. Applicants state that the Options are not immediately exercisable, will become exercisable 12 months after the date of grant, and then only if the grantee remains a Non-Employee Director. No Options will become exercisable due to the consummation of the Share Exchange. Applicants also state that the total number of shares of common stock issuable under the Elk Plan to Non-Employee directors represents 4.3% of Elk's outstanding common stock. Applicants assert that the Options will have value only to the extent that the market value of Elk's stock (or Ameritrans' stock if the Share Exchange occurs) increases above the exercise price of the Options and that the exercise of the Options under the Plans would not have a substantial dilutive effect on the net asset value of Elk's (or Ameritrans') common stock. Applicants state that the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights upon approval of the Elk Plan would represent 11.5% of Elk's outstanding voting securities, an amount within the percentage limitations set forth in section 61(a)(3)(C) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20491 Filed 8–9–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3200]

State of California (And Contiguous Counties in Nevada and Arizona)

San Bernardino County and the contiguous counties of Kern, Inyo, Los Angeles, Orange, and Riverside in California, Clark County, Nevada, and La Paz and Mohave Counties in Arizona constitute a disaster area as a result of damages caused by severe storms and flash flooding that occurred on July 11, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Sept. 27, 1999 and for economic injury until the close of business on May 1, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000

	Percent
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 320006 for California, 320106 for Nevada, and 320206 for Arizona. For economic injury the numbers are 9D4200 for California, 9D4300 for Nevada, and 9D4400 for Arizona.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–20478 Filed 8–9–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3199; Amendment #1]

State of Iowa

In accordance with notices received from the Federal Emergency Management Agency dated July 27 and July 30, 1999, the above-numbered Declaration is hereby amended to include Bremer, Buchanan, Cerro Gordo, Chickasaw, Fayette, Floyd, Howard, Mitchell, and Worth Counties in the State of Iowa as a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Allamakee, Clayton, Hancock, Winnebago, Winneshiek, and Wright Counties in Iowa, and Fillmore, Freeborn, and Mower Counties in Minnesota.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 19, 1999, and for economic injury the deadline is April 24, 2000.

The economic injury number for the State of Minnesota is 9D4800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–20476 Filed 8–9–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota

As a result of the President's major disaster declaration on July 28, 1999, I find that Cook, Itasca, and St. Louis Counties in the State of Minnesota constitute a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 25, 1999 and for economic injury until the close of business on April 28, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aitkin, Beltrami, Carlton, Cass, Koochiching, and Lake Counties in Minnesota, and Douglas County, Wisconsin.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 320306. For economic injury the numbers are 9D4500 for Minnesota and 9D4600 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1999.

Bernard Kulik,

Associate Administrator For Disaster Assistance.

[FR Doc. 99–20477 Filed 8–9–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–99–051]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its two Subcommittees (Waterways and Navigation) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The meeting of HOGANSAC will be held on Thursday, September 9, 1999 from 9 a.m. to approximately 1 p.m. The meeting of the Navigation Subcommittee will be held on Thursday, August 26, 1999 at 9 a.m. and immediately following, the Waterways Subcommittee will meet. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots' Office, 8150 South Loop East, Houston, Texas. The subcommittee meetings will be held at the Houston Port Authority, 111 East Loop South, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of the HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC)

The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Pluta), Executive Director (CAPT Gusman) and chairman (Tim Leitzell).

(2) Approval of the May 27, 1999 minutes.

(3) Report from the Waterways Subcommittee.

(4) Report from the Navigation Subcommittee.

(5) Status reports on Baytown Tunnel removal, Army Corps of Engineers' dredging projects and pipeline safety, and comments and discussions from the floor.

(6) New business.

Subcommittee on Waterways

The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Subcommittee on Navigation

The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: July 26, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coat Guard District.

[FR Doc. 99–20515 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–5867]

Parts and Accessories Necessary for Safe Operation; Exemption Applications; Minimum Fuel Tank Fill Rate and Certification Labeling

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of applications for exemptions and intent to grant exemptions; request for comments.

SUMMARY: The FHWA is announcing its preliminary determination to grant the applications of the Ford Motor Company (Ford) for exemptions from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions would enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the FHWA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FHWA believes the terms and conditions of the exemptions being considered achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations and requests public comment on Ford's applications. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before September 9, 1999.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–99–5867, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590-0001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub.L. 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be up to two years in duration, and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the request.

The TEA–21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions.

Ford's Applications for Exemptions

Ford applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that

certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

Ford produces ''Econoline'' incomplete vehicles which are completed by second-stage manufacturers for numerous uses, including use as a CMV as defined in 49 CFR 390.5. The completed vehicles are based on a ''light truck'' platform with load-or passenger-carrying capabilities that meet or exceed the weight-or passenger-carrying thresholds for the applicability of the FMCSRs. Ford indicated it is not possible to accurately estimate the number of Econoline-based vehicles that will be used as CMVs. Of the 19,000 Econoline-based vehicles produced each model year, 13,000 are produced with gasoline fuel configuration, with a percentage of these used as CMVs.

Application for Exemption From the Fill Rate Requirement

Ford Econoline vehicles are equipped with fuel tanks mounted between the frame rails and use a fill pipe system routed to minimize exposure in the event of a crash. The system is approximately two feet long with several bends, which results in additional internal resistance to fuel flow. When these design characteristics are combined with the vapor generated while filling the tank with gasoline, the maximum filling rate does not exceed 17 gallons per minute. Ford states:

> It is difficult to address [§ 393.67(c)(7)(ii)] as a safety requirement. Ford views this portion of Part 393 to be more a subject of convenience. With virtually all filling stations using the industry standard automatic shut-off nozzles, it is unlikely that fuel will be spilled even while using a high flow rate delivery system. These standard nozzles substantially reduce any potential safety risk introduced by filling an Eonoline vehicle at a rate above its capacity of 17 gallons per minute.
>
> Further, the U.S. Environmental Protection Agency (EPA) has imposed a 10 gallon per minute limit [40 CFR 80.22(j)] on gasoline fuel flow rates at any ''retailer or wholesale purchaser-consumer.'' This EPA requirement was effective in part on January 1, 1996 and in full on January 1, 1998. As mentioned previously, the Econoline fuel fill system can easily accommodate this fill rate.

Ford believes that denial of the exemption application would result in motor carriers having to retrofit replacement fuel tanks, which could result in undermining the fuel system integrity of the vehicles.

Application for Exemption From the Certification Marking Requirement

Ford indicated that fuel tanks used on Econoline vehicles are not marked in accordance with § 393.67(f). Ford states:

> The marking requirements of [§§ 393.67(f)(2) and (f)(3)(ii)] are only identification requirements and do not contribute to the safety of the fuel tank. It acts as a convenient method for [an] inspector to verify that the tank has been self-certified by [its] manufacturer. The subject tanks are already marked with the month and year of manufacture and the Ford production part number satisfying the traceability aspect of the marking requirements. The remaining certification statement will be added but cannot be fitted to all vehicles immediately, hence the need for an exemption. Ford Motor Company believes that there is no negative safety effect of these vehicles not complying with [§§ 393.67(f)(2) and (f)(3)(ii)].

Basis for Preliminary Determination To Grant Exemptions

The FHWA has reviewed its fill pipe design requirements and believes the fill pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the EPA's regulations concerning gasoline fuel pumps. While the FHWA requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at a rate twice the maximum rate gasoline fuel pumps are designed to dispense fuel.

The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (e.g., at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the FHWA does not believe this should present a safety problem because the fill pipe design used by Ford is capable of receiving fuel at a rate of 17 gallons per minute. The 17-gallon-per-minute rate is only 15 percent less than the requirement in § 393.65. The agency believes the 17-gallon-per-minute rate will achieve a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii). Gasoline fuel pumps that are dedicated for heavy-duty trucks and buses may dispense fuel at a rate in excess of 10 gallons per minute, but the FHWA does not believe the rate would exceed 17 gallons per minute. The agency requests comments on this issue.

In addition to considering the regulatory inconsistencies between the FHWA and EPA requirements, the FHWA reviewed available information on the origin of the rule concerning fill pipes. The FHWA's 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice ''Side Mounted Gasoline Tanks'' as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, ''Fuel Systems,'' an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 ''Fuel Systems—Truck and Truck Tractors.'' The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The FHWA does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, ''[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresonding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue.''

The FHWA believes the current requirement may need to be reconsidered in light of the EPA requirements. While the FHWA reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. The agency has made a preliminary determination that it is appropriate to grant an exemption to § 393.67(c)(7)(ii) for interstate motor carriers operating Ford Econoline vehicles and requests public comment on Ford's application.

With regard to Ford's application for an exemption to the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the FHWA agrees with Ford that there is no readily apparent adverse impact on safety associated with the absence of the required markings. Although the FHWA considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the FHWA's requirements and those that are not, the FHWA does not believe the operators of the Ford Econoline vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

The absence of certification labeling resulted in certain State enforcement officials prohibiting the operation of small buses built on Ford Econoline platforms. The State officials and motor carriers operating those vehicles discussed the issue with Ford and requested assistance in determining whether the fuel tanks met the requirements of § 393.67. Prior to notification from State enforcement officials and motor carriers, Ford was unaware that customers subject to the FMCSRs are required to have fuel tanks that meet the FHWA's requirements, including marking. As a vehicle manufacturer, Ford is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. Ford is less familiar with the equipment requirements of the FHWA, the agency responsible for regulating motor carriers.

Ford has met with FHWA staff to discuss the agency's requirements and conducted certain tests to determine whether its fuel tanks satisfy § 393.67. It was determined that the tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because Ford cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow only 17 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem while ensuring highway safety.

Terms and Conditions for the Exemption

The FHWA would provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating Ford Econoline-based vehicles. The exemption would be valid for two years from the date of approval, unless revoked earlier by the FHWA. Ford, or any of the affected motor carriers, may apply to the FHWA for a renewal. The exemption would preempt inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain E30, E37, E39, E40, or E47 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, and F7UA–9002D* where the asterisk (*) represents a ''wild card'' character (any character of the alphabet). The FHWA believes this information is sufficient and requests public comment.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption applications from Ford. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may grant the exemptions at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.48.

Issued on: August 2, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–20517 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6057]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled ''Shipbuilding Orderbook and Shipyard Employment.''

DATES: Comments should be submitted on or before October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Seidman, Office of Ship Construction, Maritime Administration, 400 Seventh Street, SW, Room 8311, Washington, D.C. 20590, telephone number—202–366–1888. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Shipbuilding Orderbook and Shipyard Employment.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0029.

Form Number: MA–832.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: In accordance with Sections 210 and 211 of the Merchant Marine Act, 1936, as amended, this collection of information will help facilitate MARAD's efforts to monitor the shipbuilding industry's health and current employment, facility utilization, and scheduling practices. Additionally, this data will facilitate the projection of future employment needs and facility availability for future shipbuilding work.

Need and Use of the Information: The collection of information is necessary in order for MARAD to perform and carry out its duties required by section 210 and 211 of the Merchant Marine Act, 1936.

Description of Respondents: U.S. Shipyards which agree to complete the information and return it to the MARAD.

Annual Responses: 800 responses.

Annual Burden: 400 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: August 4, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 99–20484 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Offfice of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority tissues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request.

PM—Party to application with the modification request

Issued in Washington, DC, on August 3, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemption and Approval.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	08/31/1999
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	08/31/1999
11817–N	FIBA Technologies, Inc., Westboro, MA	1, 4	08/31/1999
11862–N	The BOC Group, Murray Hill, NJ	4	08/31/1999
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	08/31/1999
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	08/31/1999
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	08/31/1999
12029–N	NACO Technologies, Lombard, IL	4	08/31/1999
12032–N	Physical Acoustics Quality Services, Lawrenceville, NJ	4	08/31/1999
12033–N	PPG Industries, Inc., Pittsburgh, PA	4	08/31/1999
12051–N	General American Transportation Corporation, Chicago, IL	4	08/31/1999
12064–N	Occident Chemical Corp., Webster, TX	4	08/31/1999
12071–N	Pennwalt India Limited, Worli, Mumbai, IN	4	08/31/1999
12106–N	Air Liquide America Corporation, Houston, TX	4	08/31/1999
12123–N	Eastman Chemical Co., Kingsport, TN	4	08/31/1999
12125–N	Mayo Foundation, Rochester, MN	4	08/31/1999
12126–N	LaRoche Industries Inc., Atlanta, GA	4	08/31/1999
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	08/31/1999
12144–N	Sea-Land Service, Inc., Charlotte, NC	4	08/31/1999
12146–N	Luxfer Gas Cylinders, Riverside, CA	4	08/31/1999
12148–N	Eastman Kodak Company, Rochester, NY	4	08/31/1999
12156–N	Columbia Falls Aluminum Co., Columbia Falls, MT	4	08/31/1999
12158–N	Hickson Corporation, Conley, GA	4	08/31/1999
12164–N	Rhodia Inc., Shelton, CT	4	08/31/1999
12166–N	Dow Corning Corp., Midland, MI	4	08/31/1999
12171–N	Arichell Technologies, Inc., West Newton, MA	4	08/31/1999
12173–N	ARCO Alaska, Inc., Anchorage, AK	4	08/31/1999
12181–N	Aristech, Pittsburgh, PA	4	08/31/1999
12194–N	Air Products & Chemicals, Inc., Allentown, PA	4	08/31/1999
12203–N	Celanese Ltd., Dallas, TX	4	08/31/1999
12204–N	Express Service & Lockheed Martin, Princeton, NJ	1	08/31/1999
12205–N	Independent Chemical Corp., Glendale, NY	4	08/31/1999
12206–N	General Electric Silicones, Waterford, NY	4	08/31/1999

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
3415–M	U.S. Department of Defense (MTMC), Falls Church, VA	4	8/31/1999
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	8/31/1999
6611–M	Gardner Cryogenics, Lehigh Valley, PA	4	8/31/1999
6765–M	Gardner Cryogenics Lehigh Valley, PA	4	8/31/1999
9266–M	ERMEWA, Inc., Houston, TX	4	8/31/1999
9419–M	FIBA Technologies, Inc., Westboro, MA	4	8/31/1999
10677–M	Suunto USA, Carlsbad, CA	4	8/31/1999
10921–M	The Procter & Gamble Company, Cincinnati, OH	4	8/31/1999
10929–M	Consolidated Rail Corporation, Philadelphia, PA	4	8/31/1999
10977–M	Federal Industries Corporation Plymouth, MN	4	8/31/1999
11173–M	Olin Corporation, Norwalk, CT	4	8/31/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	8/31/1999
11613–M	Solutia, Inc., St. Louis, MO	1	9/30/1999
11769–M	HCI USA Distribution Co., Inc., Irvine, CA	4	7/30/1999
11173–M	Olin Corporation, Norwalk, CT	4	8/31/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	8/31/1999
11613–M	Solutia, Inc., St. Louis, MO	1	9/30/1999
11769–M	HCI USA Distribution Co., Inc., Irvine, CA	4	7/30/1999
11856–M	Olin Corp/Motorola Corp	1	9/30/1999
12013–M	HCI USA Distribution Companies Incorporated, Irvine, CA	4	7/31/1999

[FR Doc. 99–20512 Filed 8–9–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Quarterly Performance Review Meeting on the Contract ''Detection of Mechanical Damage in Pipelines'' (Contract DTRS–56–96–C–0010)

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

ACTION: Notice of meeting.

SUMMARY: RSPA invites the pipeline industry, in-line inspection (''smart pig'') vendors, and the general public to the last quarterly performance review meeting of progress on the contract ''Detection of Mechanical Damage in Pipelines.'' The meeting is open to anyone, and no registration is required. This contract is being performed by Battelle Memorial Institute (Battelle), along with the Southwest Research Institute, and Iowa State University. The contract is a research and development contract to develop electromagnetic in-line inspection technologies to detect and characterize mechanical damage and stress corrosion cracking. The meeting will cover a review of the overall project plan, the status of the contract tasks, progress made during the past quarter, and projected activity for the remainder of the contract.

DATES: The last quarterly performance review meeting will be held on Monday, August 30, 1999 beginning at 1 p.m. and ending around 5 p.m.

ADDRESSES: The quarterly review meeting will be held at The Antlers Adam's Mark Hotel, 4 South Cascade Avenue, Colorado Springs, CO 80903. The hotel's telephone number is (719) 473–5600.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, Contracting Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA is conducting quarterly meetings on the status of its contract ''Detection of Mechanical Damage in Pipelines'' (Contract DTRS–56–96–C–0010) because in-line inspection research is of immediate interest to the pipeline industry and in-line inspection vendors. The research contract with Battelle is a cooperative effort between the Gas Research Institute (GRI) and DOT, with GRI providing technical guidance. The meetings allow disclosure of the results to interested parties and provide an opportunity for interested parties to ask Battelle questions concerning the research. Attendance at this meeting is open to all and does not require advanced registration nor advanced notification to RSPA.

We specifically want that segment of the pipeline industry involved with in-line inspection to be aware of the status of this contract. To assure that a cross section of industry is well represented at these meetings, we have invited the major domestic in-line inspection company (Tuboscope Vetco Pipeline Services) and the following pipeline industry trade associations: American Petroleum Institute, Interstate Natural Gas Association of America, and the American Gas Association. Each has named an engineering/technical representative and, along with the GRI representative providing technical guidance, form the Industry Review Team (IRT) for the contract.

The original objective was to open each quarterly performance review meeting to the public. The first quarterly meeting was conducted on October 22, 1996, in Washington, DC. However, preparing for a formal briefing each quarter takes a considerable amount of time and resources on Battelle's part that could be better used to conduct the research. Therefore, Battelle requested and RSPA concurred that future public meetings would be conducted semi-annually. Conducting public meetings semi-annually will provide all interested parties with sufficient update of progress in the research. Only the IRT and RSPA staff involved with the contract will be invited to the quarterly performance review meetings held between the public semi-annual meetings.

Another objective is to conduct many of the semi-annual meetings at the same location and either before or after a meeting of GRI's Nondestructive Evaluation Technical Advisory Group to enable participation by pipeline technical personnel involved with nondestructive evaluation. This meeting is being held in Colorado Springs the day before a meeting of the GRI Nondestructive Technical Advisory Group. Each of the semi-annual

meetings have been announced in the **Federal Register** at least two weeks prior to the meeting.

II. The Contract

The Battelle contract is a research and development contract to evaluate and develop in-line inspection technologies for detecting mechanical damage and cracking, such as stress-corrosion cracking (SCC), in natural gas transmission and hazardous liquid pipelines. Third-party mechanical damage is one of the largest causes of pipeline failure, but existing in-line inspection tools cannot always detect or accurately characterize the severity of some types of third-party damage that can threaten pipeline integrity. Although SCC is not very common on pipelines, it usually appears in high-stressed, low-population-density areas and only when a limited set of environmental conditions are met. Several attempts have been made to develop an in-line inspection tool for SCC, but there is no commercially successful tool on the market.

Under the contract, Battelle is evaluating and advancing magnetic flux leakage (MFL) inspection technology for detecting mechanical damage and two electromagnetic technologies for detecting SCC. The focus is on MFL for mechanical damage because experience shows MFL can characterize some types of mechanical damage and can be successfully used for metal-loss corrosion under a wide variety of conditions. The focus for SCC is on electromagnetic technologies that can be used in conjunction with, or as a modification to, MFL tools. The technologies to be evaluated take advantage of the MFL magnetizer either by enhancing signals or using electrical currents that are generated by the passage of an inspection tool through a pipeline.

The contract includes three major tasks. Task 1 evaluated existing MFL signal generation and analysis methods and established a baseline from which today's tools can be evaluated and tomorrow's advances measured. Then, improvements to signal analysis methods were developed and verified through testing under realistic pipeline conditions. Finally, it built an experience base and defect sets to generalize the results from individual tools and analysis methods to the full range of practical applications.

Task 2 evaluated two inspection technologies for detecting stress corrosion cracks. The focus in Task 2 was on electromagnetic techniques that have been developed in recent years and that could be used on or as a modification to existing MFL tools. Three subtasks evaluated velocity-induced remote-field techniques, remote-field eddy-current techniques, and external techniques for sizing stress corrosion cracks.[1]

Task 3 is verifying the results from Tasks 1 and 2 by tests under realistic pipeline conditions. Task 3 is (1) extending the mechanical damage detection, signal decoupling, and sizing algorithms developed in the basic program to include the effects of pressure, (2) verifying the algorithms under pressurized conditions in GRI's 4,700 foot, 24-inch diameter Pipeline Simulation Facility (PSF) flow loop, and (3) developing techniques to measure stress and determine the severity of mechanical damage and cracks.

A drawback of present pig technology is the lack of a reliable pig performance verification procedure that is generally accepted by the pipeline industry and RSPA. The experience gained by the pipeline industry and RSPA with the use of the PSF flow loop in this project will provide a framework to develop procedures for evaluating pig performance. Defect detection reliability is critical if instrumented pigging is to be used as an in-line inspection tool in pipeline industry risk management programs.

The ultimate benefits of the project could be more efficient and cost-effective operations, maintenance programs to monitor and enhance the safety of gas transmission and hazardous liquid pipelines. Pipeline companies will benefit from having access to inspection technologies for detecting critical mechanical damage and stress-corrosion cracks. Inspection tool vendors will benefit by understanding where improvements are beneficial and needed. These benefits will support RSPA's long-range objective of ensuring the safety and reliability of the gas transmission and hazardous liquid pipeline infrastructure.

Issued in Washington, DC.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20538 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–60–P

[1] The report summarizing the work conducted under tasks 1 and 2 can be found from viewing the RSPA home page, http://ops.dot.gov.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5442; Notice 2]

Chevron Pipe Line Company; Grant of Waiver

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice.

Chevron Pipe Line Company (CPL) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 19.612(b)(3), which requires that gas pipeline facilities in the Gulf of Mexico found to be exposed on the seabed or constituting a hazard to navigation be reburied so that the top of the pipe is 36 inches below the seabed.

CPL proposed to install concrete mesh blanket units to protect the pipeline from damage in lieu of the 36 inches of cover required by (192.612(b)(3)). Each concrete mesh blanket unit is a 20-foot by 8-foot by 9-inch section constructed from 160 individually cast 17-inch by 17-inch by 9-inch beveled concrete briquettes inter-connected with ¾-inch polypropylene UV stabilized line.

On May 27, 1999 we published a notice of petition for waver with request for comments in the **Federal Register** (60 FR 27809 May 25, 1995). We received two comments. The first commenter opined that the alternative to cover the line with a 9″ concrete mat did not appear to provide equal protection to the pipeline to that of 36″ of natural cover. The commenter further stated that the mat would produce a hump on the gulf floor which may create further safety risk. The second commenter expressed interest in the proposal to require a rock shield. The commenter believed that a pipe of the diameter would have been concrete coated before installation thus negating the need for any further protection of the pipe from the concrete mesh blanket units.

We have considered the concerns expressed by the commenter and agree that the concrete mat could under some circumstances pose a hazard to navigation by reducing the water depth by 9-inches. However, the potential for adverse consequences of a vessel striking the mat is less than the potential for adverse consequence for a vessel striking and rupturing a high pressure natural gas pipeline. As evidenced by repeated surveys in this area, the gulf floor consists of sugar sands which are highly susceptible to erosion. Although the concrete mats

would reduce the depth of water by 9-inches, the mats provide consistent penetration resistance and are designed to promote the collection of bottom silt and vegetative growth. This silt-in process is achieved by particulates dropping out of the water column as a result of reduced current flow across the mesh blankets and will add stability to the installation while building cover over the pipeline. The concrete blanket will consistently protect the line to an equal or greater degree as will 36-inches of soft, unstable natural cover.

We agree with the second commenter that the rock shield would be unnecessary if the pipeline is concrete coated. CPL confirms that the pipeline was concrete coated. Therefore we will not require a rock shield to be installed.

In consideration of the forgoing we find that the requested waiver of compliance with § 192.612(c)(3) is not inconsistent with pipeline safety. Therefore the request for waiver is granted.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by telephone at 202–366–5523, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, 400 Seventh Street, SW, Washington, DC 20590, or via e-mail to le.herrick@rspa.dot.gov regarding the subject matter of this notice.

Authority: 49 U.S.C. 60118(c); 49 CFR 1.53.

Issued in Washington, DC, on August 5, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20539 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; 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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Permit User Limited Display Fireworks Under (18 U.S.C. Chapter 40, Explosives).

DATES: Written comments should be received on or before October 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Michael Bouchard, Chief, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Application For Permit User Limited Display Fireworks Under (18 U.S.C. Chapter 40, Explosives).

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Abstract: ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis. The record retention requirement for this information collection is indefinitely.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1800.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 540.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 2, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–20566 Filed 8–9–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to develop census data on veterans enrolled in VA's health care system.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility;

(2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Census of Health of Veterans, Short Form 36 (10–21034, 10–21034a, 10–21034b, 10–21034c, 10–21034d, 10–21034e and 10–21034f).

b. Census of Enrollment Status, VA Form 10–21034g.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract:

a. *Census of Health of Veterans.* The information is to be used for clinical purposes by doctors, health care providers, administrators, and policy makers in the routine care of patients and to characterize individual physician and hospital practices.

b. *Census of Enrollment Status.* The information to develop the characteristics of the new VA enrolled population.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. *Census of Health of Veterans*—750,000 hours.

b. *Census of Enrollment Status*—4,050 hours.

Estimated Average Burden Per Respondent:

a. *Census of Health of Veterans*—15 minutes.

b. *Census of Enrollment Status*—9 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents:

a. *Census of Health of Veterans*—3,000,000.

b. *Census of Enrollment Status*—27,000.

Dated: July 12, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20529 Filed 8–9–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a parent's eligibility, dependency and income, as applicable, for the death benefit sought.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0005'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Parent(s), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine a parent's eligibility, dependency and income, as applicable, for death benefits. Without the information, VA could not make a determination on the death benefit sought.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,056 hours.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 20,880.

Dated: July 13, 1999.

By direction of the Secretary:

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20530 Filed 8–9–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0241]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to establish the reasonable value of used manufactured home units proposed for guaranteed financing.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0241'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Determination of Reasonable Value (Used Manufactured Home) VA Form 26–8728.

OMB Control Number: 2900–0241.

Type of Review: Extension of a currently approved collection.

Abstract: The information is submitted to VA by buyers, owners/sellers, lenders, and manufactured home dealers to obtain appraisals of used manufactured home units proposed for guaranteed financing. Without the information, VA could not establish the reasonable value of such units.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 38 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 225.

Dated: July 12, 1999.

By direction of the Secretary:

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service

[FR Doc. 99–20531 Filed 8–9–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 64, No. 153

Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 501

[FRL-6401–2]

RIN 2040–AB39

National Pollutant Discharge Elimination System Permit

Correction

In rule document 99–18866 beginning on page 42434 in the issue of Wednesday, August 4, 1999, make the following correction(s):

On page 42434, in the second column, in the **DATES** section, in the first line, after ''rule'' remove ''and'' and add ''is effective December 2, 1999, and the stay on''.

[FR Doc. C9–18866 Filed 8–9–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
August 10, 1999

Part II

Department of Education

34 CFR Parts 682 and 685

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR parts 682 and 685

RIN 1845–AA00

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement recently enacted changes to the Higher Education Act of 1965 made by the Higher Education Amendments of 1998. The proposed regulations deal with provisions of the Higher Education Amendments of 1998 that affect FFEL borrowers, schools, lenders, and guaranty agencies and Direct Loan borrowers and schools. These proposed regulations seek to improve the efficiency of Federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments concerning these proposed regulations to Ms. Patsy Beavan and Ms. Nicki Meoli, U.S. Department of Education, PO Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: loansnprm@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representatives named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Patsy Beavan, or for the Direct Loan Program, Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the FIRS at 1–800–877–8339.

General

Background

On October 7, 1998, President Clinton signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244)(1998 Amendments) to amend the Higher Education Act of 1965, as amended (HEA). The 1998 Amendments contained a number of changes to the Title IV programs. This notice of proposed rulemaking (NPRM) addresses many of the changes that affect the FFEL and Direct Loan programs.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four

committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee II (committee), which was made up of the following members:

- American Association of Community Colleges.
- American Association of Cosmetology Schools.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Coalition of Associations of Schools of the Health Professions.
- Coalition of Higher Education Assistance Organizations.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Legal Services Counsel (a coalition).
- National Association of College and University Business Officers.
- National Association for Equal Opportunity in Higher Education.
- National Association of Graduate/Professional Students.
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs.
- National Association of State Universities and Land-Grant Colleges.
- National Association of Student Financial Aid Administrators.
- National Association of Student Loan Administrators.
- National Council of Higher Education Loan Programs.
- National Direct Student Loan Coalition.
- Sallie Mae, Inc.
- Student Loan Servicing Alliance.
- The College Board.
- The College Fund/United Negro College Fund.
- United States Department of Education.
- United States Student Association.
- US Public Interest Research Group.

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Proposed Regulatory Changes

These proposed regulations include, in addition to the changes made to the HEA by the 1998 Amendments, conforming changes and minor technical changes.

The proposed regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs. The following discussion of the proposed regulations begins with changes that affect only the FFEL Program, followed by changes that affect both the FFEL and Direct Loan programs.

Federal Family Education Loan Program Changes

Section 682.102—Obtaining and Repaying a Loan

The proposed regulations would modify this section to reflect the change made by the 1998 Amendments to section 432(m)(1)(C) of the HEA, to require the use of the Free Application for Federal Student Aid (FAFSA) as the application for FFEL subsidized and unsubsidized Stafford loans beginning in academic year 1999–2000. These proposed regulations also include language to reflect the use of a Master Promissory Note (MPN) that would allow borrowers to receive, in addition to an initial loan, additional loans for the same or subsequent periods.

The proposed regulations also would revise this section to reflect the change made by the 1998 Amendments to allow a borrower with multiple FFEL holders to secure an FFEL Consolidation loan from any eligible FFEL lender.

Section 682.200—Definitions

The proposed regulations would implement changes made by the 1998 Amendments to the definition of an eligible lender in section 435(d)(5) of the HEA. Specifically, the 1998 Amendments created an exception to the long-standing provision that prohibits a lender from providing inducements to schools to secure loan applications. The exception added by the 1998 Amendments provides that, notwithstanding the general prohibition on inducements, a lender may provide a school with assistance ''that is comparable to the kinds of assistance that is provided by the Department of Education.''

The Department expressed its view that the purpose of the new exception was to allow lenders to provide assistance to schools similar to that provided by the Department to schools in the Direct Loan Program and therefore suggested that the proposed regulations be limited to the assistance provided by the Department for the Direct Loan Program. The committee agreed to proposed regulatory language that permits lenders to provide assistance ''comparable to the kinds of assistance provided by the Secretary under, or in furtherance of the Federal Direct Loan Program.'' This proposed language would reflect congressional intent to broaden the types of assistance that lenders may provide to a school while retaining meaning for the prohibition against lenders providing inducements to schools.

The 1998 Amendments did not change the general prohibition that lenders cannot provide services, at less than market value, to a school in order to secure applications. In general, we believe that most goods and services that a lender provides to a school at less than their fair market value are, by definition, an inducement. If those goods and services are provided by the lender to secure applicants for loans, the inducement would be prohibited. This is especially true with regard to goods and services provided by a lender that are used by the school to meet its Title IV program responsibilities under the law and the regulations. The Secretary believes that it is not necessary for the lender to specifically tie the goods and services to loan applications for certain activities to be considered improper inducements.

Prior to the 1998 Amendments, certain activities by lenders could have constituted a prohibited inducement. In light of the new law, these proposed regulations broaden the types of assistance that lenders may provide to schools. Accordingly, the following are examples of activities that would not jeopardize a lender's status as an eligible lender:

- *Counseling:* A lender may support schools in meeting their responsibilities to provide borrowers with initial counseling, exit counseling, and general debt counseling. In providing this support, lenders may:
  - Assist in the development, production, and distribution of materials used by schools in counseling activities.
  - Develop, and offer to schools, electronic products and services, including web-based processes, that can be used to meet counseling requirements.
  - Participate in counseling sessions offered by a school, provided that the school maintains control of these events and school staff members are present.
  - Participate in initial counseling, provided that the lender's activities reinforce the student's right to choose a lender.
- *Outreach:* A lender may support schools in activities to inform the public or students of the availability of student aid, including student loans. Lender participation might include such

activities as: Providing publicity for outreach events; preparing, producing, and distributing materials; providing light refreshment; and providing staff to assist the school in the presentation. Permissible outreach activities also include those that are undertaken by a lender in conjunction with a guaranty agency.

- *Computer Support:* A lender may provide computer software, technical support, and training— but not computer hardware— that support the technological processes used by the lender in its administration of the FFEL Program.
- *Training:* A lender may provide specialized training to schools in support of their FFEL Program processes. This training may be provided in person, either on or off campus, or through the use of technology. A lender may not provide school staff additional services or goods (other than items of nominal value) in connection with the training, and it may not pay expenses incurred by school staff for the training.

Section 682.201—Eligible Borrowers

The proposed regulations would implement a change made by the 1998 Amendments to section 428C(a)(3)(A) of the HEA that prohibits a borrower from receiving an FFEL Consolidation loan if the borrower is subject to a judgment secured through litigation or to an administrative wage garnishment order on a loan made under the HEA. The committee agreed to apply this restriction only to the loans the borrower wishes to consolidate. Therefore, a borrower against whom an administrative wage garnishment order or a judgment has been issued may receive an FFEL Consolidation loan, but may not include loans subject to litigation or administrative wage garnishment in the FFEL Consolidation loan. The committee also agreed that these loans should be ineligible for consolidation only until the judgment has been vacated or the administrative wage garnishment order has been lifted.

The proposed regulations also would reflect the changes made by the 1998 Amendments to section 428C(a)(3)(B) of the HEA to expand the universe of loans that may be included in an FFEL Consolidation loan. Under the 1998 Amendments, loans received prior to the borrower's receipt of an FFEL Consolidation loan may be added to the FFEL Consolidation loan during the 180-day period following the making of the FFEL Consolidation loan. Loans received by the borrower during the 180-day period following the making of the FFEL Consolidation loan may also be added during that period. Finally, loans received prior to the date of a borrower's first FFEL Consolidation loan may be added to any subsequent FFEL Consolidation loan the borrower obtains. However, the proposed regulations would clarify that a single FFEL Consolidation loan may not be reconsolidated without the borrower having another eligible loan to consolidate.

Prior to enactment of the 1998 Amendments, a borrower's eligibility to receive an FFEL Consolidation loan terminated upon receipt of an FFEL Consolidation loan, except that the borrower could add loans received prior to the date of the FFEL Consolidation loan during the 180-day period after the FFEL Consolidation loan was made. Loans made prior to, but not included in, the FFEL Consolidation loan were permanently ineligible for consolidation. The new statutory provisions that are reflected in these proposed regulations would provide more opportunities for borrowers to add loans to existing FFEL Consolidation loans.

The proposed regulations also would reflect the change made by the 1998 Amendments to section 428C(b)(1)(A)(i) of the HEA that permits a borrower who has multiple FFEL Program holders to apply to any eligible FFEL lender for an FFEL Consolidation loan. Prior to this change, a borrower had to request an FFEL Consolidation loan from the holders of all of his or her existing loans before requesting a loan from a different lender. Under the proposed rules, a borrower with a single holder may apply to another eligible FFEL lender only if the borrower is either unable to receive an FFEL Consolidation loan from the holder or is unable to receive an FFEL Consolidation loan with income-sensitive repayment terms.

Section 682.202—Permissible Charges by Lenders to Borrowers Capitalization of Interest

Interest Rates

The proposed regulations would reflect the changes made by the 1998 Amendments to the interest rate formulas for FFEL Program loans in section 427A of the HEA. The 1998 Amendments made permanent the temporary interest rate formulas that were added to the HEA by the Transportation Equity Act for the 21st Century, Pub. L. 105–178 (TEA), enacted June 9, 1998. TEA created interest rate formulas for new student and parent loans first disbursed on or after July 1, 1998, and before October 1, 1998. The 1998 Amendments applied these same formulas to loans first disbursed on or after October 1, 1998, and before July 1, 2003. Accordingly, the proposed regulations reflect the different formulas for interest rates on FFEL Program loans.

As provided by the HEA and reflected in these proposed regulations, the interest rate on Stafford loans during the repayment period is calculated based on the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 2.3 percent and during the in-school and grace periods as the 91-day Treasury bills plus 1.7 percent, with a cap during these periods of 8.25 percent. The formula for PLUS loan interest rates is the 91-day Treasury bills plus 3.1 percent not to exceed 9 percent. In addition, the proposed regulations reflect the statutory formula for the interest rate on FFEL Consolidation loans for which the application is received by the lender on or after October 1, 1998, as the lesser of the weighted average of the interest rates on the loans consolidated rounded upward to the nearest one-eighth of one percent, or 8.25 percent.

Capitalization of Interest

The proposed regulations also would implement the changes made by the 1998 Amendments to the rules for capitalization of interest on unsubsidized Stafford loans. The 1998 Amendments modified the rules governing the frequency of capitalization during certain periods in which the borrower is not making payments on the principal of an unsubsidized Stafford loan. Under these new rules, a lender would be able to add accrued interest to the principal only when the loan enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults.

The committee engaged in lengthy discussions as to how interest that accrues during a period of forbearance should be treated. There was also lengthy discussion as to whether these changes covered subsidized Stafford loans during periods of forbearance as well as unsubsidized Stafford loans during all periods in which payments of principal are not being made. (The only issue on subsidized Stafford loans was the treatment of periods of forbearance because the Department does not pay interest on the borrower's behalf during these periods.) The committee also engaged in lengthy discussions as to whether, if there were consecutive periods covered by these new

requirements (for example, a deferment period immediately followed by a forbearance period), the capitalization of the accrued interest should take place at the end of each period or the end of the consecutive covered periods.

After much discussion, the committee reached consensus on these draft regulations. Under these proposed rules, for loans first disbursed on or after July 1, 2000 (the effective date of these proposed regulations), periods of forbearance on both subsidized and unsubsidized Stafford loans would be covered by the new capitalization rules. Further, the committee agreed to propose that the capitalization could take place at the expiration of each covered period rather than at the end of a series of consecutive covered periods. For unsubsidized Stafford loans disbursed on or after the date of enactment of the 1998 Amendments (October 7, 1998) and prior to July 1, 2000, the lender must capitalize interest pursuant to section 428H(e)(2) of the HEA.

The committee believed that the proposed regulations would maximize borrower benefits by reducing the costs of capitalization. The Secretary believes that the proposed regulations would maintain the historic regulatory approach of treating periods of deferment and forbearance similarly in the area of capitalization.

Origination Fees

The proposed regulations would also implement changes to the rules governing origination fees made to section 438(c) of the HEA by the 1998 Amendments. The 1998 Amendments require any lender who charges student borrowers an origination fee to charge the same fee to all student borrowers. The law also permits a lender to assess a lower origination fee to a borrower demonstrating ''greater financial need,'' as determined by the borrower's adjusted gross income. The 1998 Amendments, for the first time, establish provisions governing a lender's decision to offer a reduced origination fee on subsidized and unsubsidized Stafford loans. Prior to these amendments, a lender had discretion to waive or lower the fee charged to a particular subsidized Stafford loan borrower. The 1998 Amendments limit the lender's discretion and make a lower fee a term or condition of the loan if the lender chooses to charge a reduced fee to any borrower.

The committee engaged in extensive discussions regarding the appropriate standard for determining ''greater financial need'' for this purpose. The committee discussed a number of different possible standards including: an expected family contribution (EFC) of ''O,'' an EFC that makes students eligible for a Federal Pell Grant, and eligibility for a subsidized Stafford loan. In addition, since each lender must apply its origination fee policies to all borrowers, there were also extensive discussions as to what constitutes a lender for purposes of this provision. Some negotiators inquired about how trust relationships would be evaluated under this regulation.

Ultimately, the committee reached consensus on both of these issues. On the issue of the standard for ''greater financial need,'' the committee agreed to propose that a lender would be permitted to use two standards to determine whether a borrower demonstrates greater financial need to allow lenders operational and financial flexibility. Under the proposed regulations, a lender could consider a borrower as demonstrating greater financial need if—

- The borrower's EFC used to determine eligibility for the loan is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified; or
- The borrower qualifies for a subsidized Stafford loan.

To allow for situations in which a lender wants to use a comparable alternative, the committee also agreed to propose that a lender, with the approval of the Secretary, would be able to use some other standard to determine whether a borrower demonstrates greater financial need.

The proposed regulations would specify that a lender that charges a borrower a lower origination fee on the borrower's unsubsidized Stafford loan must charge the same lower fee on the borrower's subsidized Stafford loan. This requirement will ensure that borrowers who demonstrate greater financial need will receive the benefit of lower origination fees on both loan types for which they may be eligible.

The proposed regulations also would provide that all lenders under common ownership, including ownership by a common holding company, constitute a single lender for purposes of this section. The proposed regulations further would provide that any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf is considered the lender. We believe that this definition will ensure that all borrowers who have loans from a particular lender will be treated equitably.

Section 682.206—Due Diligence in Making a Loan

The proposed regulations include changes in this section to conform these rules to proposed changes made in § 682.603 of the regulations related to loan certification of borrower eligibility by the school, and in § 682.401 of the regulations related to the use of the MPN.

Section 682.207—Due Diligence in Disbursing a Loan

Section 682.207 of the proposed regulations would add a new provision to require lenders to disburse loans in a single installment (rather than in multiple installments as generally required) if so directed by a school that meets certain criteria specified in the 1998 Amendments. The criteria, contained in § 682.604 of the proposed regulations, specify that the exemption applies to two groups of schools: (1) Those certifying loans for a single term, with FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates of less than ten percent for each of the three most recent years for which rates have been calculated and; (2) those certifying loans for students in study abroad programs when the school certifying the loan has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the most recent year for which rates have been calculated. Consistent with the current practice, the committee agreed to propose that lenders would be permitted to rely upon the disbursement schedule provided by the school in making single installment loans.

Section 682.209—Repayment of a Loan

The proposed regulations would implement the addition made by the 1998 Amendments of section 428(b)(9)(A)(iv) of the HEA that requires a lender to offer FFEL borrowers, including FFEL Consolidation loan borrowers, an extended repayment plan with fixed or graduated repayment amounts to be paid over a period not to exceed 25 years. The extended repayment plan is available to a new borrower (one with no outstanding balance on an FFEL Program loan as of October 7, 1998), whose total outstanding FFEL loans exceed $30,000.

The proposed regulations in this section also would reflect the new statutory provision allowing borrowers to change repayment plans annually.

Section 682.300—Payments of Interest Benefits on Stafford and Consolidation Loans

The proposed regulations include a change in this section to conform these rules to a proposed change in § 682.301 of the regulations related to the interest subsidy payment on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan during a period of authorized deferment.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

The proposed regulations would reflect changes made by the 1998 Amendments to section 428C(b) of the HEA that extended the authority for payment of interest subsidy on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan during a period of authorized deferment. This provision does not apply to the portion of the loan that does not represent Health Education Assistance Loans (HEAL). This borrower benefit was originally included in the Emergency Student Loan Consolidation Act of 1997 and was extended by the 1998 Amendments.

Section 682.301 also includes provisions necessary to conform to the changes in § 682.603 of the proposed regulations related to loan certification by a school.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

The proposed regulations would modify this section to reflect amendments to section 523(a)(8) of Title 11 of the United States Code (the Bankruptcy Code) included in the 1998 Amendments that eliminate the seven-year repayment provision for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998. The Bankruptcy Code now permits discharge of an FFEL Program loan after that date only on the grounds of undue hardship. The proposed regulations reflect the change in the criteria for bankruptcy petitions filed on or after October 8, 1998, and revise lender and guaranty agency claim filing procedures related to these loans.

Section 682.402 of the proposed regulations also includes conforming changes necessary for the implementation and use of the MPN. In particular, the proposed regulations would provide that a lack of evidence of a borrower's confirmation for subsequent loans made under an MPN will not lead to a denial of claim payment to the lender unless the loan is found to be unenforceable. However, if a court rules that the loan is not enforceable solely because of the lack of evidence of the confirmation process or processes, the lender and the guaranty agency must repay any insurance and reinsurance payments received on the loan.

Section 682.406—Conditions of Reinsurance Coverage

The proposed regulations would include conforming changes necessary to implement and use the MPN.

Section 682.409—Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

The proposed regulations contain a conforming change relating to the MPN. The proposed regulations would clarify the rules governing assignment of defaulted loans to the Secretary by specifying that mandatory assignment of one loan made under an MPN does not constitute assignment of all loans made under the MPN.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

The proposed regulations would make conforming changes to this section which are necessary to implement the MPN. In particular, this section would require lenders to maintain documentation of the confirmation processes the lender and the school used for subsequent loans under an MPN and specify that a lender or guaranty agency may, to accommodate the MPN process, retain a true and exact copy of the promissory note rather than the original note.

Section 682.603—Certification by a Participating School in Connection with a Loan Application

The proposed regulations would reflect changes made by the 1998 Amendments to section 428(a)(2) of the HEA that reduce the types of information a school is required to provide to a lender in certifying a Stafford loan. To reflect the statute, the proposed regulations would require the school to certify only the loan amount for which the borrower is eligible and to provide a disbursement schedule. The proposed regulations would require the school to maintain documentation of the determination of the borrower's need (based on the cost of attendance, estimated financial assistance, and, if applicable, EFC).

The proposed regulations in this section also would specify that schools that qualify for exemption from the multiple disbursement requirement or the requirement for delayed delivery of loan funds for first-time borrowers—due to their low FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates—must cease certifying loans based on those criteria no later than 30 days after the school is notified that it no longer meets the qualifications. The committee agreed that this 30-day period after notification was necessary to allow the school sufficient time to advise students of this change in the school's status and to make necessary system and procedural changes.

Section 682.610—Administrative and Fiscal Requirements for Participating Schools

The proposed regulations would make conforming changes to this section that are necessary to implement and use the MPN and to reflect the modified loan certification requirements of the school in 682.603 of the proposed regulations.

FFEL and Direct Loan Program Changes

Sections 682.102 and 685.201—Master Promissory Note

The proposed regulations in these sections would make conforming changes necessary to reflect the implementation of the MPN in the FFEL and Direct Loan programs. A more detailed discussion of the MPN is provided in the discussion of changes to §§ 682.401 and 685.402 in this preamble.

Sections 682.200 and 685.102—Definitions of Default, Estimated Financial Assistance, and Master Promissory Note

The proposed regulations would revise the FFEL and Direct Loan program definitions of ''Default'' and ''Estimated financial assistance'' to reflect changes made to sections 435(l) and 428(a)(2)(C) of the HEA by the 1998 Amendments. The proposed regulations also would add the term ''Master promissory note'' to the definition sections in the FFEL and Direct Loan program regulations, as part of the implementation of the MPN as provided in section 432(m)(1)(D) of the HEA.

Default

The 1998 Amendments extended the length of time a borrower is delinquent before a default occurs on an FFEL or Direct Loan program loan from—

- 180 days to 270 days for FFEL and Direct Loan program loans repayable in monthly installments; and
- 240 days to 330 days for FFEL Program loans repayable less frequently than monthly installments.

The proposed regulations would modify the existing definition of default to reflect this statutory change.

Estimated Financial Assistance

Before enactment of the 1998 Amendments, schools were required to include veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code as ''estimated financial assistance'' for the purpose of determining a borrower's eligibility for FFEL and Direct Loan program loans. The 1998 Amendments changed this requirement for the purpose of determining eligibility for subsidized FFEL and Direct Loan program loans. Schools no longer are required to include the specified veterans' educational benefits paid in the calculation of estimated financial assistance when determining eligibility for subsidized FFEL and Direct Loan program loans.

The 1998 Amendments also now require schools to include national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) as estimated financial assistance for the purpose of determining a borrower's eligibility for unsubsidized FFEL and Direct Loan program loans. However, schools are not required to include these benefits when determining a borrower's eligibility for subsidized FFEL and Direct Loan program loans.

The proposed regulations reflect these statutory changes affecting the treatment of veterans' educational and Americorps benefits in determining estimated financial assistance.

Master Promissory Note

The proposed regulations include a definition of the term ''Master promissory note'' (MPN). An MPN is a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. The 1998 Amendments direct us to develop and require the use of an MPN for periods of enrollment beginning not later than July 1, 2000. Initially, not all borrowers will be permitted to receive multiple loans under the MPN. To receive multiple loans under an MPN, the borrower must attend a school that is authorized for multi-year use of the MPN. However, some schools that are authorized for multi-year use of the MPN may choose not to exercise this option. Further, a borrower who attends a school exercising the multi-year option may choose to receive and sign an MPN for each loan that he or she receives.

A more detailed discussion of the MPN is covered in § § 682.401 and 685.402. Other conforming changes appear throughout the regulations.

Sections 682.204 and 685.203—Loan Limits

The proposed regulations would implement changes made by the 1998 Amendments to sections 428(b) and 428H(d) of the HEA that specify the annual loan limits for an academic year. The proposed regulations would reflect these changes and modify the method for calculating the reduced annual loan limits that apply to FFEL and Direct Loan borrowers enrolled in programs of study or remaining balances of programs of study that are less than an academic year in length. The proposed regulations also specify annual loan limits for non-degree preparatory and teaching credential coursework. The 1998 Amendments simplified the proration calculation but did not change the conditions under which proration would be required.

Reduced Loan Limits

The proposed regulations would implement changes in the HEA that altered the method of calculating statutorily mandated reduced annual loan limits for borrowers enrolled in a program of undergraduate education that is less than one academic year. Prior to enactment of the 1998 Amendments, the HEA included specific loan limits that applied to these borrowers. The 1998 Amendments eliminated these specified loan amounts and replaced them with a calculation that reduces the loan amount proportionally based on the relationship of the program length to the length of the academic year. The HEA now provides that the maximum amount that a borrower enrolled in a program of undergraduate education that is less than one academic year may receive is the amount that bears the same ratio to the statutory annual maximum ($2,625 for subsidized and unsubsidized, and $4,000 for additional unsubsidized) as the program of study in which the borrower is enrolled bears to one academic year.

The 1998 Amendments also clarified that annual loan limits are authorized for an academic year as that term is defined in section 481(a)(2) of the HEA, which contains a minimum standard of instructional time and academic coursework. The committee agreed that students enrolled in a program that does not meet one or both of the statutory minimum standards for an academic year not receive a full annual loan amount. After some discussion, the committee agreed that the draft regulations should propose that the calculation of the proportional loan amount for a program of study that is less than a full academic year should use the ratio that is the lesser of the ratio of academic credit or number of weeks to the academic year.

For prorating loan limits for remaining balances of programs that are equal to or greater than an academic year in length, the committee agreed that a proportional loan amount calculated as simply a ratio of the academic credit to the academic year could be used. This is because these programs already meet the two standards (instructional weeks or academic credit) for an academic year.

Preparatory Coursework

The proposed regulations would reflect the change made by the 1998 Amendments to specify the annual loan amount in the FFEL and Direct Loan programs that a borrower may receive if he or she is enrolled in preparatory coursework required for admission into an undergraduate degree or certificate program or for enrollment in a graduate or professional degree or certificate program. The loan limits specified in the statute are the same as the limits previously specified in the Department's guidance for loans made to these borrowers. The proposed regulations provide that the maximum loan amount that such a borrower may receive for coursework necessary for admission into an undergraduate program is $2,625 in subsidized and unsubsidized loans and, for independent students and certain dependent students, an additional $4,000 in unsubsidized loans. In the case of a borrower who has obtained a baccalaureate degree, the proposed regulations provide that the maximum amount a borrower may receive for coursework necessary for admission into a graduate or professional program is $5,500 in subsidized and unsubsidized loans and $10,500 (less any subsidized amount borrowed) in additional unsubsidized loans.

Teaching Credentials

The proposed regulations would reflect the change made by the 1998 Amendments to specify the annual loan amount that a borrower may receive for enrollment in postbaccalaureate coursework necessary for a professional credential or teacher certification by a State for teaching in elementary or secondary schools. The HEA specifies that such a borrower may receive an annual limit of up to $5,500 in subsidized and unsubsidized loans and

$5,000 in additional unsubsidized loans for such coursework. The loan limits specified in the statute are the same limits as those previously specified in the Department's guidance for loans made to these borrowers following enactment of section 484(b)(4) of the HEA in 1992, which made these borrowers eligible for loans.

Sections 682.207, 682.604, 685.301, and 685.303—Disbursement Exemptions

The proposed regulations would implement changes made to section 428G(a)(3), (b)(1), and (e) of the HEA by the 1998 Amendments that authorize exemptions to the requirements for disbursing loan proceeds to FFEL and Direct Loan program borrowers. These exemptions apply to FFEL and Direct Loan program schools that meet specific criteria.

Multiple Disbursement Exemption

Generally, an FFEL or Direct Loan program loan must be disbursed in more than one installment. As a result of the 1998 Amendments, loan proceeds may now be disbursed to the borrower in one installment if—

- The loan period is equal to or shorter than one semester, one trimester, one quarter, or four months; and
- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available.

Loan proceeds to cover the cost of attendance in a study abroad program also may be disbursed in one installment if the school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

Delayed Delivery/Disbursement Exemption for First-Year, First-Time Borrowers

In general, FFEL and Direct Loan program schools must delay delivery or disbursement of an installment of loan proceeds to first-year, first-time borrowers until 30 days after the first day of the student's program of study. First-year, first-time borrowers are students who are enrolled in their first year of an undergraduate program of study and who have not previously received an FFEL Subsidized Stafford, FFEL Unsubsidized Stafford, Federal Supplemental Loans for Students (SLS), Direct Subsidized, or Direct Unsubsidized loan.

Under the proposed regulations and in accordance with the statute, an FFEL or Direct Loan program school may deliver or disburse loan proceeds to first-year, first-time borrowers without the 30-day delay if the school—

- Has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available or
- Is an eligible postsecondary home school certifying or originating a loan to cover the cost of attendance in a study abroad program; and
- Has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

A school's eligibility for these exemptions is based on the school's published FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate. To be eligible, the school must have a published rate calculated for each of the required number of years. For example, a new school that has only one published FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent and wants to disburse a one-semester loan in a single installment would not qualify for the multiple disbursement exemption.

Annually, the Secretary notifies schools of their published FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates. Under the proposed regulations, schools that no longer qualify for the exemptions would have to cease certifying or originating loans based on the exemptions beginning 30 days after the school received the Department's notice that it no longer qualifies for the exemptions. A school would be responsible for certifying or originating loans in accordance with the applicable regulations and its default rate, and FFEL lenders and guaranty agencies would be able to rely upon the school certifications.

Sections 682.209 and 685.207—Grace Period for Military Service

The proposed regulations would implement changes made by the 1998 Amendments to section 428(b)(7)(D) of the HEA that authorize the exclusion of certain periods of service in the Armed Forces from the six-month grace period for FFEL and Direct Loan program borrowers. To qualify, a borrower must be—

- A member of a reserve component of the Armed Forces named in section 10101 of Title 10 of the United States Code; and
- Called or ordered to active duty for a period of more than 30 days.

For borrowers who qualify, the following periods would be excluded from the six-month grace period for the borrower's subsidized and unsubsidized student loans:

- Periods during which a borrower serves in the Armed Forces; and
- The period necessary for a borrower to resume enrollment at the next available regular enrollment period when the borrower returns from service.

The committee discussed the incidence of a borrower serving more than one period of active duty. To ensure that borrowers receive the benefit each time they serve, the committee agreed that the proposed regulations should provide that each period that coincides with the borrower's loans being in an in-school or grace status is subject to the three-year limit.

The committee also discussed the fact that the time period in which a borrower needs to re-enroll in the ''next available regular enrollment period'' after returning from service in the Armed Forces may need to be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional academic program. As a result of these discussions, the committee agreed that the proposed regulations should require that all borrowers must re-enroll within 12 months of their return from active duty service. Borrowers would not be required to re-enroll in the same program in which they were enrolled at the time they were called or ordered to active duty.

The proposed regulations also would provide that borrowers who were in their grace period when called or ordered to active duty receive a full six-month grace period when they return from service in the Armed Forces. The committee believed that this provision would be in the best interest of borrowers—many of whom must secure jobs upon their return.

Sections 682.210 and 685.204—Deferment

The proposed regulations would implement changes made by the 1998 Amendments to requirements for deferments in section 428(b)(1) of the HEA. These changes affect the qualifications for the in-school and unemployment deferments.

In-School Deferment

Prior to enactment of the 1998 Amendments, certain FFEL Program borrowers who were enrolled less than full time had to borrow a loan for the

same period of enrollment for which the borrower was seeking an in-school deferment in order to qualify for the deferment. These ''new borrowers'' are defined for deferment purposes, as those who did not have an outstanding balance on an FFEL loan made prior to July 1, 1987 and who received an FFEL loan on or prior to June 30, 1993. The 1998 Amendments eliminated the requirement that the borrower take out a loan to qualify for the deferment. The proposed regulations would provide these FFEL borrowers enrolled at least half time at an eligible school may qualify for an in-school deferment.

The 1998 Amendments also changed the HEA to specify three methods by which FFEL lenders and the Secretary will determine a borrower's eligibility for an in-school deferment. The proposed regulations would provide that a borrower may be determined eligible for an in-school deferment when—

- The borrower submits a request for deferment along with documentation verifying the borrower's eligibility for the deferment to the borrower's FFEL lender or the Secretary for a Direct Loan;
- The borrower's FFEL lender or the Secretary for a Direct Loan receives either a newly completed loan application or, as part of the MPN process, information from the borrower's school indicating that the borrower is eligible to receive a new loan; or
- The borrower's FFEL lender, or the Secretary for a Direct Loan, receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

Before the 1998 Amendments, a borrower could only receive an in-school deferment by submitting a request and the required verification of eligibility to the borrower's FFEL lender or the Secretary for a Direct Loan. The Department's current regulations allow FFEL lenders to determine a borrower's eligibility for an in-school deferment when they received new loan eligibility information from a borrower's school.

The statute requires an FFEL lender, or the Secretary for a Direct Loan, to notify a borrower when granting an in-school deferment based on new loan eligibility or student status information. The committee agreed that to provide borrowers with the opportunity to make an informed choice, the proposed regulations would provide that this notice must inform the borrower of the option to make interest payments on an unsubsidized loan during the deferment period and of the opportunity to cancel the deferment and continue paying on the loan. The proposed regulations also provide that, in the case of a borrower who chooses to cancel the deferment and continue paying on the loan, the borrower may exercise his or her option to avoid capitalization of unpaid interest by making the principal and interest payments that were deferred.

Unemployment Deferment

Prior to the 1998 Amendments, to qualify for additional periods of an unemployment deferment after an initial six months, FFEL and Direct Loan program borrowers were required to submit a written certification that described the borrower's conscientious search for full-time employment. Alternatively, a borrower could provide comparable documentation the borrower had used to meet the requirements of the Unemployment Insurance Service.

The 1998 Amendments modified the HEA to permit borrowers who are eligible for unemployment insurance benefits to submit evidence of their eligibility for the benefits to their FFEL lender, or to the Secretary for a Direct Loan, to qualify for initial and subsequent periods of an unemployment deferment. The proposed regulations reflect this change in the HEA. However, borrowers who are not eligible for unemployment insurance benefits may continue to provide written certifications to their FFEL lender or the Secretary.

As part of the discussions of this statutory change, the committee agreed that borrowers who are eligible for unemployment insurance benefits should not have to receive those benefits to qualify for an unemployment deferment. The proposed regulations reflect this standard of eligibility. The committee believed that the statute's goal was to reduce the burden on the borrower. Therefore, the committee agreed that a borrower should simply submit documentation proving that he or she is eligible to receive the unemployment insurance benefits for the period during which the borrower is requesting an unemployment deferment.

The committee also discussed the minimum documentation that a borrower should be required to provide. Some negotiators suggested that the documentation should include, at a minimum—

- The borrower's personal identifying information (i.e., name, address, and social security number); and
- The effective dates of the borrower's eligibility to receive unemployment insurance benefits.

However, following these discussions, the committee did not include these requirements in the proposed regulations. The Secretary invites comment as to whether these items should be included in the final regulations.

Sections 682.211 and 685.205—Forbearance

The proposed regulations would implement changes to sections 428(c)(3) and 428H(e) of the HEA made by the 1998 Amendments. These changes remove the requirement that forbearance requests be in writing and add a new basis for granting a forbearance.

Under new sections 428(c)(3)(D) and 428H(e)(7) of the HEA, an FFEL lender, and the Secretary for a Direct Loan, may grant a forbearance to a borrower for a period not to exceed 60 days after the borrower requests a deferment, a forbearance, a change in repayment plan, or a consolidation loan. The purpose of this forbearance period is to allow time for FFEL lenders and the Secretary to collect and process documentation supporting these requests. Lenders and the Secretary may not capitalize interest that accrues during this forbearance period.

Sections 682.401 and 685.402—Multi-Year Use of the Master Promissory Note

The proposed regulations would modify §§ 682.401 and 685.402 to reflect the adoption of an MPN in the FFEL and Direct Loan Programs. Even before enactment of the 1998 Amendments, the Department, in consultation with the financial aid community, developed an MPN and a process for multi-year use of the MPN for FFEL and Direct Stafford loans. The Department's adoption of an MPN was confirmed by changes made to section 432(m)(1)(D) of the HEA by the 1998 Amendments. The proposed regulations would further this process by stating the requirements that a school must meet to be authorized for multi-year use of the MPN.

Under the proposed regulations, a school would have to be authorized by the Secretary to use a single MPN as the basis for multiple loans obtained by a particular borrower. A borrower attending a school that is not authorized by the Secretary for multi-year use of the MPN would have to complete a new MPN for each subsequent loan.

Under the proposed regulations, to be eligible for multi-year use of the MPN, a school would have to be a four-year or graduate/professional school, or meet criteria or be otherwise designated at the sole discretion of the Secretary. The school also would have to meet the following requirements:

- Not be subject to an emergency action or a proposed or final limitation,

suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the HEA; and

- Meet other performance criteria determined by the Secretary.

The proposed regulations provide that the Secretary may designate additional institutions to use the multi-year feature of the MPN, in his sole discretion. It is our current intention to allow schools (other than four-year and graduate/professional schools) to request approval for use of the multi-year feature of the MPN at any time after the publication of the final regulations. Any such requests will be considered at the Secretary's sole discretion. At some point after final regulations are published, it is also our intention to establish and announce criteria and a process that will be used by the Department for consideration of requests for approval of the use of the multi-year feature of the MPN by schools other than four-year and graduate/professional schools.

We believe the proposed regulations would give the Secretary adequate flexibility to implement multi-year use of the MPN.

The adoption of the MPN for multi-year use will require significant changes to the systems and procedures currently in place for lenders, schools, servicers, and the Department. It will also require increased efforts by all parties to ensure that borrowers understand their obligations and rights under the new note. In light of these changes, the Secretary believes it is appropriate to phase in the multi-year use of the MPN. Accordingly, at this time, the Secretary will authorize multi-year use of the MPN only for four-year or graduate/professional schools that are not subject to an emergency action or a proposed or final limitation, suspension, or termination action. However, it is the Secretary's ultimate goal to allow multi-year use of the MPN by all schools that meet the eligibility requirements.

Consistent with the statutory requirements, the proposed regulations would require schools that are authorized for multi-year use of the MPN to develop and document a confirmation process or processes along with the FFEL lender, or the Secretary for Direct Loans, to ensure that the borrower wants subsequent loans.

The negotiators agreed that a confirmation process is required now and that schools and lenders may follow the guidance in the Department's Dear Colleague Letters—GEN–98–25, November 1998 and GEN–99–08, February 1999—in developing and documenting that confirmation process. As technology develops and different methods of confirmation are tested, the Secretary will continue to issue guidance regarding confirmation methods. Any guidelines will be issued in accordance with applicable requirements of the Administrative Procedures Act. Ultimately, after evaluating various confirmation processes, the Secretary plans to develop regulations governing the confirmation process.

It is the Secretary's goal to maintain and enhance a borrower's control over the lending process. To that end, the Secretary intends to work with students, schools, lenders, guaranty agencies, and other interested parties to develop improved technologies and processes that will enable borrowers to further control the lending process. These efforts will include the development of borrower-control mechanisms such as the—

- Use of electronic signatures to confirm acceptance of loans;
- Use of PIN numbers to access and confirm loan records and amounts; and
- Adoption of on-line or other initial counseling that includes acknowledgment of the loan.

Sections 682.402, 685.212, and 685.215—Unpaid Refund Discharge

The proposed regulations would implement changes made to section 437(c)(1) of the HEA by the 1998 Amendments. These changes provide for the discharge of the amount of a borrower's FFEL or Direct Loan program loan that should have been refunded by the borrower's school. This discharge is available for loans disbursed on or after January 1, 1986. Under the proposed regulations, the loan discharge would be available to any borrower whose school failed to refund loan proceeds to an FFEL lender or the Secretary on behalf of a borrower who was entitled to a refund. While technically the return of Title IV loan proceeds that have been applied to the account of a borrower who never attended a school does not meet the definition of a Title IV refund, the committee agreed to be fair to borrowers in this situation, and propose to make these borrowers eligible for the unpaid refund discharge.

The rules proposed by the committee for unpaid refund discharges are generally consistent with the rules governing application for closed school and false certification discharges. The committee believed that adopting consistent rules would help assure consistent administration and fair treatment for borrowers. The proposed regulations therefore would require FFEL and Direct Loan program borrowers to submit a complete application for an unpaid refund discharge. However, the committee agreed that an application should not be required in all cases. The proposed regulations would allow the Secretary or the guaranty agency, with the approval of the Secretary, to discharge a loan based on information in his/its possession that shows that the borrower is eligible for a discharge. Under the proposed regulations, collection efforts on the loan would cease from the time the borrower submits the application until such time as a determination is made as to the borrower's eligibility for the discharge.

Under the proposed regulations, the borrower would have to agree to provide, upon request, any additional documentation reasonably available to the borrower but not submitted with the application, to demonstrate that the borrower meets the qualifications for the discharge. Examples of documentation reasonably available to the borrower include copies of the tuition bill, the enrollment contract, the school's catalog or other documents stating the school's refund policy, and any correspondence from the school specifying the borrower's withdrawal date or the amount of the refund owed.

Unpaid refund discharge requests will involve both schools that have closed and schools that are open. However, the issues presented by those situations differ. Accordingly, the proposed regulations provide different procedures for closed and open school situations.

Closed School Situations

Under the proposed regulations, if the school has closed, the guaranty agency or the Secretary would discharge the amount of the loan equal to the unpaid refund and any associated accrued interest and other charges based on a complete application from the borrower or, under limited circumstances, information otherwise available to the guaranty agency or to the Secretary.

Open School Situations

Under the proposed regulations, if the school is open, the guaranty agency or the Secretary would discharge the amount of the loan equal to the unpaid refund and any associated accrued interest and other charges if—

- The borrower no longer attends the school that owes the refund;
- The borrower has been unable to resolve the unpaid refund with the school; and
- The guaranty agency or the Secretary has been unable to resolve the unpaid refund with the school within 120 days from the date the borrower

submits a complete application for the unpaid refund discharge.

Under the proposed regulations, the guaranty agency or the Secretary would notify the school of the receipt of an unpaid refund discharge application. Within 60 days of the date of this notice, the school would have to submit documentation demonstrating that the school either made the refund, or is not required to make the refund.

In both closed and open school situations, the proposed regulations would provide that the guaranty agency or the Secretary would determine the amount eligible for discharge based on information showing the refund amount that was not made or by applying the appropriate refund formula to data that the borrower provides or that is otherwise available to the guaranty agency or to the Secretary. If this information is not available, the guaranty agency or the Secretary would use one of two formulas to determine the amount eligible for discharge. Two formulas must be considered because of changes made to the HEA by the 1998 Amendments that modify the calculation of Title IV refunds. The effective date for the new refund calculation is October 7, 2000 and that date will be used to determine which of the following formulas applies.

For Students Who Fail To Attend, Withdraw, or Are Terminated Before October 7, 2000

To determine unpaid refund discharges for borrowers in this group, the guaranty agency or the Secretary would calculate and discharge the lesser of the institutional charges unearned by the school or the loan amount. The amount of institutional charges unearned equals—

$$\frac{\text{Time Remaining in Loan Period After Student's Last Day of Attendance}}{\text{Actual Length of Loan Period}} \times \text{Institutional Charges for Loan Period}$$

For Students Who Fail To Attend, Withdraw, or Are Terminated On or After October 7, 2000

To determine unpaid refund discharges for borrowers in this group, a guaranty agency or the Secretary would calculate and discharge the loan amount unearned by the school. The loan amount unearned equals—

$$\frac{\text{Time Remaining in Loan Period After Student's Last Day of Attendance}}{\text{Actual Length of Loan Period}} \times \begin{array}{c}\text{Title IV Grants/Loans Student Received (if known)}\\ \text{or}\\ \text{Loan Amount}\end{array}$$

The refund resulting from the above calculation may never exceed the loan amount, including accrued interest and other charges.

Sections 682.604 and 685.304—Counseling Borrowers

The proposed regulations would reflect changes made to section 485(b)(2)(C) of the HEA by the 1998 Amendments clarifying that schools may use electronic means to provide exit counseling to FFEL and Direct Stafford loan borrowers. The statutory change addresses only exit counseling because initial counseling is not required by the HEA. However, because electronic counseling gives flexibility to both borrowers and schools, the committee agreed that the proposed regulations should also permit schools to use electronic means to provide initial counseling to borrowers. This change also would conform to the guidance issued by the Department before enactment of the 1998 Amendments, which permitted schools to use electronic means to provide initial and exit counseling to FFEL and Direct Loan program borrowers. The proposed regulations also would update the counseling elements to require schools to include information about two new statutory initiatives—the MPN and the availability of the Department's Student Loan Ombudsman's office.

Use of Electronic Means To Provide Counseling

The proposed regulations make changes based on the statutory authorization for schools to use electronic means to provide counseling to borrowers. Under the proposed regulations, FFEL and Direct Loan program schools would be authorized to provide initial and exit counseling to borrowers—

- In person;
- By audiovisual presentation; or
- By interactive electronic means.

In any case, schools would continue to be required to ensure that an individual with knowledge of Title IV programs is reasonably available shortly after the counseling to answer borrowers' questions. The proposed regulations would also continue to allow schools to provide written counseling materials to borrowers who are enrolled in a correspondence program or a study abroad program approved for credit at a postsecondary home school. In the case of a borrower who withdraws from school without the school's prior knowledge or who fails to complete the exit counseling as required, the proposed regulations would now require a school to provide exit counseling through interactive electronic means or by mailing written counseling materials to the borrower within 30 days after the school learns that the borrower has withdrawn from school or failed to complete the exit counseling as required.

The committee members pointed out that there are different electronic means by which schools may provide initial and exit counseling to FFEL and Direct Loan borrowers. Moreover, new and improved electronic means are continually becoming available. At the same time, the committee agreed that it was important to ensure that the quality of the counseling that schools provide to borrowers is enhanced rather than diminished by advancing technology. For these reasons, the proposed regulations would not prescribe specific electronic means by which schools may provide initial and exit counseling. Rather, the proposed regulations would specify that the electronic means the school uses must be interactive, which at a minimum, requires schools to take reasonable steps to ensure that each borrower receives the counseling

materials and participates in and completes the counseling. For example, simply ensuring that the student received and ''opened'' an electronic message that contained loan counseling information would not be sufficient.

The proposed regulations would continue to require schools to maintain documentation substantiating their compliance with the initial and exit counseling requirements for each borrower. However, in recognition of the unique features of electronic counseling, the proposed regulations would eliminate the requirement that a school maintain the documentation in a borrower's file. For schools that send initial and exit counseling materials by e-mail or other electronic means, the school's documentation would have to include proof that the borrower received the materials. This does not mean that the school must receive a personal response from the borrower, rather the school can accept an electronic ''receipt'', or other comparable response, that is a feature of most electronic mail systems. Proof of receipt would not be required if schools send the materials via U.S. mail.

New Counseling Elements

The proposed regulations also would require that, as part of initial and exit counseling, schools include information about two new initiatives authorized by the 1998 Amendments. The committee believed that these statutory initiatives are important for borrowers to be informed of during the appropriate counseling session. Under the proposed regulations, schools would have to—

- Explain the use of an MPN during the initial counseling; and
- Review information on the availability of the Department's Student Loan Ombudsman's office during the exit counseling.

The committee also agreed that borrowers should be informed of the availability of the Department's Student Loan Ombudsman's office by FFEL lenders and guaranty agencies at specific points in the life of the loan. The agreed-upon points at which information on the Ombudsman's services would be provided are included and discussed in the NPRM of Committee I.

Section 685.300—Choice of Loan Programs

The 1998 Amendments modified section 498(b) of the HEA to require that the application for schools to participate in the Title IV programs provide schools the option to participate in one or more of the loan programs under the FFEL and Direct Loan programs. As a result of this change, a school may choose to participate in either the subsidized or the unsubsidized Stafford loan programs, or both. A school also has the option to choose whether or not to participate in the PLUS loan program. The proposed Direct Loan Program regulations contain a conforming change in 685.300 to reflect this statutory change. The prior FFEL Program regulations that provided for agreements between an eligible school and the Secretary for participation in the FFEL Program were removed and reserved in regulations published on July 1, 1995. Therefore, a comparable conforming change is not proposed for those regulations. Notwithstanding that fact, FFEL schools also have the option to decide in which FFEL loan programs they wish to participate.

The committee considered whether a student attending a school that chose not to participate in the PLUS loan program would be automatically eligible to borrow additional unsubsidized FFEL or Direct Loan program funds as the law provides for dependent students whose parents are unable to borrow under the PLUS loan program. After much discussion, the committee agreed that the proposed regulations should not permit a dependent student attending such a school to be eligible to receive additional unsubsidized FFEL or Direct Loan program funds based on the school's decision not to participate in the PLUS loan program. Some negotiators agreed with the Department's belief that this went beyond the scope of the intent of the law.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by the negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

Summary of Potential Costs and Benefits

The following is an analysis of the costs and benefits of the most significant provisions of the proposed regulations, all of which reflect statutory changes included in the 1998 Amendments. There are additional proposed changes including conforming and minor technical changes intended to further improve the administration of the FFEL and Direct Loan programs, which are discussed elsewhere in this preamble under the heading *Proposed Regulatory Changes.* The Department does not consider there to be significant costs associated with those provisions.

Interest Rates

The 1998 Amendments changed the basis for calculating borrower interest rates on new Stafford and unsubsidized Stafford loans from a security of comparable maturity plus 1 percent for both in-school and repayment periods, to the 91-day T-bill interest rate plus 1.7 percent for in-school, grace, and deferment periods, and the 91-day T-bill interest rate plus 2.3 percent for repayment periods. These changes are incorporated in proposed 682.202. At the time the 1998 Amendments passed, the 91-day T-bill interest rate plus 2.3 percent was roughly equal to the 10–20 year bond interest rate plus 1 percent; as a result this change had no financial impact for loans in repayment. The lower in-school costs of unsubsidized Stafford loans result in significant student benefits. The cost to loan holders is estimated to be $56 million for loans originated in FY 2000.

The interest rate on FFEL Consolidation loans with applications received by the lender on or after October 1, 1998, was changed to the lesser of the weighted average of interest rates on the loans consolidated, rounded to the nearest higher 1/8th of 1 percent, or 8.25 percent. The cost to loan holders for the lower borrower interest rate is estimated to total $52 million for FFEL Consolidation loans originated in FY 2000.

Capitalization

Section 682.202 also reflects the changes made to the HEA that govern the frequency with which FFEL loan holders may capitalize accrued interest. In addition, they clarify that these frequency of capitalization rules apply

to subsidized loans as well as to unsubsidized loans. In accordance with the 1998 Amendments, a loan holder may only add accrued interest to the principal when a borrower enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults. This provision would benefit borrowers and would result in an estimated cost to loan holders of $45 million for loans originated in FY 2000. Of this amount, $354,000 is the cost of including subsidized loans.

FFEL Extended Repayment Plan

Section 682.209 incorporates the new FFEL extended repayment plan for new borrowers with outstanding FFEL Program loans exceeding $30,000 which would allow those borrowers to repay their loans, including FFEL Consolidation loans, over a period not to exceed 25 years with fixed or graduated repayment amounts. Assuming the same proportion of FFEL borrowers take advantage of these provisions as in the Direct Loan Program, lender's interest receipts may increase by as much as $55 million over the 30-year life of a loan. This increased revenue should more than offset any additional administrative costs lenders may incur. Further, it is likely that many or most small lenders will sell loans in the extended repayment plan to larger loan holders in the secondary markets.

Bankruptcy Discharge

Section 682.402 reflects changes made to the Bankruptcy Code by the 1998 Amendments that eliminates the seven-year repayment provision for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998. This change limits the FFEL Program loans that may be discharged in bankruptcy to those that qualify on grounds of undue hardship. The discharge of fewer loans would save the Federal Government an estimated $66 million for loans originated in FY 2000.

Overall, these regulations would result in savings to borrowers and the Federal Government, and would have a cost to loan holders in the FFEL Program as shown in the table below. These costs are a direct result of changes made to the HEA by the 1998 Amendments and have been implemented prior to the development of these proposed regulations.

FY 2000 COSTS

[In millions of dollars]

Provision	Federal government	All Borrowers	FFEL loan holders
Interest Rate Reduction	.....	−108	108
Capitalization Upon Repayment	.....	−45	45
Limit Bankruptcy Discharge	−66	66	
Total	−66	− 87	153

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, *§ 682.202 Permissible charges by lenders to borrowers.)*
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the persons listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education and loan holders that participate in the Title IV, HEA programs, and individual FFEL and Direct Loan borrowers. Institutions would experience positive impacts from these proposed regulations. Individuals are not considered small entities for this purpose. Nearly all of the roughly 4,800 participating FFEL loan holders would be defined as small entities under U.S. Small Business Administration (SBA) guidelines. (Student loans are originated by lenders and are often sold in packages to larger secondary market participants.) Small lenders originate only 16 percent of new loans. The economic impact for loans originated in FY 2000 would be $24 million or approximately $5,000 per average lender.

The Secretary invites comments on this determination, and welcomes proposals on any significant alternatives that would satisfy the same legal and policy objectives of these proposals while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Sections 682.102, 682.200, 682.402, 682.604, 682.610, 685.215, and 685.304 contain information collection requirements and require OMB approval. Sections 682.210(h), 682.301(b), 682.401(b)(5), 685.204(b) and 685.205 are affected by the NPRM and require continued approval by OMB. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program.

Section 682.102—Obtaining and Repaying a Loan

We are proposing to require the use of the Free Application for Federal Student

Aid (FAFSA), beginning in academic year 1999–2000, as the application for subsidized and unsubsidized Stafford loans, as required by the 1998 Amendments. Borrowers would no longer be required to complete a separate loan application. This provision would reduce the burden hours required for a lender's processing of the loan application. The Department currently has the burden hours for this provision accounted for under 682.401(b)(4) and approved under OMB control numbers 1840–0742 and 1840–0717. We will submit a change request to reflect the reduction in burden hours to OMB.

Section 682.200—Definitions

We are proposing to change the definition of ''Default'' by increasing the number of days a borrower may be delinquent before an FFEL Program Loan becomes defaulted from 180 days to 270 days for loans repayable in monthly installments, and from 240 days to 330 days for loans repayable less frequently than monthly installments. We anticipate no change in burden hours as a result of this change.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

We are proposing changes that would provide for the discharge of all or a portion of a borrower's FFEL Program loan if a school failed to refund loan proceeds to the lender on behalf of a borrower who withdrew or was terminated from the school within a timeframe that entitled the borrower to a Title IV refund. This proposed statutory change would be retroactive to loans disbursed on or after January 1, 1986. The proposed unpaid refund discharge would involve both schools that have closed and schools that are open. Annual reporting burden hours for this collection of information for processing unpaid refund discharge payments is estimated to average one hour per response for 500 borrowers, equaling a total of 500 new burden hours. This figure is based on unpaid refund discharge payments for an estimated 400 borrowers in closed school situations and an estimated 100 borrowers in open school situations.

Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers

We are proposing to change the regulations to clarify that schools are not restricted to providing in-person exit counseling to borrowers, but may use interactive electronic means to conduct entrance and exit counseling for borrowers. Our recalculation of burden hours also reflects the streamlining of an in-person counseling since the inception of the process in 1989. Annual public reporting burden for the collection of information for initial counseling is estimated to average 0.25 hour per response for 5,899 FFEL Program schools times eight sessions per school for a total of 11,798 burden hours. This equals a decrease of 4,514 burden hours. Annual public reporting burden for the collection of information for exit counseling is estimated to average 0.25 hour per response for 836,124 students for a total of 209,031 burden hours. This equals an increase of 77,814 burden hours over the current inventory. The large increase results from the large increase of respondents since the last calculation of these numbers.

Section 682.610—Administrative and Fiscal Requirements for Participating Schools

This provision would require a school to maintain documentation of any confirmation process or processes the school may have used for borrowers who use the multi-year feature of the Master Promissory Note. This provision has information collection requirements that affect schools. Annual reporting burden for this collection of information is estimated to average 20 minutes to prepare a document describing the school's confirmation process or processes for MPN multi-year borrowers. There are 5,899 FFELP schools. This equals a total of 1,947 new burden hours.

Section 685.215—Unpaid Refund Discharge

This proposed provision would allow a borrower to have all or a portion of the borrower's loan discharged if a school failed to make a refund. The provision has information collection requirements that would affect borrowers and schools. In the majority of cases, borrowers would be required to complete a form to apply for an unpaid refund discharge. This form will be developed following publication of the final regulations and, when cleared, will account for the burden to borrowers. In cases in which a borrower applies for an unpaid refund discharge based on the actions of a school that is open, schools would need to respond to an inquiry by the Department as to the unpaid refund allegation. The Department estimates that 100 Direct Loan borrowers will submit unpaid refund discharge applications and that 25% of those applications would require schools that are open to spend one hour to respond to the allegations for an estimated total of 25 new burden hours.

Section 685.304—Counseling Borrowers

This proposed provision would revise existing regulations to allow schools to provide initial and exit counseling to borrowers by one of three methods: in person, by audiovisual presentation, or by interactive electronic means. Schools would continue to be affected by the information collection requirements in the existing regulations—they would have to collect and maintain documentation substantiating their compliance with the initial and exit counseling requirements for each borrower. However, with the authorization for providing initial and exit counseling through electronic means, the time required for schools to collect and maintain the information would be reduced. For initial counseling, the Department estimates that 1,230 Direct Loan schools will conduct an average of eight counseling sessions and spend .25 hour per session collecting and maintaining the required documentation for a total of 2,460 burden hours. For exit counseling, the Department estimates that Direct Loan schools will spend .25 hour collecting and maintaining the required documentation for each of 836,124 borrowers who must complete exit counseling for a total of 209,301 burden hours. The combined burden hours for the information collection requirements associated with initial and exit counseling equal 211,491. While this is an increase of 182,097 burden hours to the 29,394 burden hours reported in the Department's most recent inventory, the increase is due to the growth of the Direct Loan Program.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representatives named in the **ADDRESSES** section of this preamble.

We consider your comments in these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers 84.032 Federal Family Education Loan Program, and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 22, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising parts 682 and 685 as follows:

PART—682 FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.100 paragraph (a)(4) is amended by removing ''other loans, including,''; and by adding ''Loans for Disadvantaged Students (LDS)'', after ''(HPSL)''.

3. Section 682.102, paragraph (a), is revised; paragraph (b) is removed and reserved; and paragraph (d) is revised to read as follows:

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student requests a loan by completing the Free Application for Federal Student Aid (FAFSA), or contacting the school, lender or guarantor. The school determines and certifies the student's eligibility for the loan. Prior to loan disbursement, the lender obtains a loan guarantee from a guaranty agency or the Secretary and the student completes a promissory note, unless the student has previously completed a Master Promissory Note (MPN) that the lender may use for the new loan.

(b) [Reserved]

* * * * *

(d) *Consolidation loan application.* To obtain a Consolidation loan, a borrower completes an application and submits it to the lender holding the borrower's FFEL Program loan. If the borrower has multiple holders of FFEL Program loans, or if the borrower's single loan holder declines to make a Consolidation loan, or declines to make one with income-sensitive repayment, the borrower may submit the application to any lender participating in the Consolidation Loan Program. In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

* * * * *

4. Section 682.200(b) is amended as follows:

A. By amending the definitions of *Default* by revising paragraphs (1) and (2), *Estimated financial assistance* by revising paragraphs (1)(i) (2)(i)(B) and (C), (2)(ii), and by adding (2)(iii).

B. By revising the definition of *Holder.*

C. In the definition of ''Lender,'' by revising paragraph (5)(i) and by renumbering the second paragraph (5) as paragraph (6).

D. By adding a new definition ''Master promissory note (MPN)'' in alphabetical order.

E. In the definition of ''Repayment period,'' in paragraph (1), by adding ''or 25 years under an extended repayment schedule,'', after ''10 years''; in paragraph (2), by adding ''or 25 years under an extended repayment schedule,'', after ''10 years''.

§ 682.200 Definitions.

* * * * *

Default.

* * * * *

(1) 270 days for a loan repayable in monthly installments; or

(2) 330 days for a loan repayable in less frequent installments.

* * * * *

Estimated financial assistance.

(1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 and veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

* * * * *

(2) * * *

(i) * * *

(A) * * *

(B) PLUS loan amounts; or

(C) Private and state-sponsored loan programs; and

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined; and

(iii) For the purpose of determining eligibility for a subsidized Stafford loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender.

* * * * *

(5) * * *

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

* * * * *

Master promissory note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.

* * * * *

5. Section 682.201 is amended as follows:

A. By revising paragraph (a)(2).

B. By revising paragraph (c)(1); in paragraph (c)(2)(iii) by removing ''(c)(1)(vi)'', and by adding in its place, ''(c)(1)(iv)''; and by removing paragraphs (c)(3) and (c)(4).

C. By adding a new paragraph (d).

D. By adding a new paragraph (e).

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of $200, have made a request to a lender for a subsidized Stafford loan;

* * * * *

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Is, on the loans being consolidated—

(A) In a grace period preceding repayment;

(B) In repayment status;

(C) In a default status on a title IV loan and has either made satisfactory repayment arrangements as defined in 682.200(b)(2) or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in 682.209(a)(6)(viii);

(D) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(E) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(ii) Certifies that no other application for a Consolidation loan is pending;

(iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds the outstanding loan of the borrower that is being consolidated; or

(B) Applies to any eligible consolidation lender if the borrower—

(*1*) Has multiple holders of FFEL loans; or

(*2*) Has been unable to receive from the holder of the borrower's outstanding loans, a Consolidation loan or a Consolidation loan with income-sensitive repayment.

* * * * *

(d) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and

(2) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made.

(e) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has other outstanding eligible loans that will be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, and 1091)

6. Section 682.202 is amended as follows:

A. In paragraph (a)(1)(i) by removing ''If'' and by adding, in its place, ''For loans made prior to July 1, 1994, if,''.

B. In paragraph (a)(1)(ii)(B) by adding ''and prior to July 1, 1994,'' after ''October 1, 1992''.

C. In paragraph (a)(1)(iii)(A) by removing ''evidencing the loan''.

D. In paragraph (a)(1)(iv) by adding ''but before December 29, 1993,'' after ''October 1, 1992''.

E. By adding new paragraphs (a)(1)(v) through (a)(1)(viii).

F. In paragraph (a)(2)(iii), introductory text, by adding ''and prior to July 1, 1994,'' after ''October 1, 1992''.

G. By adding new paragraphs (a)(2)(iv) and (a)(2)(v).

H. In paragraph (a)(3)(iii), introductory text, by removing ''1992,'' and by adding, in its place, ''1992 and for loans made prior to July 1, 1994 for a period of enrollment that began prior to July 1, 1994''.

I. In paragraph (a)(4) by adding ''(i)'' at the beginning of the sentence before ''A Consolidation'', by adding ''made before July 1, 1994'' after ''loan'', by designating paragraph ''(i)'' as ''(*A*)'', by designating paragraph ''(ii)'' as ''(*B*)'', by adding new paragraphs (a)(4)(ii) through (a)(4)(v).

J. In paragraph (b)(1), by removing ''paragraph (b)(2) of''; and by revising paragraph (b)(2).

K. In paragraph (b)(3) by removing '', except that capitalization'', and by adding in its place, ''. Capitalization''.

L. By removing paragraph (b)(5).

M. By redesignating paragraph (b)(4) as paragraph (b)(5); and adding a new paragraph (b)(4).

N. By revising the newly redesignated paragraph (b)(5).

O. By revising paragraphs (c)(1) and (c)(2).

P. By redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(5) through (c)(7); and by adding new paragraphs (c)(3) and (c)(4).

§ 682.202 Permissible charges by lenders to borrowers.

(a) * * *

(1) * * *

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 for a period of enrollment that includes or begins on or after July 1, 1995, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after

July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

* * * * *

(2) * * *

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

* * * * *

(4) * * *

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

* * * * *

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.* A lender—

(1) May charge a borrower an origination fee on a Stafford loan not to exceed 3 percent of the principal amount of the loan. Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) May charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the minimum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to borrowers who qualify for a subsidized Stafford loan.

(ii) If a lender charges a lower origination fee pursuant to this subparagraph, the lender must charge all similarly situated borrowers the same origination fee.

(iii) A lender may use a comparable standard with the approval of the Secretary.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraphs (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4) For purposes of paragraphs (c)(1) and (c)(2) of this section, all lenders under common ownership, including ownership by a common holding company, constitute a single lender. Any beneficial owner of loans, that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf, is considered the lender for this purpose.

* * * * *

7. Section 682.204 is amended as follows:

A. By revising paragraphs (a), (b), (c), (d), and (e).

B. In paragraph (f)(2)(i) by adding ''the following'', after ''exceed''.

C. In paragraph (f)(2)(ii) by adding ''the following'' after ''exceed''.

D. In paragraph (f)(2)(ii)(B) by removing ''and'', and by adding, in its place, ''or''.

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct

Stafford/Ford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $3,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed $5,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Federal Direct Stafford/Ford Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of an

undergraduate student, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) $4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) $5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed $10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Federal Direct Stafford/Ford Loans, Unsubsidized Stafford Loans, Federal Direct Unsubsidized Stafford/

Ford Loans and SLS Loans, but excluding the amount of capitalized interest may not exceed the following:

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

* * * * *

8. Section 682.206 is amended as follows:

A. By revising paragraph (a)(1);

B. By removing ''on the application form or data electronically transmitted to the lender'' in paragraph (c)(1);

C. By revising paragraph (c)(2);

D. By removing paragraph (c)(3); and

E. By revising paragraph (d)(1).

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include determining the borrower's loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note (except with respect to multiple loans made under an MPN).

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under § 682.603 or the loan limits under § 682.204.

* * * * *

(d)(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower's indebtedness.

* * * * *

9. Section 682.207 is amended as follows:

A. By revising the introductory text of paragraph (c);

B. By removing paragraph (c)(5);

C. By redesignating paragraph (d) as paragraph (f);

D. By redesignating paragraph (c)(4) as paragraph (d);

E. By adding a new paragraph (e); and

F. By revising the newly redesignated paragraph (f).

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

* * * * *

(e) A lender must disburse the loan in one installment if the school submits a schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(10).

(f)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(i) The school certified the borrower's loan eligibility and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(ii) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and

(iii) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

(2) The lender must give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (f)(1) of this section at the time the lender sends the loan proceeds to the school.

10. Section 682.209 is amended as follows:

A. By revising paragraph (a)(4).

B. By redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), respectively.

C. By adding a new paragraph (a)(6).

D. By revising the newly redesignated paragraph (a)(7)(iii).

E. In the newly redesignated paragraph (a)(7)(v)(A) by removing ''income-sensitive or a graduated repayment'', and adding, in its place, ''income-sensitive, a graduated, or if applicable, an extended repayment''.

F. By redesignating paragraph (a)(7)(ix) as paragraph (a)(7)(xi).

G. By adding new paragraphs (a)(7)(ix) and (x).

H. By revising paragraph (c)(1)(i).

I. By removing paragraph (h)(3); by redesignating paragraphs (h)(4), (h)(5), and (h)(6), as paragraphs (h)(3), (h)(4), and (h)(5), respectively; by revising the newly redesignated paragraph (h)(3); and by removing redesignated paragraph (h)(4)(ii) and redesignating paragraph (h)(4)(iii) as paragraph (h)(4)(ii).

§ 682.209 Repayment of a loan.

(a) * * *

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of—

(i) The day after the borrower completes the program;

(ii) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(iii) 60 days following the last day for completing the program as established by the school.

* * * * *

(6) For purposes of establishing the beginning of the repayment period for Stafford and SLS loans, the grace periods referenced in paragraphs (a)(2)(iii) and (a)(3)(i) exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Stafford or SLS borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a full grace period upon completion of the excluded period.

(7) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, or if applicable, an extended repayment schedule.

* * * * *

(ix) Under an extended repayment schedule, the borrower may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a ''new borrower'' is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(x) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually.

* * * * *

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, or extended repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

* * * * *

(h) * * *

(3) For the purpose of paragraph (h)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment arrangements with the holder of the loan, does not include the unpaid balance on defaulted loans.

* * * * *

11. Section 682.210 is amended as follows:

A. By revising paragraphs (a)(3), (a)(4), and (a)(6)(iv); in paragraph (a)(7) by removing ''180- or 240-day'' and adding, in its place, ''270- or 330-day''.

B. By revising paragraph (b)(4).

C. By revising the heading in paragraph (c); by revising paragraph (c)(1), by redesignating paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively; and by adding a new paragraph (c)(2).

D. In redesignated paragraph (c)(3) by adding ''or other form certified by the school'' after ''application''.

E. In redesignated paragraph (c)(4) by removing ''SLS or PLUS'' and adding, in its place, ''SLS, PLUS or Consolidation loan'' after ''Stafford''.

F. In redesignated paragraph (c)(5), by adding ''or PLUS (unless based on the dependent's status)'' after ''Stafford''.

G. By revising paragraph (h).

§ 682.210 Deferment.

(a) * * *

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary for a Stafford loan and for all or a portion of a qualifying Consolidation loan that meets the requirements under 682.301 when the loan is made.

(4) As a condition for receiving a deferment, except for purposes of paragraphs (c)(1)(ii) and (iii) of this section, the borrower must request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

* * * * *

(6) * * *

(iv) In the case of a student deferment, the student's anticipated graduation date as certified by an authorized official of the school and as updated by notice or SSCR update to the lender from the school or guaranty agency; or

* * * * *

(b) * * *

(4) For a ''new borrower,'' as defined in paragraph (b)(7) of this section, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

* * * * *

(c) *In-School deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; or

(iii) The lender receives student status information indicating that the borrower's enrollment status supports eligibility for a deferment.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii) or (iii) of this section and of the borrower's option to pay interest that accrues on an unsubsidized Federal Stafford loan or to cancel the deferment and continue paying on the loan.

* * * * *

(h) *Unemployment deferment.* (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number; and

(C) The name or title of the person contacted;

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and date of registration.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(v) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(2)(i) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under this section.

* * * * *

12. Section 682.211 is amended as follows:

A. By revising paragraph (a)(4);

B. In paragraph (b) by removing ''in writing'';

C. By adding a new paragraph (f)(9);

D. In paragraphs (h)(l) and (h)(2), by removing the word ''written''; and

E. By removing paragraph (h)(2)(ii)(B) and designating paragraph (h)(2)(ii)(C) as paragraph (h)(2)(ii)(B) to read as follows:

§ 682.211 Forbearance.

(a) * * *

(4) Except as provided in paragraph (f)(10) of this section, if payments of interest are forborne, they may be capitalized as provided in 682.202(b).

* * * * *

(f) * * *

(9) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

13. Section 682.300 is amended by revising paragraph (a) to read as follows:

§ 682.300 Payments of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a

portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under 682.301. This payment is known as interest benefits.

* * * * *

14. Section 682.301 is amended as follows:

A. By revising paragraph (a)(3);

B. By removing paragraph (a)(4); and

C. By revising paragraphs (b) and (c).

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 only if the loan consolidates subsidized Stafford loans; and

(iii) On or after November 13, 1997 for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to 682.603. The student must qualify for interest benefits if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

15. Section 682.401 is amended as follows:

A. By revising paragraphs (b)(5)(i) and (ii);

B. By redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively; and

C. By adding a new paragraph (d)(4).

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her preferred lender on the promissory note or application, if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a Stafford or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) In the case of a PLUS loan request, information concerning the outstanding FFEL loans of the borrower and of the student, including any Consolidation loan used to repay a Stafford, SLS, or PLUS loan;

(C) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(D) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

* * * * *

(d) * * *

(4)(i) The Secretary authorizes the use of the multi-year feature of the Master Promissory Note (MPN)—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (i) of this section. The criteria to be used by the Secretary to prohibit use of the multi-year feature include the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A borrower attending a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each period of enrollment.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the student asking that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the original MPN was signed if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the student signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary.

* * * * *

16. Section 682.402 is amended as follows:

A. By revising the section heading; by revising paragraph (a)(1); in paragraph (a)(3), by adding ''and as provided in paragraph (h)(1)(iv) of this section,'' after ''section''.

B. In paragraph (f)(1) by removing ''(f) through (m)'', and adding, in its place, ''(h) through (k)''; by revising paragraph (f)(3); in paragraph (f)(5)(i)(B) by adding ''before October 8, 1998'' after ''Code''.

C. By revising paragraphs (g)(1)(i) and (ii).

D. In paragraph (h)(1)(i), by removing ''paragraph (g)'', and adding, in its place, ''paragraph (h)''; by adding a new paragraph (h)(1)(iv);

E. By revising paragraph (i)(1); and by removing paragraph (i)(3) in its entirety.

F. In paragraph (j)(1)(ii), by removing ''(B)''; and by revising paragraph (j)(1)(iii).

G. By revising paragraph (k)(1)(i)(A).

H. By redesignating paragraphs (l) and (m) as paragraphs (r) and (s); and by adding new paragraphs (l) through (q).

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

* * * * *

(f) * * *

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

* * * * *

(g) * * *

(1) * * *

(i) The original promissory note or a copy of the promissory note certified by the lender as true and accurate.

(ii) The loan application, if a separate loan application was provided to the lender.

* * * * *

(h) * * *

(1) * * *

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

* * * * *

(i) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information if the petition for relief in bankruptcy was filed prior to October 8, 1998, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim; and

(ii) In all other cases, determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(iii) If the agency determines that repayment would not constitute an undue hardship, the agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iv) The agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

* * * * *

(j) * * * (1) * * *

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

* * * * *

(l) *Unpaid refund discharge.*

(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—

(i) The borrower has ceased to attend the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the borrower submits a complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.

(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums) owed by the borrower at the time of discharge.

(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(ii) State whether the borrower has any other application for discharge pending for this loan; and

(iii) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in

accordance with paragraph (d) of this section.

(5) *Unpaid refund discharge procedures.* (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) The agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in the initial determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for the period during which collection activity was suspended. The holder may capitalize any interest accrued and not paid during the review period in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency*— (1) *General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (l)(1) and (l)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October

7, 2000, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

* * * * *

17. Section 682.406 is amended by adding a new paragraph (c) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

* * * * *

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

18. Section 682.409 is amended as follows:

A. By revising paragraph (c)(2);

B. In paragraph (c)(4)(i) by adding ''original or a true and exact copy of the'' after ''The'';

C. In paragraph (c)(4)(iv) by adding '', if a separate application was provided to the lender'', after ''application'';

D. In paragraph (c)(5), and by removing ''certified'' after ''submit'' and by removing ''if no originals exist'' after ''originals''.

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) * * *

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

* * * * *

19. Section 682.414 is amended, as follows:

A. In paragraph (a)(4)(ii)(A) by adding ''if a separate application was provided to the lender'' after ''application'';

B. In paragraph (a)(4)(ii)(B) by removing '', including the repayment instrument'' after ''note'';

C. In paragraph (a)(4)(ii)(J) by removing ''and'' at the end of sentence;

D. By redesignating paragraph (a)(4)(ii)(K) as paragraph (a)(4)(ii)(L);

E. By adding a new paragraph (a)(4)(ii)(K);

F. In paragraph (a)(5)(i) by removing ''(K)'', and adding, in its place, ''(L)'';

G. By revising paragraph (a)(5)(ii); and

H. By removing paragraph (a)(5)(iii).

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(4) * * *

(i) * * *

(K) Documentation of any confirmation process or processes; and

* * * * *

(5) * * *

(ii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

* * * * *

20. Section 682.603 is amended as follows:

A. By revising paragraph (b);

B. By adding a new paragraph (c);

C. By redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively; and

D. By adding a new paragraph (g).

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under § 682.204.

* * * * *

(g) A school must cease to certify a loan based on the exceptions in § 682.604(c)(5)(i) and (c)(5)(ii) and § 682.604(c)(10)(i) and (ii) that allow for the disbursement of loans in one installment and exempt the school from delayed release of loan proceeds no later than 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

21. Section 682.604 is amended as follows:

A. By revising paragraph (c)(5);

B. By revising the introductory text of paragraph (c)(6);

C. By adding a new paragraph (c)(10); and

D. By revising paragraphs (f) and (g).

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a

Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible postsecondary home school certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

(6) Unless the provision of § 682.207(d) applies—

* * * * *

(10) Notwithstanding the requirements of paragraphs (c)(6)-(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or 4 months; and

(B) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) The school is an eligible postsecondary home school certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

* * * * *

(f) *Initial counseling.* (1) A school must conduct initial counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the borrower has received a prior Stafford, SLS, or Direct loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. As an alternative, in the case of a student enrolled in a correspondence program or a student enrolled in a study-abroad program that the postsecondary home school approves for credit, the school may provide the counseling through written materials, prior to releasing those loan proceeds.

(2) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(iii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iv) In the case of a borrower of a Stafford loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(5) A school must maintain documentation substantiating the school's compliance with this section for each borrower.

(g) *Exit counseling.* (1) A school must conduct exit counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must conduct this counseling shortly before the borrower ceases at least half-time study at the school. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the postsecondary home school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If a borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Stafford or SLS loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing of SLS loans);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer, that will then be provided within 60 days to the guaranty agency or agencies listed in the borrower's records; and

(vii) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts exit counseling by electronic interactive means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(5) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

22. Section 682.610 is amended by revising paragraph (b) to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

* * * * *

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any confirmation process or processes the school may have used.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

23. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

24. Section 685.102 is amended in paragraph (b)

A. By revising the definitions of ''Default'' and ''Estimated financial assistance.''

B. By adding after ''Loan fee'' a new definition ''Master promissory note (MPN).''

§ 685.102 Definitions.

* * * * *

(b) * * *

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance: (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, financial need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan;

(viii) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and

(C) Non-Federal loan amounts;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined; and

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Master promissory note (MPN): A promissory note under which the borrower may receive loans for a single academic year or multiple academic years. Loans for multiple academic years may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement except that a remaining portion of a loan may be disbursed after this date.

* * * * *

25. Section 685.201 is revised to read as follows:

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 2 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school disburses the funds to the student.

(iii) If the student is attending a school participating under standard origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school disburses the funds to the student.

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent must complete the application and promissory note and submit it to the school at which the student is enrolled. The school must complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination

option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan.*

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.216.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

26. Section 685.203 is amended by revising paragraphs (a) and (c)(2); and by revising the introductory text of paragraphs (d) and (e) to read as follows:

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $5,500.

* * * * *

(c) * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $5,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.

(v) In the case of a graduate or professional student, $10,000.

(vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

* * * * *

27. Section 685.204 is amended by adding a new paragraph (b)(1)(iii) to read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

(iii)(A) For the purpose of paragraph (b)(1)(i) of this section, the Secretary processes a deferment when—

(*1*) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(*2*) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(*3*) The Secretary receives student status information from the borrower's school indicating that the borrower is enrolled on at least a half-time basis.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*) or (*3*) of this section, the borrower has the option to continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

* * * * *

28. Section 685.205 is amended as follows:

A. By revising the introductory text of paragraph (a); by removing the ''period'' at the end of paragraph (a)(2) and adding, in its place, '';''; by revising paragraph (a)(4); and by removing paragraph (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(5).

B. By revising paragraph (b)(6); by removing ''or'' at the end of paragraph (b)(7); by removing the ''period'' at the end of paragraph (b)(8) and adding, in its place, ''; or''; and by adding a new paragraph (b)(9).

§ 685.205 Forbearance.

(a) *General.* ''Forbearance'' means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

* * * * *

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under 685.213;

(ii) Under 685.214;

(iii) Under 685.215; or

(iv) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

29. Section 685.207 is amended as follows:

A. By redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii);

B. By adding a new paragraph (b)(2)(ii);

C. By revising the redesignated paragraph (b)(2)(iii).

D. By redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii); and by adding a new paragraph (c)(2)(ii).

§ 685.207 Obligation to repay.

* * * * *

(b) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the 6-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full 6-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

* * * * *

(c) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the 6-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full 6-month grace period upon completion of the excluded period.

* * * * *

30. Section 685.212 is amended by revising paragraphs (d), (e), (f), and (g) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(d) *Closed schools.* If a borrower meets the requirements in 685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(f) *Unpaid refunds.* If a borrower meets the requirements in 685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(g) *Payments received after eligibility for discharge.* (1) *For the discharge*

conditions in paragraphs (a)–(e) of this section. Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(Authority: 20 U.S.C. 1087a *et seq.*)

31. Section 685.215 is redesignated it as 685.216, a new 685.215 is added to read as follows:

§ 685.215 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.*

(i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower has ceased to attend the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in 685.213(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.*

(1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or, if unknown, the loan amount.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes

collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(Authority: 20 U.S.C. 1087a *et seq.*)

32. The newly redesignated 685.216 is amended by revising paragraphs (g), (l)(1), (l)(2), and (l)(3) to read as follows:

§ 685.216 Consolidation.

* * * * *

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in 685.202(a)(3)(ii).

* * * * *

(l) * * *

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Direct Consolidation Loan under 685.212, each borrower must meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of 685.212(d), (e), or (f) as applicable.

33. Section 685.300 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) * * *

(1) * * *

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

* * * * *

34. Section 685.301 is amended by revising paragraphs (b)(2), (b)(3), introductory text, (b)(8), and (c)(2) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(2) Unless paragraph (b)(5) or (6) of this section applies, an institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), (6), or (8) of this section applies—

* * * * *

(8)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or 4 months; and

(*2*) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible postsecondary home school originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(8)(i)(A) and (B) of this section, which allow the disbursement of loans in one installment, do not apply to any loans originated by the school beginning 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

(c) * * *

(2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower's indebtedness.

* * * * *

35. Section 685.303 is amended by revising paragraph (b)(4) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible postsecondary home school originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

36. Section 685.304 is amended as follows:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text; by redesignating paragraphs (a)(3)(i)–(iv) as paragraphs (a)(3)(ii)–(v), respectively; by adding a new paragraph (a)(3)(i); by revising the newly redesignated paragraph (a)(3)(v); and by adding new paragraphs (a)(6) and (a)(7).

B. By redesignating paragraphs (b)(1)(ii), (b)(2), introductory text, (b)(2)(i) through (vi), (b)(2)(vii), (b)(3), and (b)(4), introductory text, (b)(4)(i) through (vi), (b)(4)(viii), (b)(5), and (b)(7), respectively; by revising paragraph (b)(1) and newly redesignated paragraphs (b)(3), (b)(4), introductory text, (b)(4)(v), (b)(4)(vi), (b)(4)(viii), and (b)(7); and by adding new paragraphs (b)(2), (b)(4)(vii), and (b)(6).

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a)(5) of this section, a school must conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless the borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the postsecondary home school, the school may provide the borrower with written counseling materials prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

* * * * *

(v) Inform the student as to the average anticipated monthly repayment for those students based on the average indebtedness provided under paragraph (a)(3)(iv) of this section.

* * * * *

(6) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes initial counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

(b) * * *

(1) A school must conduct exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the borrower ceases at least half-time study at the school.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the postsecondary home school, the school may provide the borrower with written counseling materials within 30 days after the borrower completes the program.

(3) If a borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, the school must provide exit counseling either through interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) In conducting the exit counseling, the school must—

* * * * *

(v) Meet the requirements described in paragraphs (a)(3)(ii) and (iii) of this section;

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vii) Review with the borrower information on the availability of the Department's Student Loan Ombudsman's office; and

(Viii) Require the borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer (if known). The school must provide this information to the Secretary within 60 days.

* * * * *

(6) A school that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

37. Section 685.402 is amended by adding a new paragraph (f) to read as follows:

§ 685.402 Criteria for schools to originate loans.

* * * * *

(f) *Determination of eligibility for multi-year use of the Master Promissory Note.* (1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be eligible for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii)(A) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*)

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August 10, 1999

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Purchase Price Allocations in Deemed Actual Asset Acquisitions; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–107069–97]

RIN 1545–AZ58

Purchase Price Allocations in Deemed Actual Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the allocation of purchase price in deemed and actual asset acquisitions. The proposed regulations determine the amount realized and the amount of basis allocated to each asset transferred in a deemed or actual asset acquisition and affect transactions reported on either Form 8023 or Form 8594.

DATES: Written comments must be received by September 20, 1999. Requests to speak and outlines of topics to be discussed at the hearing scheduled for 10 a.m., October 12, 1999, must be received by September 20, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG 107069 97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG 107069 97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Starke, (202) 622–7790 or Stephen R. Wegener, (202) 622–7530; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by October 12, 1999.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the collections will have a practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 1.338–2(d), 1.338–2(e)(4), 1.338–5(d)(3), 1.338–10(a)(4), 1.338(h)(10)–1(d)(2), and 1.1060–1(e)(ii)(A) and (B). The collections of information are necessary to make an election to treat a sale of stock as a sale of assets, to calculate and collect the appropriate amount of tax in a deemed or actual asset acquisition, and to determine the bases of assets acquired in a deemed or actual asset acquisition.

These collections of information are required to obtain a benefit. The likely respondents and/or recordkeepers are small businesses or organizations, businesses, or other for-profit institutions, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594. The burden for the collection of information in § 1.338–2(e)(4) is as follows:

Estimated total annual reporting/recordkeeping burden: 25 hours.

Estimated average annual burden per respondent/recordkeeper: 0.56 hours.

Estimated number of respondents/recordkeepers: 45.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A. Evolution of Code and Regulations

Section 338 was added to the Internal Revenue Code of 1954 (Code) by section 224(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (96 Stat. 324), and amended by section 306(a)(8) of the Technical Corrections Act of 1982, Public Law 97–448 (96 Stat. 2365), and further amended by section 712(k) of the Tax Reform Act of 1984, Public Law 98–369 (98 Stat. 951). Section 338 replaces any nonstatutory treatment of a stock purchase as an asset purchase by allowing certain acquiring corporations to elect to treat qualifying stock purchases as asset acquisitions.

General rules for making elections under section 338 were first issued in temporary regulations §§ 5f.338–1, 5f.338–2, and 5f.338–3 published as TD 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722) (1984–1 C.B. 93). Those rules were amended and redesignated as §§ 1.338–1T, 1.338–2T, and 1.338–3T by temporary regulations published as TD 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086) (1984–2 C.B. 81).

Treasury Decision 8021, published in the **Federal Register** on April 25, 1985 (50 FR 16402) (1985–1 C.B. 96), amended §§ 1.338–1T and 1.338–2T and added § 1.338–4T. These regulations provided guidance in a question and answer format, most notably in the areas of asset and stock consistency requirements.

Temporary regulations published as TD 8068 in the **Federal Register** on January 8, 1986 (51 FR 741) (1986–1 C.B. 165) amended §§ 1.338–1T and

1.338–4T. The temporary regulations published on January 8, 1986 also added § 1.338(h)(10)–1T to implement section 338(h)(10), under which a selling consolidated group can elect to treat certain stock sales as asset sales.

Sections 1.338–1T and 1.338–4T were again amended by temporary regulations published as TD 8072 in the **Federal Register** on January 29, 1986 (51 FR 3583) (1986–1 C.B. 111) (Due to typesetting errors, the Federal Register republished TD 8072 in its entirety on March 28, 1986 (51 FR 10617)). The temporary regulations published on January 29, 1986 also amended § 1.338(h)(10)–1T and added §§ 1.338(b)–1T, 1.338(b)–22T, and 1.338(b)–3T. These regulations required the selling price and basis allocated to each asset to be determined by using a four class residual method.

On February 12, 1986, temporary regulations published as TD 8074 in the **Federal Register** (51 FR 5163) (1986–1 C.B. 126) amended §§ 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T and added § 1.338–5T. These regulations provided guidance on international aspects of section 338.

Sections 1.338–1T, 1.338–2T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T were amended by temporary regulations published as TD 8088 in the **Federal Register** on May 16, 1986 (51 FR 17929) (1986–1 C.B. 103). Sections 1.338–1T, 1.338–3T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T were amended by temporary regulations published as TD 8092 in the **Federal Register** on July 1, 1986 (51 FR 23741) (1986–2 C.B. 49). The temporary regulations published on July 1, 1986 also added § 1.338(b)–4T. These regulations made miscellaneous conforming changes and transitional rules relating to making and filing section 338 elections.

Section 1060 was added by section 641 of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2282). Section 1060 requires both the buyer and the seller of a trade or business to allocate their consideration paid or received to the assets under the same residual method prescribed by the section 338 regulations. Also as part of the 1986 act, miscellaneous changes were made to section 338 by section 631, 1275, 1804(e), and 1899A (100 Stat. 2269, 2598, 2800, 2958). The changes to section 338 were made to conform section 338 with the repeal of the *General Utilities* doctrine and to define a qualified stock purchase by reference to section 1504.

General guidance under section 1060 was provided by § 1.1060–1T, added by temporary regulations published as TD 8215 on July 18, 1986 (53 FR 27035) (1988–2 C.B. 304). These regulations included direction on the scope of section 1060 and reiterated the four class residual method found in the section 338 regulations.

Section 1060 was amended by section 1006(h) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3410). This amendment requires the residual method to be used in the case of a distribution of partnership property or a transfer of an interest in a partnership, but only in determining the value of goodwill or going concern value for purposes of applying section 755. Miscellaneous changes were again made to section 338 by sections 1006(e)(20), 1012(bb)(5)(A), and 1018(d)(9) of the 1988 act (102 Stat. 3403, 3535, 3581).

Sections 338 and 1060 were amended by section 11323 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388–464). The amendments add certain reporting requirements under sections 338 and 1060. In addition, a provision was added to section 1060 under which parties are bound by written agreements as to allocations or fair market values. The legislative history indicates that the parties are so bound unless the parties can refute the agreement under the standards set forth in *Commissioner* v. *Danielson*, 378 F.2d 771 (3d Cir.), cert. denied, 389 U.S. 858 (1967) (by presenting proof which in an action between the parties would be admissible to alter that construction or to show its unenforceability because of mistake, undue influence, fraud, duress, etc.). See, H.R. Ways and Means Comm., 101st Cong., 2d Sess. (Print No. 101–37, Oct. 15, 1990), at 79 .

Temporary regulations published as TD 8339 in the **Federal Register** on March 15, 1991 (56 FR 11093) (1991–1 C.B. 52) added § 1.338–6T. The March 15, 1991, temporary regulations provided relief from situations in which a corporation making an election under section 338 could be subjected to multiple taxation on the same gain as a result of the 1986 repeal of the *General Utilities* doctrine.

On January 12, 1992, a notice of proposed rulemaking (C0–111–90) under section 338 was published in the **Federal Register** (57 FR 1409) (1992–1 C.B. 1000). The notice of proposed rulemaking contained proposed regulations to replace the question and answer asset and stock consistency rules of § 1.338–4T and the rules relating to the international aspects of section 338 found in § 1.338–5T. In addition, the proposed rules restated the remainder of the temporary regulations under section 338, except that only minor conforming changes were made to §§ 1.338(b)–2T and 1.338(b)–3T.

Section 1060 was again amended by section 13261(e) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 539). This amendment made changes to section 1060 to conform the rules for actual asset acquisitions to the amortization of intangibles under section 197. In addition, the legislative history to section 197 suggested that the residual method should be altered to accommodate section 197 intangibles (See H.R. Rep. 111, 103d Cong., 1st Sess. 760 (May 23, 1993) (1993–3 C.B. 336).

Sections 1.338–1T, 1.338–2T, 1.338–3T, 1.338–4T, 1.338–5T, 1.338(b)–1T, and 1.338(h)(10)–1T were revised and replaced by §§ 1.338–1, 1.338–2, 1.338–3, 1.338–4, 1.338–5, 1.338(b)–1, and 1.338(h)(10)–1, respectively, by final regulations published as TD 8515 in the **Federal Register** on January 20, 1994 (59 FR 2958) (1994–1 C.B. 89). The final regulations published on January 20, 1994 (TD 8515) also removed § 1.338–6T and added § 1.338(i)–1. Also, a new § 1.338–4T was added by temporary regulations published as TD 8516 on January 20, 1994 in the **Federal Register** (59 FR 2956) (1994–1 C.B. 119). The temporary regulations provided consistency rules applicable to certain cases involving controlled foreign corporations.

Treasury Decision 8626 amended § 1.338–2 by final regulations published in the **Federal Register** on October 27, 1995 (60 FR 54942) (1995–2 C.B. 34), providing rules governing the treatment of an intragroup merger following a qualified stock purchase of target stock when a section 338 election is not made for the target.

Section 1.338–4 was amended and § 1.338–4T was removed by final regulations published as TD 8710 in the **Federal Register** on January 23, 1997 (62 FR 3458) (1997–1 C.B. 82).

Sections 1.338(b)–2T, 1.338(b)–3T, and 1.1060–1T were amended by temporary regulations published as TD 8711 in the **Federal Register** on January 16, 1997 (62 FR 2267) (1997–1 C.B. 85). The January 16, 1997, changes to the regulations adapted the residual method to section 197 by adding a fifth class to the residual method prescribed for deemed and actual asset acquisitions.

B. Current Regulations

Section 338 allows certain purchasers of stock to treat the purchases instead as purchases of assets. A purchasing corporation can elect to treat a stock acquisition as an asset acquisition if it acquires 80 percent of the total voting

power and 80 percent of the total value of the stock of a target corporation (not taking into account certain preferred stock) by purchase within a 12-month period. If a purchasing corporation makes a section 338 election, the target is treated as if it (as old target) sold all of its assets at the close of the acquisition date at fair market value in a single transaction and (as new target) purchased all of the assets as of the beginning of day after the acquisition date.

If a purchasing corporation acquires the stock of a target corporation in a qualified stock purchase and makes a section 338(g) election (i.e., makes a general section 338 election, not a section 338(h)(10) election), old target's gain or loss from the deemed asset sale is included in old target's final return unless old target is a member of a consolidated group or is an S corporation. In the consolidated and S corporation cases, old target files a special final return including only the items from the deemed asset sale. § 1.338 1(e). In the consolidated case, that return is consolidated with neither the selling corporation's nor the purchasing corporation's consolidated group. In the S corporation case, old target must file the special final return as a C corporation. The section 338(g) election (as opposed to a section 338(h)(10) election) generally does not change the tax treatment of the selling shareholders—that is, they are still taxed on their stock sale, notwithstanding the purchasing corporation's section 338(g) election.

In certain cases, the selling shareholders may join with the purchasing corporation in making a section 338(h)(10) election. Until 1994, a section 338(h)(10) election could be made only for target corporations that were members of a consolidated group. The 1994 revisions to the section 338 regulations (effective retroactively to 1992 at taxpayers' election) expanded the eligibility for section 338(h)(10) elections to target corporations that are members of an affiliated group and S corporations. The section 338(h)(10) election changes the tax treatment of old target and the selling shareholders. Old target is deemed to sell all its assets in a single transaction while a member of the selling consolidated group (or while a non-consolidated affiliate, or while an S corporation owned by the selling shareholders) and is deemed immediately thereafter to distribute the proceeds in complete liquidation to the members of the selling consolidated group who sold the target stock (or to the selling affiliate or to all the S corporation shareholders). Thus, under section 338(h)(10), the selling shareholders are not treated as selling stock but instead realize gain or loss, if any, on the stock in the deemed liquidation. § 1.338(h)(10)–1(d)(2). Usually, a selling consolidated group or selling affiliate will recognize no stock gain or loss on the deemed liquidation under section 332. S corporation shareholders will include their share of items of income, gain, loss, or deduction on the deemed asset sale passed through to them under section 1366, increase or decrease their basis accordingly under section 1367, and then recognize any remaining gain or loss in their stock under section 331 (the overall effect of which is to recognize net gain or loss equal to the amount of built-in gain or loss in their S corporation stock immediately before the qualified stock purchase).

In the case of a section 338(g) election, old target's total amount realized for the assets it is deemed to sell (aggregate deemed sale price or ADSP) is the sum of (a) the purchasing corporation's grossed-up basis in recently purchased target stock; (b) the liabilities of new target; and (c) other relevant items. This is the amount to be allocated among the assets sold for purposes of determining gain or loss on the assets. § 1.338–3(d)(1) and (2). The liabilities referred to in (b) are those liabilities assumed by new target, but the amount thereof taken into account in ADSP is determined as if old target had sold its assets to an unrelated person for consideration that included the liabilities. The liabilities include any tax liability resulting from the deemed asset sale. §§ 1.338–3(d)(3) and 1.338(b)–1(f). In the case of a section 338(h)(10) election, ADSP is modified. While not stated explicitly, modified ADSP (MADSP) appears to exclude any tax liabilities resulting from the deemed asset sale. § 1.338(h)(10)–1(f).

New target's adjusted grossed-up basis in the assets it is deemed to purchase (AGUB) is the sum of (a) the purchasing corporation's grossed-up basis in recently purchased target stock; (b) the purchasing corporation's basis in nonrecently purchased target stock; (c) the liabilities of new target; and (d) other relevant items. This is the amount to be allocated among the assets sold for purposes of determining the purchaser's basis in the assets. § 1.338(b)–1(c)(1).

Section 1060(a) requires a purchaser and a seller to allocate basis for any applicable asset acquisition in the same manner as amounts are allocated to such assets under section 338(b)(5). Section 1060(c) defines an applicable asset acquisition as any transfer of assets that constitute a trade or business where the transferee's basis is determined wholly by reference to the consideration paid for the assets.

Section 338(b)(5) authorizes the Secretary to issue regulations prescribing how the deemed purchase price is to be allocated among the assets. Final and temporary regulations under sections 338(b) and 1060, as amended, implement this authority. The regulations generally require that the basis of the acquired (or deemed acquired) assets will be determined using a five class residual method. Class I consists of cash and cash equivalents; Class II consists of certificates of deposit, U.S. Government securities, readily marketable stock or securities, and foreign currency; Class III includes all assets not included in Class I, Class II, Class IV, or Class V; Class IV consists of section 197 intangible assets except those in the nature of goodwill and going concern value; and Class V consists of section 197 intangible assets in the nature of goodwill and going concern value. The total allocable basis is first decreased by the amount of Class I assets. Any remaining amount is allocated proportionally to Class II assets to the extent of their fair market value. Any remaining amount is then allocated first to Class III assets and then to Class IV assets in the same manner as to Class II assets. Finally, any remaining amount is allocated to the Class V assets. See §§ 1.338(b)–2T and 1.1060–1T.

Reasons for Change

A. In General

The regulations under section 338 have developed, in large part, through a series of small changes and additions according to the priorities of taxpayers' and the government's needs and in response to statutory amendments to section 338 or other relevant Code sections. Most of the regulations under section 338 (§§ 1.338–1, 1.338–2, 1.338–3, 1.338–4, 1.338–5, 1.338(b)–1, 1.338(h)(10)–1, and 1.338(i)–1) were made final as part of a single package as recently as 1994, but, with the exception of the consistency rules, most of those regulations were largely restatements of the existing temporary regulations that had been developed to that point. The remaining temporary regulations under section 338 and the temporary regulations under section 1060 have been substantively changed only once since 1986 and 1988, respectively, to accommodate the addition of section 197 to the Code. As a result of the ad hoc manner in which the regulations under sections 338 and 1060 have been amended, the current regulations are

difficult to follow. Thus the IRS and Treasury determined that a review of the regulations was appropriate.

In addition, the current regulations have proven problematic in three major respects: first, in their statement of tax accounting rules and their relationship to tax accounting rules for asset purchases outside of section 338, second, in the effects of the allocation rules, and, third, in their lack of a statement of a complete model for the deemed asset sale (and, in the case of section 338(h)(10) elections, the deemed liquidation) from which one can determine the tax consequences not specifically set forth in the regulations.

B. Tax Accounting Rules Under Current Regulations

The current regulations include certain rules for accounting for items in connection with the deemed asset sale. These tax accounting rules apply for determining the original amounts of and subsequent adjustments to ADSP and AGUB. For example, the regulations provide rules governing the treatment of contingent liabilities deemed assumed by new target. In some respects the tax accounting rules in the current regulations differ considerably from the tax accounting rules applicable to actual asset sales.

Link Between Old Target's and New Target's Tax Accounting

Under the current regulations, ADSP is defined as the sum of (a) the grossed-up basis of the purchasing corporation's recently purchased target stock, (b) the liabilities of new target, and (c) other relevant items. Thus, the calculation of ADSP is linked to the tax accounting treatment of new target or the purchaser of new target in item (a) above. Such link does not exist, however, in the case of an actual asset sale between two parties. In actual asset sales the timing and amount of the seller's amount realized and the timing and amount of the buyer's basis may differ. For example, with respect to the link under (a), the current fair market value of promised future contingent payments that constitute debt is taken into account in amount realized under § 1.1001–1(g) unless, in rare and extraordinary circumstances, the fair market value is not reasonably ascertainable. Yet, under § 1.1012–1(g), the current fair market value of such future contingent payments is not taken into account currently in the purchaser's basis.

This link between old target's deemed sales price and the purchasing corporation's basis in target stock existed in the original version of section 338, adopted in 1982. In 1984, Congress removed that link from the statute, providing instead that old target should be deemed to sell its assets at fair market value. The regulations originally allowed old target to choose between using the three-part formula (items (a) through (c)) above to calculate ADSP and treating the assets as being sold at their fair market value. In 1994, new regulations eliminated the election, thereafter requiring use of the three-part formula. Under the current regulations, any contingent payments for target stock do not become part of AGUB and ADSP until they become fixed and determinable. However, no rule prevents the seller from using all its basis to offset the amount realized in the year of the deemed sale. As a result of the link between old target's deemed sales price and the purchasing corporation's purchase price, old target receives open transaction treatment on terms broader than those available in an actual asset sale. Compare § 15A.453–1(d)(2)(iii) (''Only in those rare and extraordinary cases involving sales for a contingent payment obligation in which the fair market value of the obligation * * * cannot reasonably be ascertained will the taxpayer be entitled to assert that the transaction is 'open.' '')

Liabilities Assumed

The current regulations specify new target's tax accounting treatment for the assumption of liabilities. New target takes a liability into account in AGUB only if it is a bona fide liability of target as of that date that would be properly taken into account in basis under principles of tax law if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed, or taken property subject to, the liabilities, and the amount thereof is determined on the same basis. § 1.338(b)–1(f)(1) and (2).

Under § 1.338(b)–3T(a)(1), AGUB is subsequently redetermined only if an adjustment would be required, under general principles of tax law, in connection with an actual asset purchase by new target from an unrelated person. One of the subsequent events enumerated as an example is the change in a contingent liability of target to one which is fixed and determinable. Section 1.338(b)–3T(c)(1) provides that a contingent amount (including contingent liabilities of old target deemed assumed) is taken into account at the time at which such amount becomes fixed and determinable. The statement of the latter rule suggests to some that it overrides the rules based on general principles of tax law stated in §§ 1.338(b)–1(f)(2) and 1.338(b)–3T(a)(1). However, interpreting the fixed and determinable rule in this manner would be inconsistent with the economic performance rules of section 461(h), that, in some circumstances, would operate to defer new target's taking an assumed liability into account until some time after the liability becomes fixed and determinable. See §§ 1.461–4(a) and 1.446–1(c)(1)(ii)(B).

Installment Method

The current regulations provide no rules for old target to report its deemed sale gain under the installment method. Because the parties could have structured an actual asset sale to qualify for the installment method, commentators have argued that making the installment method available when a section 338(h)(10) election is made would be consistent with the full asset sale model implied by those rules. Making the installment method available when only a section 338(g) election is made would not be appropriate because the target shareholders are still treated as selling stock and because target would get a step-up in basis of assets before it had borne the tax burden for such step-up.

C. Allocation Rules Under Current Regulations

Fast Pay Assets

The current regulations employ a residual method of allocation. Under the residual method, the amount of basis to be allocated to goodwill and going concern value is based entirely on the amount of basis remaining to be allocated after all other assets have been allocated basis to the extent of their fair market values. Because assets other than goodwill and going concern value tend to be more easily valued, the residual allocation method is intended to result in less controversy over the value of goodwill and going concern value. The legislative history of section 1060, adopted in the Tax Reform Act of 1986, Public Law 99–514, (100 Stat. 2282), noted with approval the use of the residual method under the section 338(b) regulations and required that the same method be used in regulations to be prescribed under section 1060. See S. Rep. No. 313, 99th Cong., 2d Sess., May 29, 1986, at 254. Accordingly, the current regulations place each acquired asset into one of five asset classes. The total allocable basis is allocated among the classes starting with the first class and proceeding to the final, residual class. No asset in any class except for the residual class can be allocated more than its fair market value. If the aggregate basis allocable to a particular

class is less than the aggregate fair market value of the assets within the class, each asset is allocated an amount in proportion to its fair market value and nothing is allocated to any junior class.

The residual allocation method presents unique problems when the cost of the assets, and hence the basis to be allocated thereto, is less than the aggregate fair market value of the individual assets. This situation may arise as a result of the use of contingent consideration for target stock or the deemed assumption of liabilities that are not yet taken into account. If this is the case, the basis of the assets is said to be impaired. Under the residual method, the impairment is borne equally by the assets in the first class in which the cumulative fair market value exceeds the remaining aggregate basis available for allocation. As no basis is allocated to assets in junior classes, they are also impaired. If such an asset is sold, the taxpayer will realize a gain on its disposition even if its value has not increased since the acquisition date. Taxpayers may reverse the gain recognized in later years if the purchasing corporation pays or incurs additional amounts for target stock or additional target liabilities deemed assumed are taken into account. For this reason, the gain recognized is often referred to as phantom income.

The problem is most acute with assets that turn over quickly, such as accounts receivable and inventory (fast pay assets). Comments received on the temporary regulations suggested that fast pay assets should be placed in a more senior class to make it more likely that basis is allocated equal to the assets' fair market values in order to alleviate concerns over phantom income.

Top-Down Allocation

Under the current regulations, stock in a subsidiary is generally a Class III asset. In allocating basis among tiered corporations, an allocation to the stock of a subsidiary becomes the starting point for allocation to the assets inside the subsidiary if a section 338 election is also made for the subsidiary. See, e.g., § 1.338–2(b)(4) of the current regulations. One might refer to this as top-down allocation. Under a top-down allocation, the basis of assets of a particular class can be more impaired at one corporate level than at another. For example, Class III assets in the parent target corporation might be allocated some basis while Class II assets in its subsidiary are allocated no basis because Class I assets in the subsidiary have absorbed all the basis allocated to the stock in the subsidiary, a Class III asset. The differences in impairment arising from the differences in the location of assets and liabilities is inconsistent with the residual method (e.g., liabilities secured by an asset support basis of all assets in a single corporation) and can lead to the misallocation of basis.

D. Statement of Complete Model

For purposes of effectuating the statutory purpose of permitting taxpayers to elect to treat a stock acquisition as an asset acquisition, section 338 and the current regulations deem certain transactions to occur. The current regulations' express statement of these deemed transactions provides the appropriate Federal income tax consequences for most targets for which a section 338 election is made. However, as with the tax accounting rules, some taxpayers interpret the express statements in the current regulations as resulting in tax consequences different from those had they actually engaged in the transactions deemed under the regulations to have occurred or as resulting in the tax consequences specifically stated and not any of the collateral consequences.

Explanation of Provisions

A. Overview of Changes

The proposed regulations are intended to clarify the treatment of, and provide consistent rules (where possible) for, both deemed and actual asset acquisitions under sections 338 and 1060. In addition, the proposed regulations propose changes to the current regulations to take into account changes to the tax law made since the different portions of the current regulations were published. The changes made by the proposed regulations have four major components: organization of the regulations; clarification and modification of the accounting rules applicable to deemed and actual asset acquisitions; modifications to the residual method mandated for allocating consideration and basis; and miscellaneous revisions to the current regulations. These changes are discussed in the order in which they arise in the proposed regulations. The IRS and Treasury did not address any provisions of the regulations relating to the consistency rules or the international aspects of section 338.

B. Organization of Regulations

The proposed regulations change the organization of the regulations in order to make the rules for all asset acquisitions more administrable and provide consistent treatment, when appropriate, for deemed and actual asset acquisitions. In order to make the regulations more administrable, the proposed regulations redesignate certain of the final regulations and reorganize and restate the remaining final and temporary regulations in a manner that is more consistent with the approach the IRS and Treasury has taken to drafting regulations in other areas. The proposed regulations also attempt to provide similar treatment, when appropriate, for deemed and actual asset acquisitions by stating the relevant concepts once in the regulations under section 338 and cross-referencing those rules in § 1.1060–1 of the proposed regulations.

New § 1.338–1 includes a scope statement. Section 1.338–1 also addresses the question of to what extent the deemed asset sale and other elements of the section 338 regime are considered as actually having occurred for purposes of application of other Code sections, such as those relating to retirement plan sponsors. Terminology and definitions and provisions regarding the mechanics of the section 338 election of current § 1.338–1 have been moved to new § 1.338–2. The return filing rules of current § 1.338–1 have been moved to their own section, § 1.338–10. All of the current § 1.338–2 rules for qualification for making the section 338 election and rules relating to the effect on continuity of proprietary interest have been moved to new § 1.338–3.

The rules defining ADSP, as well as various rules relating to taxation of old target, currently in § 1.338–3, are in § 1.338–4 of the proposed regulations. The rules defining AGUB, currently in § 1.338(b)–1, are in § 1.338–5. Current § 1.338(b)–3T sets forth the timing of increases or decreases in ADSP and AGUB; these timing rules have been moved to new § 1.338–4 (ADSP) and new § 1.338–5 (AGUB).

Current §§ 1.338–4 and 1.338–5, dealing with consistency and with international aspects of section 338, respectively, have been renumbered § 1.338–8 and 1.338–9, respectively. The substance of these rules has not been addressed in connection with these proposed regulations.

Section 1.338–6 of the proposed regulations addresses allocation of ADSP and AGUB among assets, currently covered by § 1.338(b)–2T. The rules pertaining to subsequent adjustments to ADSP and AGUB, currently in § 1.338(b)–3T, are in § 1.338–7 of the proposed regulations.

Section 1.338(h)(10)–1 has not been renumbered.

C. Section 1.338–1 General Principles; Status of Old Target and New Target

Regulations' Scope Statement

The scope statement describes the general model of the deemed asset sale and other aspects of the regulations used as the basis for the rules in the proposed regulations. This statement of the model should assist the reader generally in the correct interpretation and application of the regulations. This section also provides that old target and new target (as well as any other affected parties, for example, when a section 338(h)(10) election is made) are to determine the tax consequences as if they had actually engaged in the transactions deemed under the section 338 regulations to have occurred. Thus, the proposed regulations clarify that old target's deemed asset sale may result in tax consequences for old target and new target (such as income and deduction) in addition to old target's gain or loss realized on its deemed sale of assets. For example, if target is an insurance company for which a section 338 election is made, the deemed asset sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817–4(d).

The proposed regulations make minor amendments to the list of sections in subtitle A for purposes of which old target and new target are considered the same corporation, notwithstanding the deemed asset sale between the two. Such changes generally are with respect to retirement plan and similar provisions.

Anti-Abuse Rule

The proposed regulations incorporate an anti-abuse rule giving the Commissioner, for purposes of calculating ADSP and AGUB and allocating ADSP and AGUB among assets, the authority under certain circumstances (a) to treat as not being part of target's assets those added to the pool of target's assets before the deemed asset sale and (b) to treat as being part of target's assets those removed from the pool of target's assets before the deemed asset sale. The Commissioner's authority to treat assets added to the pool as not being part of the pool exists when the property is transferred to old target in connection with the transactions resulting in the application of the residual method if such property is, within 24 months after the deemed asset sale, (a) not owned by new target but owned, directly or indirectly, by a member of the affiliated group of which new target is a member, or (b) owned by new target but held or used to more than an insignificant extent in connection with an activity conducted, directly or indirectly, by another member of the affiliated group of which new target is a member in combination with other property acquired, directly or indirectly, from the transferor of the property to old target. The Commissioner's authority to treat assets removed from the pool as being part of the pool exists where the property is removed in connection with the transactions resulting in the application of the residual method if the removed property, within 24 months after the deemed asset sale, (a) is owned by new target, or (b) is owned, directly or indirectly, by a member of the affiliated group of which new target is a member and continues after the election to be held or used to more than an insignificant extent in connection with one or more of the activities of new target.

D. Section 1.338–2 Nomenclature and Definitions; Mechanics of the Section 338 Election

Definitions

Four definitions of terms already used in the current regulations have been added to the proposed regulations under section 338. These terms are *acquisition date asset, deemed asset sale, deemed sale gain, and deemed sale return.* The scope of some of these terms has been expanded from their usage in the current regulations. For example, *deemed asset sale* refers to the transaction deemed under the section 338 regulations to occur between old target and new target and *deemed sale gain*, refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset sale. Deemed sale gain can also refer to the Federal income tax consequences of the transfer of a particular individual asset in the deemed asset sale. The expanded definition of deemed sale gain in conjunction with the rules in § 1.338–7(c) of the proposed regulations (§ 1.338(b)–3T(h) of the current regulations) provides a mechanism for target (or, in the case of a section 338(h)(10) election, the member of the selling consolidated group, the selling affiliate, or the S corporation shareholders to which such income, loss, or other amount is attributable) to report items that are properly taken into account after the acquisition date. One such item would be the deduction for an assumed liability of old target that it could not deduct under its method of accounting on or before the acquisition date.

The definition of *purchasing corporation* has been clarified to include new target (new T) with respect to its deemed purchase of stock in its own subsidiary.

The definition of *selling group* in § 1.338–2 of the proposed regulations and related provisions in § 1.338(h)(10)–1 of the proposed regulations provide that a section 338(h)(10) election may be made for target notwithstanding that it was at some time during the year in which the acquisition date occurs the common parent of its affiliated or consolidated group, so long as it is not the common parent on the acquisition date.

E. Section 1.338–3 Qualification for the Section 338 Election

More Than a Nominal Amount Paid for Purchase of Stock

The IRS and Treasury have received many informal comments in which guidance was requested on whether a section 338 election may be made for a target that is insolvent. In order to have a purchase of a share of stock in target, the proposed regulations generally require that more than a nominal amount of consideration be paid for the stock. With respect to target affiliates, one cannot adequately determine whether more than a nominal amount of consideration is paid for the stock because the amount paid is not determined in an arm's length transaction but instead under the allocation rules of the regulations. Consequently, the proposed regulations provide that stock in a target affiliate acquired by new target in the deemed asset sale of target's own assets is considered purchased if, under general principles of tax law, new target is considered to own stock of the target affiliate meeting the requirements of section 1504(a)(2), notwithstanding that no purchase price may be allocated to target's stock in the target affiliate. For a discussion of the tax consequences when a qualified stock purchase is made of an insolvent corporation and a section 338(h)(10) election is made, see the discussion of section 338(h)(10) elections later in this preamble.

Time for Testing Relationship

A section 338 election may be made only with respect to a transaction that qualifies as a purchase within the meaning of section 338(h)(3). Under section 338(h)(3)(iii), the parties to the transaction must be unrelated in order for a transaction to qualify as a purchase. The statute is unclear,

however, as to when the relationship between the parties is tested. The proposed regulation provides that the relationship is tested immediately after the transaction. This rule gives effect to the statutory objective of preventing a transferor from obtaining the benefits of a section 338 election while retaining a significant interest, directly or indirectly, in the property transferred. This rule also furthers the statutory objective of affording similar tax treatment to section 338 deemed asset sales and actual asset sales. For example, under this rule, if an actual sale of assets would qualify as a reorganization under section 368(a)(1)(D) (with a carryover of basis and other attributes), taxpayers are not able to reach a different result by structuring the transaction as a stock sale and electing under section 338.

F. Sections 1.338 4 and 1.338 5 Aggregate Deemed Sale Price; Various Aspects of Taxation of the Deemed Asset Sale; Adjusted Grossed-up Basis

Breaking the Link Between ADSP and AGUB

Under the current regulations, the first element in the definition of ADSP is the grossed-up basis of the purchasing corporation's recently purchased target stock. The combination of the link between the definitions of ADSP and AGUB with the rule in the current regulations that contingent payments are taken into account in AGUB as they become fixed and determinable effectively affords old target open-transaction treatment, which treatment generally is inconsistent with §§ 15A.453–1(d)(2)(iii) and 1.1001 1(g)(2). The proposed regulations remove the link in the current regulations between calculation of the first element of ADSP and the purchaser's basis in recently purchased target stock.

The new first element in the calculation of ADSP is the grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock. Amount realized is determined as if old target itself were the selling shareholder. Also, notwithstanding that the sellers of the target shares may use the installment method of section 453 to report their gain on the stock, old target may not use the installment method in the calculation of the first element of ADSP.

Time and Amount Combined

The proposed regulations provide that general principles of tax law apply in determining the timing and amount of the elements of ADSP, and that ADSP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, to the individual constituent elements of the definition of ADSP. The proposed regulations also provide a parallel rule for AGUB. Substantively, the two statements are designed to eliminate special accounting rules included in the current section 338 regulations-such as the current regulations' fixed and determinable rule for the timing of taking into account contingent amounts-and to bring taxation of old target's deemed asset sale closer to the taxation of an actual asset sale. In contrast to the current regulations, the proposed regulations state in one location all the rules for determining ADSP and AGUB.

Both the breaking of the link between the calculation of ADSP and the purchaser's basis in recently purchased stock and the removal of the fixed and determinable rule for contingent liabilities may often result in increased disparities between ADSP and AGUB.

Liabilities

The current regulations appear to presume that any tax liability of old target incurred on its deemed asset sale is a liability assumed by new target if a section 338(h)(10) election is not made but is not a liability assumed by new target if a section 338(h)(10) election is made. These presumptions apparently required that the definition of ADSP be modified in current § 1.338(h)(10)–1. The proposed regulations make clear that, whether or not a section 338(h)(10) election is made, old target's tax liability is deemed not assumed by new target only if the parties have agreed that (or the tax or non-tax rules operate such that) the seller, and not target, will bear the economic cost of that tax liability. This is because the legal burden for the tax would otherwise remain with target. Thus, the proposed regulations remove the term *MADSP* from § 1.338(h)(10)–1, and extend the use of the term *ADSP* to that regulation.

Under the proposed regulations, the amount of liabilities of old target taken into account to calculate ADSP is determined as if old target had sold its assets to an unrelated person for consideration that included the unrelated person's assumption of, or taking subject to, the liabilities. Similarly, they provide that, in order to be taken into account in AGUB, a liability must be a liability of target that is properly taken into account in basis under general principles of tax law that would apply if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liability. Regarding the timing of taking such liabilities into account, the proposed regulations provide that general principles of tax law apply in determining the timing and amount of the elements of ADSP and AGUB. Thus, for example, under general principles of tax law, a particular liability might not be taken into account in basis when a purchaser buys an asset subject to such liability, but might be taken into account at some later date; such timing controls the timing of including the liability in AGUB. Accordingly, the current rule in the regulations that liabilities are taken into account in calculating AGUB, and apparently ADSP, only when such liabilities become fixed and determinable is removed in the proposed regulations.

Costs

The treatment of selling costs for old target and acquisition costs for new target is modified. For old target, it is made clear that when grossing-up the selling shareholders' amount realized where not all the target stock is recently purchased by the purchaser, the amount of selling costs by which that grossed-up amount realized is reduced is not itself grossed-up. For new target, the definition of AGUB is changed such that when the purchaser's basis in recently purchased stock is grossed-up, acquisition costs are no longer also grossed-up.

Grossing-up the selling shareholders' selling costs or the purchasing corporation's acquisition costs would result in costs not actually incurred reducing old target's amount realized for the assets or increasing new target's cost basis in the assets. The IRS and Treasury do not believe that these results are appropriate because there is no evidence that the purchasing corporation's costs to acquire an amount of target stock sufficient for there to be a qualified stock purchase would increase proportionately if it acquired all of the target stock and the deemed asset sale mechanism allows taxpayers to avoid many of the costs that would be incurred in an actual asset sale. Accordingly, the IRS and Treasury have exercised the authority under section 338(b)(2) to prevent the grossing-up of selling costs and acquisitions costs.

Other Relevant Items

The element *other relevant items* is removed from the definitions of both ADSP and AGUB as it no longer serves any function. In the current regulations, this element reduces ADSP for the purchasing corporation's acquisition

costs that would otherwise be taken into account because the purchaser's basis in recently purchased stock was an element in calculation of both ADSP and AGUB. This element becomes unnecessary with the removal of the link between ADSP and AGUB.

G. Section 1.338–6 Allocation of ADSP and AGUB Among Target Assets

Allocation of ADSP and AGUB Generally

Apart from a change in the number of classes, the proposed regulations generally do not represent a substantive change in the system of allocation of ADSP and AGUB. The proposed regulation states the allocation rules that apply equally to ADSP and AGUB and then states the modifications to those common allocation rules for AGUB.

Transaction Costs

Generally, the definition of fair market value is the price at which a willing seller will transfer an asset to a willing buyer. Therefore, the fair market value of a particular asset to a seller is not different from the fair market value of the same asset to a buyer, even though the economic value of the asset to each would reflect the selling costs or acquisition costs. A seller may reduce its amount realized on an asset and a buyer may increase its cost basis in an asset for the transaction costs specifically allocable to the asset in an actual asset sale. Because the underlying transaction in section 338 is actually a stock sale, the costs incurred are not specifically allocable to any individual asset deemed transferred, but rather to the stock. Therefore, in applying the residual method to a deemed asset sale, transaction costs are accounted for only by decreasing the total amount realized by the seller or increasing the total cost basis of the buyer. In contrast, see the discussion of the treatment of transaction costs in an actual asset acquisition below.

IRS Challenges to Asset Fair Market Value

Drawing from the existing rules under section 1060, the proposed regulations provide that the IRS may challenge a taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties.

Number and Content of Classes

The seven classes under the proposed regulations are as follows: Class I, cash and cash equivalents; Class II, actively traded personal property as defined in section 1092(d), certificates of deposit, and foreign currency; Class III, accounts receivable, mortgages, and credit card receivables which arise in the ordinary course of business; Class IV, stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; Class V, all assets not in Class I, II, III, VI, or VII; Class VI, all section 197 intangibles except goodwill or going concern value; and Class VII, goodwill and going concern value.

AGUB Less Than the Amount of Class I Assets

The proposed regulations clarify that, if the total AGUB (or consideration in an applicable asset acquisition under section 1060) to be allocated is less than the amount of Class I assets (i.e., cash and cash equivalents), then new target (or the purchaser in an applicable asset acquisition under section 1060) immediately recognizes ordinary income to that extent.

Marketable Securities

The current regulations include marketable stock and securities, as defined in § 1.351–1(c)(3), in Class II. Marketable stock and securities are included in Class II because a value can be easily assigned at any given time by looking at the value at which those instruments were trading on a securities exchange. Since the time Class II was first defined, financial markets have evolved and a greater variety of financial instruments can be readily valued in the same manner. The proposed regulations instead defines Class II with respect to actively traded personal property as defined under section 1092(d) because the regulations under that section have a more comprehensive definition of public financial markets.

Fast Pay Assets

The IRS and Treasury are aware that many taxpayers engage in transactions solely to avoid the impairment problems with fast-pay assets. In addition, the IRS spends time evaluating whether such transactions are subject to challenge under the section 338 regulations or general principles of tax law. In order to address these concerns, the proposed regulations create two new classes of assets between current Classes II and III, one for accounts receivable, mortgages, and credit card receivables which arise in the ordinary course of business and another for stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

Residual Class

In the current regulations, Class V, the residual class, is comprised of section 197 intangibles in the nature of goodwill and going concern value. Class IV is comprised of all section 197 intangibles except those in the nature of goodwill and going concern value. Because many section 197 intangibles would have been characterized by the IRS as assets in the nature of goodwill and going concern value prior to the enactment of section 197, the current regulations provide somewhat ambiguous guidance as to the line between current Class IV and current Class V. Accordingly, the proposed regulations remove the phrase ''in the nature of.'' Furthermore, in rare circumstances, goodwill or going concern value is not a section 197 intangible. The residual class should include all goodwill and going concern value to ensure that the residual method serves the purpose of reducing valuation controversies. Therefore, the proposed regulations define the residual class as goodwill and going concern value without any reference to whether those assets would qualify as section 197 assets.

In TD 8711, *supra*, the IRS amended the current regulations to adapt the residual method to section 197 by creating a new Class IV for section 197 intangibles other than goodwill or going concern value and providing that goodwill and going concern value would remain in a true residual class. The proposed regulations retain this distinction in renumbered Class VI and Class VII. Allocating goodwill and going concern value to Class VII avoids the need for determining the value of goodwill and going concern value through a non-residual method.

Allocation of AGUB When Gain Recognition Election Available but Not Made

When the purchaser of the target stock holds nonrecently purchased target stock and no section 338(h)(10) election is made, the purchaser has the option of making or not making the gain recognition election. (If a section 338(h)(10) election is made, the making of the gain recognition election is automatic rather than elective.) The proposed regulations retain these rules. The current regulations have a special allocation rule when the failure to make

the gain recognition election leaves AGUB less than ADSP (that is, when the purchaser's nonrecently purchased stock was bought at a lower price than the recently purchased stock). Under the special allocation rule, AGUB, after reduction by the amount of Class I assets, is allocated among all other assets, regardless of their class, in proportion to their fair market values. (For this purpose, the fair market value of assets in the residual class (current Class V) is deemed to be the excess, if any, of the hypothetical purchase price over the sum of the Class I assets and the fair market values of the Class II, III, and IV assets. The hypothetical purchase price is the AGUB that would result if a gain recognition election were made.)

If, looking at the hypothetical purchase price, full fair market value was paid on the acquisition date for assets in each class above the residual class, the current regulation's special allocation rule spreads the impairment that arises because no gain recognition election was made equally among all assets in classes below Class I. However, if, looking at the hypothetical purchase price, full fair market value was not paid on the acquisition date for assets in each class above the residual class, this rule spreads the impairment that arises because no gain recognition election was made as well as the impairment that arises from the bargain purchase equally among all assets in classes below Class I. In the latter case, the prioritization of classes under the residual method becomes irrelevant by the failure to make a gain recognition election. Prior to the enactment of section 197, the effect of the current regulations generally would have been to shift basis from depreciable or amortizable assets to nondepreciable, nonamortizable assets.

The proposed regulations modify the special allocation rule to minimize this effect. Generally, under the modified special allocation rule, the portion of AGUB (after reduction by the amount of Class I assets) to be allocated to each Class II, III, IV, V, VI, and VII asset is determined by multiplying (a) the amount that would be allocated to such asset under the general rules for allocation of AGUB were AGUB increased to equal the hypothetical purchase price by (b) a fraction, the numerator of which is actual AGUB (after reduction by the amount of Class I assets) and the denominator of which is the hypothetical purchase price (after reduction by the amount of Class I assets). The reason for the modification is to spread only the impairment that arises because no gain recognition election was made equally among all assets in classes below Class I.

The IRS and Treasury request comments as to whether any special allocation rule has continuing merit.

H. Section 1.338–7 Allocation of Redetermined ADSP and AGUB Among Target Assets

In General

Section 1.338(b)–3T of the current regulations addresses subsequent adjustments to ADSP and AGUB. In the proposed regulations, these rules, contained in § 1.338–7, have been streamlined and some of their content has been moved to the sections defining ADSP and AGUB, §§ 1.338–4 and 1.338–5 respectively. The proposed regulations eliminate the use of the term *adjustment event* used in certain provisions of the current regulations. Instead, the proposed regulations provide simply that when general principles of tax law require a change in the amount of any of the various elements of ADSP or AGUB (discussed earlier), the new ADSP or AGUB amount is reapplied to produce new allocations to the assets. This generally is not intended as a substantive change to the current rules for subsequent adjustments provided in § 1.338(b)–3T.

Item-Specific Adjustments

The current regulations at § 1.338(b)–3T contain special rules for changes to AGUB (and thus, indirectly, to ADSP) that relate to the income produced by intangible assets. The special rules apply for purposes of allocating an increase or decrease in AGUB or ADSP to the extent (a) the contingency that results in the increase or decrease directly relates to income produced by a particular intangible asset (contingent income asset) and (b) the increase or decrease is related to such contingent income asset and not to other target assets. The special rules consist of two provisions that vary from the normal rules of § 1.338(b)–3T. Under the first provision, the fair market value of the contingent income asset at the beginning of the day after the acquisition date is redetermined at the time of the increase or decrease in AGUB or ADSP (but only those circumstances that resulted in the increase or decrease to AGUB or ADSP are taken into account in the redetermination). Under the second, the increase or decrease in AGUB or ADSP is allocated first to the contingent income asset, not to all assets generally under the normal allocation rules. Any portion that cannot be so allocated because of the fair market value limitation (as redetermined) is allocated under the normal allocation rules.

The intent of this rule was to accommodate the uncertainties in the valuation of contingent income assets. The rule produces an allocation that would have resulted if the parties had known on the acquisition date the fair market value of the contingent income asset (as determined, with hindsight, on the date of the adjustment event) and paid on the acquisition date the increased or decreased consideration. The IRS and Treasury weighed the usefulness of this rule with its complexity and decided that the proposed regulations should not include any item-specific adjustment rule. Commentators, if they believe that the item-specific adjustment rule continues to serve a useful function that justifies its retention, should identify in their comments in what circumstances the rule has proven useful or could prove useful. Commentators should also identify what provisions would be necessary for an effective item-specific adjustment rule.

I. Section 1.338(h)(10)–1 Deemed Asset Sale and Liquidation

Model

The proposed regulations explain the effects of the section 338(h)(10) election on the parties involved. The proposed regulations discuss the effects of the section 338(h)(10) election on the purchasing corporation, the effects on new target, the effects on old target, and the effects on old target's shareholders (including non-selling shareholders).

As with the rest of the proposed regulations, proposed § 1.338(h)(10)–1 describes the model on which taxation of the section 338(h)(10) election is based. Under the proposed regulations, old target is treated as transferring all of its assets by sale to an unrelated person. Old target recognizes the deemed sale gain while a member of the selling consolidated group, or owned by the selling affiliate, or owned by the S corporation shareholders (both those who actually sell their shares and any who do not). Old target is then treated as transferring all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceasing to exist. If target is an S corporation, the deemed asset sale and deemed liquidation are considered as occurring while it is still an S corporation. The proposed regulations treat all parties concerned as if the fictions the section 338(h)(10) regulations deem to occur actually did occur, or as closely thereto as possible. The structure of this model

should help taxpayers answer any questions not explicitly addressed by the proposed regulations. Also, old target generally is barred by the proposed regulations from obtaining any tax benefit from the section 338(h)(10) election that it would not obtain if it actually sold its assets and liquidated.

The treatment of S corporation targets which own one or more qualified subchapter S subsidiaries (as defined in section 1361(b)(3)) is also addressed, as is the treatment of tiered targets (i.e., the order of their deemed asset sales and deemed liquidations).

Deemed Liquidation

The current regulations provide that, when a section 338(h)(10) election is made, old target is deemed to sell all of its assets and distribute the proceeds in complete liquidation. The term *complete liquidation* is generally considered to be a term of art in tax law. The proposed regulations instead provide that old target transferred all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceased to exist, making it clear that the transaction following the deemed asset sale does not automatically qualify as a distribution in complete liquidation under either section 331 or 332. This is meant to clarify any inference one might draw from previous regulations that section 332 treatment is automatic under section 338(h)(10) in the case of an affiliated or consolidated group. For example, if S owns all of the stock of T, T is insolvent because of its indebtedness to S, P acquires T from S in a qualified stock purchase, and, as a condition of the sale, S cancels the debt owed it by T, and P and S make a section 338(h)(10) election for target, T's deemed liquidation would not qualify under section 332 because S would not be considered to receive anything in return for its stock in T. Rev. Rul. 68–602 (1968–2 C.B. 135).

Special S Corporation Issues

The current regulations provide that, notwithstanding the purchase of 80 percent of the shares of an S corporation by a purchasing C corporation, the S corporation continues to be considered an S corporation for purposes of determining the tax effects of the section 338(h)(10) election to old target and its S corporation shareholders. For example, old target reports to its shareholders under section 1366 the tax effects of its deemed asset sale, and the shareholders adjust their stock basis pursuant to section 1367. The proposed regulations clarify that when the target itself is an S corporation immediately before the acquisition date, any direct and indirect subsidiaries of target with respect to which qualified subchapter S subsidiary elections are in effect are considered to remain qualified subchapter S subsidiaries for purposes of target's and its S corporation shareholders' reporting the effects of target's deemed sale of assets and deemed liquidation. No similar rule applies when a qualified subchapter S subsidiary, as opposed to the S corporation that is its owner, is the target corporation. The IRS and Treasury request comments as to whether it would be beneficial to make section 338(h)(10) elections available for acquisitions of qualified subchapter S subsidiaries and as to how the section 338(h)(10) regulations should be modified to accommodate the unique taxation of these entities.

The proposed regulations clarify the effects of the section 338(h)(10) election on both selling and non-selling S corporation shareholders. For example, the proposed regulations clarify that all S corporation shareholders, selling or not, must consent to the making of the section 338(h)(10) election, particularly because the non-selling shareholders have to include their proportionate share of the deemed sale gain under section 1366. Form 8023 will be corrected to reflect this requirement.

Availability of the Section 453 Installment Method

When some or all of the target stock is purchased for an installment obligation and a section 338(h)(10) election is made, the proposed regulations make the section 453 installment method available to old target in its deemed asset sale, as long as the deemed asset sale would otherwise qualify for installment sale reporting. Solely for purposes of the application of section 453 and related provisions to the deemed asset sale and subsequent deemed corporate liquidation under section 338(h)(10), old target generally is considered to receive from new target in the deemed asset sale consideration consisting of the installment obligation given to old target shareholders in exchange for recently purchased stock, the assumption of, or taking subject to, old target liabilities, and cash. Thus, regardless of its actual character, any consideration conveyed by the purchaser to the selling shareholders other than installment obligations is considered to have been in cash, including for instance the purchaser's assumption of, or taking subject to, liabilities of the selling shareholders. In addition, the amount of any grossing-up under § 1.338–4(d) of the proposed regulations is deemed to be in the form of cash. For purposes of section 453, new target is considered to be the obligor on the installment obligation the purchasing corporation actually issued. The provisions of sections 453(h), 453B(d), and 453B(h) may then apply to old target and its shareholders with respect to the deemed liquidation of old target following the deemed asset sale. In the deemed liquidation, a selling shareholder who actually received an installment obligation in the stock sale is deemed to receive that installment obligation as part of the liquidating distribution; the other shareholders are deemed to receive none of the installment obligation.

The proposed regulations provide that old target generally is barred from obtaining any tax benefit from the section 338(h)(10) election that it would not obtain if it actually sold its assets and liquidated. This bar extends to the application of section 453. In other words, the results of application of section 453 to old target should be as close as possible to those that would occur if old target actually sold its assets for an installment obligation of the purchaser. Thus, for example, the installment method of section 453 applies unless old target affirmatively elects out of the installment method.

As another example, § 15A.453–1(b)(2)(iv) provides that any obligation created subsequent to the taxpayer's acquisition of the property and incurred or assumed by the taxpayer or placed as an encumbrance on the property in contemplation of disposition of the property is not qualifying indebtedness if the arrangement results in accelerating recovery of the taxpayer's basis in the installment sale. Old target would be subject to this test with respect to its debts new target is deemed to assume or take subject to.

Further, the rule of section 453A requiring payment of interest will apply in the same manner as it would apply if target actually sold all its assets in return for consideration that included an installment obligation from the purchaser and then distributed in complete liquidation all the consideration received.

Tiered Targets

The proposed regulations provide that, in the case of parent-subsidiary chains of corporations making section 338(h)(10) elections, the deemed asset sale at the parent level is considered to precede that at the subsidiary level. The proposed regulations then provide, however, that the deemed liquidation of

the subsidiary is considered to precede the deemed liquidation of the parent.

Additional Information Required

The proposed regulations provide that the Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require the provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form. The IRS and Treasury are considering requiring that the information about the amount and allocation of AGUB and ADSP currently submitted on the election form (Form 8023) instead be submitted by the purchaser and seller(s) separately on their income tax returns, and is interested in comments on this approach.

J. Section 1.1060–1

Definition of Trade or Business

Section 1060 applies to the direct or indirect transfer of a trade or business. Under the current regulations, a group of assets constitutes a trade or business if the use of such assets would constitute an active trade or business for purposes of section 355. Further, even if a group of assets would not qualify as an active trade or business for purposes of section 355, a group of assets will constitute a trade or business for purposes of section 1060 if goodwill or going concern value could attach under any circumstances. The current regulations set out factors that will be considered in determining whether goodwill or going concern could attach.

Although the current regulations set out factors, there are still ambiguities regarding when goodwill or going concern value could attach. For example, § 1.1060–1T(b)(2) has been misinterpreted to mean that a trade or business exists only when basis is allocated to goodwill or going concern value under the residual method. Under the misinterpretation, a taxpayer would be required to filter every bulk asset purchase through the residual allocation method in order to determine whether the transaction is subject to section 1060. The proposed regulations clarify that a trade or business is present if goodwill or going concern value could attach to the group of assets, regardless of whether any value will eventually be allocated to the residual class (Class VII).

In addition, the proposed regulations provide that the presence of assets in the nature of section 197 assets is a factor to be considered in determining whether goodwill or going concern value could attach. This clarification recognizes that many section 197 assets would have been considered part of goodwill or going concern value at the time Congress enacted section 1060. However, the proposed regulations make it clear that the transfer of an isolated section 197 asset will not be subject to section 1060.

The proposed regulations clarify that an applicable asset acquisition can occur even if the trade or business is transferred from seller to purchaser in a series of related transactions and that the residual method must be applied once to all of the assets transferred in a series of related transactions. The proposed regulations also incorporate the principles of the anti-abuse rule from § 1.338–1(c) of the proposed regulations to determine which assets must be included for purposes of applying the residual method.

Asymmetrical Transfers of Assets

Section 1060 applies to the direct or indirect acquisition of a trade or business when the purchaser's basis in the assets (other than assets to which section 1031 applies) is determined wholly by reference to the consideration paid by the purchaser. This rule clarifies that a purchaser of assets in an applicable asset acquisition is subject to the allocation rules set out in §§ 1.338–6 and 1.338–7 even if the transferor in the transaction is treated as transferring something different from the assets the transferee is treated as receiving. For example, Rev. Rul. 99–6 (1999–6 I.R.B. 6) concerns the purchase, by one person, of all of the interests in a limited liability company which is classified as a partnership under § 301.7701–3. The revenue ruling sets forth two situations and holds that each seller is treated as having transferred its interests in the partnership, while each purchaser is treated as having purchased the assets of the limited liability company. The proposed regulations make it clear that each purchaser described in Rev. Rul. 99–6 must use the residual method prescribed under §§ 1.338–6 and 1.338–7 to allocate the consideration paid for the purchased assets (provided that the asset transfer otherwise qualifies as an applicable asset acquisition).

Multiple Trades or Businesses Transferred in a Single Transaction

The current regulations are silent on the proper application of the residual method to situations when a seller transfers a group of assets that could be categorized as constituting more than one trade or business. The proposed regulations clarify that, as long as any part of the assets are a trade or business, all of the assets are to be treated as a single trade or business for purposes of applying the residual method. Therefore, the residual method should be applied once to all of the assets transferred, rather than to blocks of the assets separately. This rule is intended to reduce valuation conflicts regarding how much consideration should be allocated to each separate group of assets. By treating all of the assets as a single trade or business, all assets in Classes I through VI can receive full fair market value allocation before the goodwill of any trade or business is allocated basis. In addition, this rule brings actual asset acquisitions into conformity with deemed asset acquisitions by allocating consideration paid across all assets acquired, without looking to the trade or business with which they are associated.

Miscellaneous Changes

The proposed regulations incorporate two miscellaneous changes addressing issues that have arisen under the current regulations. First, the proposed regulations include any covenants entered into between the seller and the purchaser in connection with an applicable asset acquisition as an asset transferred as part of a trade or business even though, to the seller, the covenant is a contract for services. As a result, sellers must include any covenants in the asset pool for purposes of applying the residual method, thus allowing for greater symmetry to be achieved between the purchaser and seller.

Second, the like-kind exchange rule in the current regulation has been expanded. Under this expanded rule, if an applicable asset acquisition includes property that is transferred subject to any provision of the Code or regulations that has the tax effect of section 1031, the tax treatment determined under such provision is given effect. The residual method is then applied to the remaining assets and consideration exchanged.

In addition, the proposed regulations no longer separately state the residual allocation method. Instead, proposed § 1.1060–1 incorporates the residual method by cross reference to proposed regulations §§ 1.338–6 and 1.338–7. Proposed regulation § 1.1060–1 only sets out rules in which the treatment of an actual asset acquisition differs from the treatment of a deemed asset acquisition. By cross-referencing the section 338 regulations rather than separately stating the residual method, the proposed regulations ensure that deemed and actual asset acquisitions will be treated similarly to the extent possible.

Transaction Costs

Under the current regulations, consideration is allocated to each asset to the extent of that asset's fair market value as long as there is sufficient consideration to provide full allocation of basis to each asset in the class. The fair market value limitation and the residual allocation method of the current regulations do not permit costs associated with specific assets to be allocated to those assets. For example, if a purchaser incurred costs to acquire an asset and section 1060 did not apply to the acquisition, the basis of that asset would be increased to reflect those costs. However, the fair market value limitation under the current regulations would limit a purchaser's basis in the asset to its fair market value. The proposed regulations allow the buyer and seller to adjust their allocation of consideration to particular assets for costs incurred which are specifically identified with those assets. Thus, the total amount the seller allocates to an asset for which it incurs specifically identifiable costs would be less than its fair market value and, for the buyer, greater than its fair market value. The parties are not allowed to apportion costs associated generally with the overall transaction to specific assets. A similar rule is not necessary, and therefore not included, under section 338, because the underlying transaction is a stock sale. Any costs associated with a deemed asset sale are of the type generally associated with the overall sale of stock and, therefore, the parties would not be allowed to apportion those costs to specific assets under the rule.

Written Allocation Agreements

After the current regulations were adopted, Congress amended section 1060 to provide that a written agreement allocating purchase price is binding on both parties. See section 1060(a). The legislative history indicates that parties must report consistent with their agreed-upon allocations, unless the parties are able to refute the agreement under the standards set forth in *Commissioner* v. *Danielson,* 378 F.2d 771 (3d Cir.), cert. denied, 389 U.S. 858 (1967). The proposed regulations incorporate the *Danielson* standard by reference.

Specific Requests for Comments and Matters Under Study

A. Examples in the Section 338 and Section 1060 Regulations

The proposed regulations, for the most part, retain the examples of the current regulations. The retained examples are updated to reflect the changes in the location, terminology, and substance of the regulations which they illustrate. Some examples have been dropped as it was thought that they were unnecessary. Comments are requested as to whether any of the retained examples (or new examples) are superfluous and whether other examples are necessary to illustrate the regulations.

B. Discharge of Indebtedness Income in the Case of Tiered Targets Under Section 338 and the Current Regulations

Taxpayers may inadvertently experience adverse tax consequences when there is intercompany indebtedness owing between tiered targets acquired in the same qualified stock purchase. Such consequences might include the realization of discharge of indebtedness income and changes to the issue price of the indebtedness. The latter could affect the total amount of AGUB to be allocated.

For example, assume that T owns 100 percent of the stock of T1, T and T1 do not file a consolidated return, and T is indebted to T1. Assume also that P acquires all the stock of T in a qualified stock purchase and makes section 338 elections for both T and T1. Under § 1.338–2(b)(4), first old T is considered to sell its assets to new T, and new T is deemed to assume the debt of old T to old T1. Next, old T1 is deemed to sell its assets to new T1. New T1 thus may be considered to acquire debt owed by new T (to old T1) at a time when new T1 is related to new T.

Under section 108(e)(4), this may trigger discharge of indebtedness income for new T if new T1's adjusted basis in the acquired debt is less than the amount of the debt (see § 1.108–2(f)(1)). That might occur when the T stock is purchased partly for contingent consideration not originally taken into account in AGUB. A variety of similar issues may arise under § 1.1502 13(g).

The IRS and Treasury solicit comments on whether the application of section 108(e)(4) and § 1.1502–13(g) is appropriate in these circumstances and how one might best address these consequences.

C. Ideas for Revision of Application of the Residual Method of Allocation Under Section 338 in the Case of Tiered Targets

In General

The IRS and Treasury are studying ways of addressing the allocation of ADSP and AGUB in the case of tiered targets making section 338 elections. Set forth below is the framework for one potential method that would equalize the amount of impairment for assets in a given class without regard to which target corporation owns the assets. This method uses a lookthrough approach. The method is incomplete, raises difficult issues, and is more complicated than the current rules. For these reasons, the proposed regulations do not adopt the method. However, the IRS and Treasury request comments as to the value and feasibility of the method; how best to resolve its issues; and what alternative approaches might be better. For instance, would it be better to have a complicated special method such as that described below that operates in every case of tiered targets or, as the proposed regulations do, retain the approach of the current regulations with the addition of an anti-abuse rule, the goal of which is to restrict movement of assets in advance of the qualified stock purchase undertaken to benefit from the shortcomings of the current top-down rules?

Essentially, the lookthrough approach referred to above would revise the treatment of Classes I through V (referring to the class numbering system of the proposed regulations). In allocating to these senior classes, the tiered targets would be aggregated for purposes of calculating the overall purchase price and allocating that amount among the individual assets. This rule would apply to a target (referred to as the parent target) and to those of its lower tier subsidiaries for which a section 338 election is also made (referred to as subsidiary targets). Stock in subsidiaries for which section 338 elections are not or cannot be made would continue to be treated for all purposes as a Class V asset (or Class II if publicly traded)—in other words, such entities would not participate in the aggregation.

The method would thereafter switch back to the normal top-down system for allocation to assets in Classes VI and VII, because the process of dividing up the amount allocated to the aggregate goodwill of all the targets under the residual method would be antithetical to the notion that goodwill is best valued by looking at what value is left over rather than being separately valued, and because both Class VI and VII assets generally get the same 15 year amortization period pursuant to section 197–hence determining which of those two classes or assets within the classes receives a given dollar of basis is relatively insignificant.

An issue in applying the method is how to treat liabilities owed by one group member to another. The IRS and Treasury request comments as to whether such liabilities should be

treated for all allocation purposes as not debt but as stock in the debtor-member held by the creditor-member, and whether to do so even if the creditor-member is a subsidiary of the debtor-member.

One possible method of implementing the method is set forth in greater detail, below. Possible method of implementation of the lookthrough approach

The first step under the method would be to calculate the total amount to be allocated (ADSP and AGUB). Under the method, this would be the sum of (a) the amount realized or basis, as appropriate, of the parent target stock (grossed-up as appropriate to reflect stock not recently purchased, etc.) and (b) liabilities.

In the second step, all Class I through Class V assets in the parent target and subsidiary targets (other than stock of subsidiary targets) would be combined into aggregate Classes I, II, III, IV, and V. Then, the total basis would be allocated (as basis is under the current system, except that the allocation would be across such joint classes, not merely within individual members) first to Class I assets, then, if there is any remainder, to Class II assets, then, if there is any remainder, to Class III assets, then, if there is any remainder, to Class IV assets, and then, if there is any remainder, to Class V assets. The allocations thus made to individual Class I through V assets would be the final, binding allocations to them.

In the third step, if there were no amount of the total basis remaining to be allocated to Class VI and VII assets, one would proceed to determine the basis in subsidiary target stock. If the aggregate amount assigned to all the subsidiary's Class I through V assets pursuant to the second step above exceeded the amount of the subsidiary's liabilities, then the amount of the excess would become its parent's basis in that subsidiary's stock.

If the aggregate amount were, however, less than the liabilities, then the stock basis would be zero. A subissue is whether in such case other action should also be taken: whether, in the case of a consolidated group, an excess loss account should be created equal to the amount of the shortfall; and whether, if the tiered entities do not join in filing a consolidated return but other nonconsolidated investment adjustment rules apply, future positive basis increases should be denied to the extent of the excess loss account that would have been created under the method had they been filing consolidated. The rule could apply, for example, to increases in basis of controlled foreign corporations for undistributed earnings taxed currently under subpart F.

Under the method, if there were an amount of the total ADSP or AGUB remaining to be allocated to Class VI and VII assets, then one would proceed to allocate basis to Class VI and VII assets. At this point, the aggregating of members' assets into joint classes would be abandoned and the method would revert to a top-down system similar to that of current rules. The process is top-down in that any basis not already allocated to the parent target's Class I through V assets (other than subsidiary target stock) would be allocated among its Class VI and VII assets and subsidiary target stock, then the subsidiary target would in turn make its own allocation of its own basis among its own Class VI and VII assets and any stock it might own in other subsidiary targets.

Certain adjustments, as yet undetermined, would have to be made to this method for minority interests outstanding in subsidiaries.

Possible Disadvantages of the Method

The method has drawbacks:

(1) *Complexity.* The method is more complicated than the existing rules. When, for example, there is a subsequent change in the amount of a liability of a subsidiary target that changes the amount of AGUB or ADSP, under the method one would recalculate the allocations to all the assets of the parent target and all subsidiary targets, not just the assets of the indebted subsidiary target and its own subsidiary targets.

Also, questions arise regarding subsequent changes in AGUB and ADSP, with respect to subsidiary targets already disposed of. What if, for instance, at the time of a subsequent adjustment to AGUB or ADSP, the group had already disposed of the stock of a particular subsidiary target should one change the allocation to that former subsidiary's assets? Separately, in determining whether AGUB or ADSP has changed, should one take into account changes in the amount of liabilities of former subsidiary targets? How would the group be made aware of such changes?

(2) *Lack of inside-outside basis conformity.* The current system, although it tolerates large disparities in the allocations to identical assets based on location, assures conformity between stock basis and net asset basis. The look-through approach does so only in a consolidated setting (employing excess loss accounts to do so).

(3) *The method would not eliminate all allocation disparities.* The method would not completely eliminate disparate allocations based on location within the acquired group, because it applies only to tiered targets. Similar disparities can exist in acquisitions of sister corporations or in mixed stock and asset purchases. The method does not include a mechanism for equalizing basis impairment in such cases. Thus, the method would not fully solve the disparity problem. (Note, however, that the new anti-abuse rule included in the proposed regulations may operate in some cases.)

Proposed Effective Date

The regulations are proposed to be effective on the date that final regulations are published in the **Federal Register** and apply to qualified stock purchases or applicable asset acquisitions occurring on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. An initial regulatory flexibility analysis has been prepared pursuant to 5 U.S.C. section 604 for the collections of information in this Treasury Decision. The analysis is set forth below under the heading ''Initial Regulatory Flexibility Analysis.'' Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

This regulatory action is intended to simplify and clarify the current rules relating to both deemed and actual asset acquisitions. The current rules were developed over a long period of time and have been repeatedly amended. The IRS and Treasury believe these proposed regulations will significantly improve the clarity of the rules relating to both deemed and actual asset acquisitions.

The major objective of the proposed regulations is to modify the rules for allocating purchase price in both deemed and actual asset acquisitions. In addition, the proposed regulations replace the general rules for electing to treat a stock sale as an asset sale.

These collections of information may affect small businesses if the stock of a corporation which is a small entity is acquired in a qualified stock purchase or if a trade or business which is also a small business is transferred in a

taxable transaction. Form 8023 (on which an election to treat a stock sale as an asset sale is filed) has been submitted to and approved by the Office of Management and Budget. With respect to Form 8023, the IRS estimated that 201 forms would be filed each year and that each taxpayer would require 12.98 hours to comply. Form 8594 (on which a sale or acquisition of assets constituting a trade or business is reported) has also been submitted to and approved by the Office of Management and Budget. With respect to Form 8594, the IRS estimated that 20,000 forms would be filed each year and that each taxpayer would require 12.25 hours to comply. These estimates have been made available for public comment and no public comments have been received. These proposed regulations do not impose new requirements on small businesses and, in fact, should lessen any difficulties associated with the existing reporting requirements by clarifying the rules associated with deemed and actual asset acquisitions.

The collections of information require taxpayers to file an election in order to treat a stock sale as an asset sale. In addition, taxpayers must file a statement regarding the amount of consideration allocated to each class of assets under the residual method. The professional skills that would be necessary to make the election or allocate the consideration would be the same as those required to prepare a return for the small business.

Consideration was given to limiting the reporting requirements under section 1060 to trades or businesses meeting a threshold level of business activity. However, any threshold derived without further information would be arbitrary. Instead, the proposed regulations authorize the Commissioner to exclude certain transactions from the reporting requirements.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 12, 1999, beginning at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The IRS recognizes that persons outside the Washington, DC, area may also wish to testify at the public hearing through teleconferencing. Requests to include teleconferencing sites must be received by September 20, 1999. If the IRS receives sufficient indications of interest to warrant teleconferencing to a particular city, and if the IRS has teleconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests. The IRS will publish the locations of any teleconferencing sites in an announcement in the **Federal Register**.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 20, 1999. A period of ten minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal authors of these proposed regulations are Richard Starke and Stephen R. Wegener, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.338(b)–1, 1.338(b)–3T, and 1.1060 1T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.338–6 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–7 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–8 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–9 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–10 also issued under 26 U.S.C. 337(d), 338, and 1502.* * *

Section 1.1060–1 also issued under 26 U.S.C. 1060.* * *

Par. 2. Sections 1.338–0 through 1.338–3 are revised to read as follows:

§ 1.338–0 Outline of topics.

This section lists the captions contained in the regulations under section 338 as follows:

§ 1.338–1 General principles; status of old target and new target.

(a) In general.
(1) Deemed transaction.
(2) Application of other rules of law.
(3) Overview.
(b) Treatment of target under other provisions of the Internal Revenue Code.
(1) General rule for subtitle A.
(2) Exceptions for subtitle A.
(3) General rule for other provisions of the Internal Revenue Code.
(c) Anti-abuse rule.
(1) In general.
(2) Examples.

§ 1.338–2 Nomenclature and definitions; mechanics of the section 338 election.

(a) Scope.
(b) Nomenclature.
(c) Definitions.
(1) Acquisition date.
(2) Acquisition date assets.
(3) Affiliated group.
(4) Common parent.
(5) Consistency period.
(6) Deemed asset sale.
(7) Deemed sale gain.
(8) Deemed sale return.
(9) Domestic corporation.
(10) Old target's final return.
(11) Purchasing corporation.
(12) Qualified stock purchase.
(13) Related persons.
(14) Section 338 election.
(15) Section 338(h)(10) election.
(16) Selling group.
(17) Target; old target; new target.
(18) Target affiliate.
(19) 12-month acquisition period.
(d) Time and manner of making election.
(e) Special rules for foreign corporations or DISCs.
(1) Elections by certain foreign purchasing corporations.
(i) General rule.

(ii) Qualifying foreign purchasing corporation.
(iii) Qualifying foreign target.
(iv) Triggering event.
(v) Subject to United States tax.
(2) Acquisition period.
(3) Statement of section 338 may be filed by United States shareholders in certain cases.
(4) Notice requirement for U.S. persons holding stock in foreign market.
(i) General rule.
(ii) Limitation.
(iii) Form of notice.
(iv) Timing of notice.
(v) Consequence of failure to comply.
(vi) Good faith effort to comply.
§ 1.338–3 Qualification for the section 338 election.
(a) Scope.
(b) Rules relating to qualified stock purchases.
(1) Purchasing corporation requirement.
(2) Purchase.
(i) Definition.
(ii) Purchase of target.
(iii) Purchase of target affiliate.
(3) Acquisitions of stock from related corporations.
(i) In general.
(ii) Time for testing relationship.
(iii) Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.
(iv) Examples.
(4) Acquisition date for tiered targets.
(i) Stock sold in deemed asset sale.
(ii) Examples.
(5) Effect of redemptions.
(i) General rule.
(ii) Redemptions from persons unrelated to the purchasing corporation.
(iii) Redemptions from the purchasing corporation or related persons during 12-month acquisition period.
(A) General rule.
(B) Exception for certain redemptions from related corporations.
(iv) Examples.
(c) Effect of post-acquisition events on eligibility for section 338 election.
(1) Post-acquisition elimination of target.
(2) Post-acquisition elimination of the purchasing corporation.
(3) Consequences of post-acquisition elimination of target.
(i) Scope.
(ii) Continuity of interest.
(iii) Control requirement.
(iv) Example.
§ 1.338–4 Aggregate deemed sale price; various aspects of taxation of the deemed asset sale.
(a) Scope.
(b) Determination of ADSP.
(1) General rule.
(2) Time and amount of ADSP.
(i) Original determination.
(ii) Redetermination of ADSP.
(iii) Example.
(c) Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock.
(1) Determination of amount.
(2) Example.
(d) Liabilities of old target.
(1) In general.
(2) Time and amount of liabilities.
(3) Interaction with deemed sale gain.
(e) Calculation of deemed sale gain.
(f) Other rules apply in determining ADSP.
(g) Examples.
(h) Deemed sale of target affiliate stock.
(1) Scope.
(2) In general.
(3) Deemed sale of foreign target affiliate by a domestic target.
(4) Deemed sale producing effectively connected income.
(5) Deemed sale of insurance company target affiliate electing under section 953(d).
(6) Deemed sale of DISC target affiliate.
(7) Anti-stuffing rule.
(8) Examples.
§ 1.338–5 Adjusted grossed-up basis.
(a) Scope.
(b) Determination of AGUB.
(1) General rule.
(2) Time and amount of AGUB.
(i) Original determination.
(ii) Redetermination of AGUB.
(iii) Examples.
(c) Grossed-up basis of recently purchased stock.
(d) Basis of nonrecently purchased stock; gain recognition election.
(1) No gain recognition election.
(2) Procedure for making gain recognition election.
(3) Effect of gain recognition election.
(i) In general.
(ii) Basis amount.
(iii) Losses not recognized.
(iv) Stock subject to election.
(e) Liabilities of new target.
(1) In general.
(2) Time and amount of liabilities.
(3) Interaction with deemed sale gain.
(f) Adjustments by the Internal Revenue Service.
(g) Examples.
§ 1.338–6 Allocation of ADSP and AGUB among target assets.
(a) Scope.
(1) In general.
(2) Fair market value.
(i) In general.
(ii) Transaction costs.
(iii) Internal Revenue Service authority.
(b) General rule for allocating ADSP and AGUB.
(1) Reduction in the amount of consideration for Class I assets.
(2) Other assets.
(i) In general.
(ii) Class II assets.
(iii) Class III assets.
(iv) Class IV assets.
(v) Class V assets.
(vi) Class VI assets.
(vii) Class VII assets.
(3) Other items designated by the Internal Revenue Service.
(c) Certain limitations and other rules for allocation to an asset.
(1) Allocation not to exceed fair market value.
(2) Allocation subject to other rules.
(3) Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock.
(i) Scope.
(ii) Determination of hypothetical purchase price.
(iii) Allocation of AGUB.
(4) Liabilities taken into account in determining amount realized on subsequent disposition.
(d) Examples.
§ 1.338–7 Allocation of redetermined ADSP and AGUB among target assets.
(a) Scope.
(b) Allocation of redetermined ADSP and AGUB.
(c) Special rules for ADSP.
(1) Increases or decreases in deemed sale gain taxable notwithstanding old target ceases to exist.
(2) Procedure for transactions in which section 338(h)(10) is not elected.
(i) Deemed sale gain included in new target's return.
(ii) Carryovers and carrybacks.
(A) Loss carryovers to new target taxable years.
(B) Loss carrybacks to taxable years of old target.
(C) Credit carryovers and carrybacks.
(3) Procedure for transactions in which section 338(h)(10) is elected.
(d) Special rules for AGUB.
(1) Effect of disposition or depreciation of acquisition date assets.
(2) Section 38 property.
(e) Examples.
§ 1.338–8 Asset and stock consistency.
(a) Introduction.
(1) Overview.
(2) General application.
(3) Extension of the general rules.
(4) Application where certain dividends are paid.
(5) Application to foreign target affiliates.
(6) Stock consistency.
(b) Consistency for direct acquisitions.
(1) General rule.
(2) Section 338(h)(10) elections.
(c) Gain from disposition reflected in basis of target stock.
(1) General rule.
(2) Gain not reflected if section 338 election made for target.
(3) Gain reflected by reason of distributions.
(4) Controlled foreign corporations.
(5) Gain recognized outside the consolidated group.
(d) Basis of acquired assets.
(1) Carryover basis rule.
(2) Exceptions to carryover basis rule for certain assets.
(3) Exception to carryover basis rule for de minimis assets.
(4) Mitigation rule.
(i) General rule.
(ii) Time for transfer.
(e) Examples.
(1) In general.
(2) Direct acquisitions.
(f) Extension of consistency to indirect acquisitions.
(1) Introduction.
(2) General rule.
(3) Basis of acquired assets.
(4) Examples.
(g) Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid.

(1) General rule for direct acquisitions from target.
(2) Other direct acquisitions having same effect.
(3) Indirect acquisitions.
(4) Examples.
(h) Consistency for target affiliates that are controlled foreign corporations.
(1) In general.
(2) Income or gain resulting from asset dispositions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Operating rule.
(iv) Increase in asset or stock basis.
(3) Stock issued by target affiliate that is a controlled foreign corporation.
(4) Certain distributions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Increase in asset or stock basis.
(5) Examples.
(i) [Reserved]
(j) Anti-avoidance rules.
(1) Extension of consistency rules.
(2) Qualified stock purchase and 12-month acquisition period.
(3) Acquisitions by conduits.
(i) Asset ownership.
(A) General rule.
(B) Application of carryover basis rule.
(ii) Stock acquisitions.
(A) Purchase by conduit.
(B) Purchase of conduit by corporation.
(C) Purchase of conduit by conduit.
(4) Conduit.
(5) Existence of arrangement.
(6) Predecessor and successor.
(i) Persons.
(ii) Assets.
(7) Examples.
§ 1.338–9 International Aspects of Section 338.
(a) Scope.
(b) Application of section 338 to foreign targets.
(1) In general.
(2) Ownership of FT stock on the acquisition date.
(3) Carryover FT stock.
(i) Definition.
(ii) Carryover of earnings and profits.
(iii) Cap on carryover of earnings and profits.
(iv) Post-acquisition date distribution of old FT earnings and profits.
(v) Old FT earnings and profits unaffected by post-acquisition date deficits.
(vi) Character of FT stock as carryover FT stock eliminated upon disposition.
(4) Passive foreign investment company stock.
(c) Dividend treatment under section 1248(e).
(d) Allocation of foreign taxes.
(e) Operation of section 338(h)(16). [Reserved]
(f) Examples.
§ 1.338–10 Filing of Returns.
(a) Returns including tax liability from deemed asset sale.
(1) In general.
(2) Old target's final taxable year otherwise included in consolidated return of selling group.
(i) General rule.
(ii) Separate taxable year.
(iii) Carryover and carryback of tax attributes.
(iv) Old target is a component member of purchasing corporation's controlled group.
(3) Old target is an S corporation.
(4) Combined deemed sale return.
(i) General rule.
(ii) Gain and loss offsets.
(iii) Procedure for filing a combined return.
(iv) Consequences of filing a combined return.
(5) Deemed sale excluded from purchasing corporation's consolidated return.
(6) Due date for old target's final return.
(i) General rule.
(ii) Application of § 1.1502 76(c).
(A) In general.
(B) Deemed extension.
(C) Erroneous filing of deemed sale return.
(D) Erroneous filing of return for regular tax year.
(E) Last date for payment of tax.
(7) Examples.
(b) Waiver.
(1) Certain additions to tax.
(2) Notification.
(3) Elections or other actions required to be specified on a timely filed return.
(i) In general.
(ii) New target in purchasing corporation's consolidated return.
(4) Examples.
§ 1.338(h)(10)–1 Deemed Asset Sale and Liquidation.
(a) Scope.
(b) Definitions.
(1) Consolidated target.
(2) Selling consolidated group.
(3) Selling affiliate; affiliated target.
(4) S corporation target.
(5) S corporation shareholders.
(6) Liquidation.
(c) Section 338(h)(10) election.
(1) In general.
(2) Simultaneous joint election requirement.
(3) Irrevocability.
(4) Effect of invalid election.
(d) Certain consequences of section 338(h)(10) election.
(1) P.
(2) New T.
(3) Old T—deemed sale.
(i) In general.
(ii) Tiered targets.
(4) Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization.
(i) In general.
(ii) Tiered targets.
(5) Selling consolidated group, selling affiliate, or S corporation shareholders.
(i) In general.
(ii) Basis and holding period of T stock not acquired.
(iii) T stock sale.
(6) Nonselling minority shareholders other than nonselling S corporation shareholders.
(i) In general.
(ii) T stock sale.
(iii) T stock not acquired.
(7) Consolidated return of selling consolidated group.
(8) Availability of the section 453 installment method.
(i) In deemed asset sale.
(ii) In deemed liquidation.
(9) Treatment consistent with an actual asset sale.
(e) Examples.
(f) Inapplicability of provisions.
(g) Required information.
§ 1.338(i)–1 Effective dates.

§ 1.338–1 General principles; status of old target and new target.

(a) *In general*—(1) *Deemed transaction.* Elections are available under section 338 when a purchasing corporation acquires the stock of another corporation (the target) in a qualified stock purchase. One type of election, under section 338(g), is available to the purchasing corporation. Another type of election, under section 338(h)(10), is, in more limited circumstances, available jointly to the purchasing corporation and the sellers of the stock. (Rules concerning eligibility for these elections are contained in §§ 1.338–2, 1.338–3, and 1.338(h)(10)–1.) Although target is a single corporation under corporate law, if a section 338 election is made, then two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code. Old target is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the assumption of, or taking subject to, liabilities, and new target is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of or taking subject to liabilities. (Such transaction is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset sale and the income tax consequences thereof as the deemed sale gain.) If a section 338(h)(10) election is made, old target is also deemed to liquidate following the deemed asset sale.

(2) *Application of other rules of law.* Other rules of law apply to determine the tax consequences to the parties as if they had actually engaged in the transactions deemed to occur under section 338 and the regulations hereunder except to the extent otherwise provided in the regulations hereunder. See also § 1.338–6(c)(2). Other rules of law may characterize the transaction as something other than or in addition to a sale and purchase of assets; however, it must be a taxable transaction. For example, if target is an insurance company for which a section 338 election is made, the deemed asset

sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817–4(d).

(3) *Overview.* Definitions and special nomenclature and rules for making the section 338 election are provided in § 1.338–2. Qualification for the section 338 election is addressed in § 1.338–3. The amount for which old target is treated as selling all of its assets (the aggregate deemed sale price, or ADSP) is addressed in § 1.338–4. The amount for which new target is deemed to have purchased all its assets (the adjusted grossed-up basis, or AGUB) is addressed in § 1.338–5. Section 1.338–6 addresses allocation both of ADSP among the assets old target is deemed to have sold and of AGUB among the assets new target is deemed to have purchased. Section 1.338–7 addresses allocation of ADSP or AGUB when those amounts change after the close of new target's first taxable year. Asset and stock consistency are addressed in § 1.338–8. International aspects of section 338 are covered in § 1.338–9. Rules for the filing of returns are provided in § 1.338–10. Eligibility for and treatment of section 338(h)(10) elections is addressed in § 1.338(h)(10)–1.

(b) *Treatment of target under other provisions of the Internal Revenue Code*—(1) *General rule for subtitle A.* Except as provided in this section, new target is treated as a new corporation that is unrelated to old target for purposes of subtitle A of the Internal Revenue Code. Thus—

(i) New target is not considered related to old target for purposes of section 168 and may make new elections under section 168 without taking into account the elections made by old target; and

(ii) New target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446. Notwithstanding § 1.441–1T(b)(2), a new target may adopt a taxable year on or before the last day for making the election under section 338 by filing its first return for the desired taxable year on or before that date.

(2) *Exceptions for subtitle A.* New target and old target are treated as the same corporation for purposes of—

(i) The rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 106, 125, 127, 129, 132, 137, and 220), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), tax qualified stock option plans (sections 422 and 423), welfare benefit funds (sections 419, 419A, 512(a)(3), and 4976), voluntary employee benefit associations (section 501(c)(9) and the regulations thereunder);

(ii) Sections 1311 through 1314 (relating to the mitigation of the effect of limitations) if a section 338(h)(10) election is not made for target;

(iii) Section 108(e)(5) (relating to the reduction of purchase money debt);

(iv) Section 45A (relating to the Indian Employment Credit), section 51 (relating to the Work Opportunity Credit), section 51A (relating to the Welfare to Work Credit), and section 1396 (relating to the Empowerment Zone Act);

(v) Sections 401(h) and 420 (relating to medical benefits for retirees);

(vi) Section 414 (relating to definitions and special rules); and

(vii) Any other provision designated in the Internal Revenue Bulletin by the Internal Revenue Service. See § 601.601(d)(2)(ii) of this chapter (relating to the Internal Revenue Bulletin). See § 1.1001–3(e)(4)(F) providing that an election under section 338 does not result in the substitution of a new obligor on target's debt.

(3) *General rule for other provisions of the Internal Revenue Code.* Except as provided in the regulations under section 338 or in the Internal Revenue Bulletin by the Internal Revenue Service (see § 601.601(d)(2)(ii) of this chapter), new target is treated as a continuation of old target for purposes other than subtitle A of the Internal Revenue Code. For example—

(i) New target is liable for old target's Federal income tax liabilities, including the tax liability for the deemed sale gain and those tax liabilities of the other members of any consolidated group that included old target that are attributable to taxable years in which those corporations and old target joined in the same consolidated return (see § 1.1502–6(a));

(ii) Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act); and

(iii) Old target and new target must use the same employer identification number.

(c) *Anti-abuse rule*—(1) *In general.* For purposes of applying the residual method of §§ 1.338–0 through 1.338–10, 1.338(h)(10)–1, and 1.338(i)–1, the Commissioner is authorized to treat any property (including cash) transferred by old target in connection with the transactions resulting in the application of the residual method as, nonetheless, property of target at the close of the acquisition date if the property so transferred, within 24 months after the deemed asset sale, is owned by new target, or is owned, directly or indirectly, by a member of the affiliated group of which new target is a member and continues after the election to be held or used to more than an insignificant extent in connection with one or more of the activities of new target. The Commissioner is authorized to treat any property (including cash) transferred to old target in connection with the transactions resulting in the application of the residual method as, nonetheless, not being property of target at the close of the acquisition date if the property so transferred by the transferor is, within 24 months after the deemed asset sale, not owned by new target but owned, directly or indirectly, by a member of the affiliated group of which new target is a member or owned by new target but held or used to more than an insignificant extent in connection with an activity conducted, directly or indirectly, by another member of the affiliated group of which new target is a member in combination with other property acquired, directly or indirectly, from the transferor of the property (or a member of the same affiliated group) to old target. For purposes of this paragraph (c)(1), an interest in an entity is considered held or used in connection with an activity if property of the entity is so held or used. The authority under this paragraph (c)(1) includes the making of any necessary correlative adjustments.

(2) *Examples.* The following examples illustrate this paragraph (c):

Example 1. Prior to a qualified stock purchase under section 338, target transfers one of its assets to a related party. The purchasing corporation then purchases the target stock and also purchases the transferred asset from the related party. After its purchase of target, the purchasing corporation and target are members of the same affiliated group. A section 338 election is made. Under an arrangement with the purchaser, target continues to use the separately transferred asset to more than an insignificant extent in connection with its own activities. Applying the anti-abuse rule of this paragraph (c), the Commissioner may consider target to own the transferred asset for purposes of applying section 338 and its allocation rules.

Example 2. Target (T) owns all the stock of T1. T1 leases intellectual property to T, which T uses in connection with its own activities. P, a purchasing corporation, wishes to buy the T–T1 chain of corporations. P, in connection with its planned purchase of the T stock, contracts to consummate a purchase of all the stock of T1

on March 1 and of all the stock of T on March 2. Section 338 elections are thereafter made for both T and T1. Immediately after the purchases, P, T and T1 are members of the same affiliated group. T continues to lease the intellectual property from T1 and to use the property to more than an insignificant extent in connection with its own activities. Thus, an asset of T, the T1 stock, was removed from T's own assets prior to the qualified stock purchase of the T stock, T1's own assets are used after the deemed asset sale in connection with T's own activities, and the T1 stock is after the deemed asset sale owned by P, a member of the same affiliated group of which T is a member. Applying the anti-abuse rule of this paragraph (c), the Commissioner may, for purposes of application of section 338 both to T and to T1, consider P to have bought only the stock of T, with T at the time of the qualified stock purchases of both T and T1 (the qualified stock purchase of T1 being triggered by the deemed sale under section 338 of T's assets) owning T1. The Commissioner would accordingly apply section 338 first at the T level and then at the T1 level.

§ 1.338–2 Nomenclature and definitions; mechanics of the section 338 election.

(a) *Scope.* This section prescribes rules relating to elections under section 338.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic target corporation that has only one class of stock outstanding. Old T refers to T for periods ending on or before the close of T's acquisition date; new T refers to T for subsequent periods.

(2) P is the purchasing corporation.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1, T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. citizen or resident, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. citizen or resident. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. citizen or resident, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term *acquisition date* has the same meaning as in section 338(h)(2).

(2) *Acquisition date assets. Acquisition date assets* are the assets of the target held at the beginning of the day after the acquisition date (other than assets that were not assets of old target).

(3) *Affiliated group.* The term *affiliated group* has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of the same affiliated group.

(4) *Common parent.* The term *common parent* has the same meaning as in section 1504.

(5) *Consistency period.* The *consistency period* is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–8(j)(1).

(6) *Deemed asset sale.* The *deemed asset sale* is the transaction described in § 1.338–1(a)(1) that is deemed to occur for purposes of subtitle A of the Internal Revenue Code if a section 338 election is made.

(7) *Deemed sale gain. Deemed sale gain* refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset sale. *Deemed sale* gain also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset sale.

(8) *Deemed sale return.* The *deemed sale return* is the return on which target's deemed sale gain is reported that does not include any other items of target. Target files a deemed sale return when a section 338 election (but not a section 338(h)(10) election) is filed for target and target is a member of a selling group (defined in paragraph (c)(16) of this section) that files a consolidated return for the period that includes the acquisition date or is an S corporation. See § 1.338–10.

(9) *Domestic corporation.* A *domestic corporation* is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Internal Revenue Code (e.g., to which an election under section 953(d) or 1504(d) applies); and

(ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(10) *Old target's final return. Old target's final return* is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale gain. If the disaffiliation rule of § 1.338–10(a)(2)(i) applies or if target is an S corporation, target's deemed sale return is considered old target's final return.

(11) *Purchasing corporation.* The term *purchasing corporation* has the same meaning as in section 338(d)(1). The purchasing corporation may also be referred to as purchaser. Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. See sections 338(h)(5) and (8). Also, unless otherwise provided, any reference to the purchasing corporation is, with respect to a deemed purchase of stock under section 338(a)(2), a reference to new target with respect to its own deemed purchase of stock in another target.

(12) *Qualified stock purchase.* The term *qualified stock purchase* has the same meaning as in section 338(d)(3).

(13) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be attributed under section 318(a) (other than section 318(a)(4)) to the other.

(14) *Section 338 election.* A *section 338 election* is an election to apply section 338(a) to target. A section 338 election is made by filing a statement of section 338 election pursuant to § 1.338–2(d). The form on which this statement is filed is referred to in the regulations under section 338 as the Form 8023 Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

(15) *Section 338(h)(10) election.* A *section 338(h)(10) election* is an election to apply section 338(h)(10) to target. A section 338(h)(10) election is made by making a joint election for target under § 1.338(h)(10)–1.

(16) *Selling group.* The *selling group* is the affiliated group (as defined in section 1504) eligible to file a

consolidated return that includes target for the taxable period in which the acquisition date occurs. However, a selling group is not an affiliated group of which target is the common parent on the acquisition date.

(17) *Target; old target; new target.* *Target* is the target corporation as defined in section 338(d)(2). *Old target* refers to target for periods ending on or before the close of target's acquisition date. *New target* refers to target for subsequent periods.

(18) *Target affiliate.* The term *target affiliate* has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(19) *12-Month acquisition period.* The *12-month acquisition period* is the period described in section 338(h)(1), unless extended pursuant to § 1.338–8(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 in accordance with the instructions to the form. The section 338 election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. A section 338 election is irrevocable. See § 1.338(h)(10)–1(c)(2) for section 338(h)(10) elections.

(e) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is a qualifying foreign purchasing corporation only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a *qualifying foreign target* only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period because of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A *triggering event* occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (e)(1), a foreign corporation is considered subject to United States tax—

(A) For the taxable year for which that corporation is required under § 1.6012 2(g)–(other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return; or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (e), the term acquisition period means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471 (information return with respect to a foreign corporation) filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (e)(1)(i) of this section applies to the election, for the purchasing corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign market*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member (the purchasing group member)) that, on the acquisition date of the foreign target, holds stock in the foreign target; and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a purchasing group member during the foreign target's 12-month acquisition period.

(ii) *Limitation.* The notice requirement of this paragraph (e)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in paragraph (e)(4)(i) of this section under section 551, 951, 1248, or 1293.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (i.e., target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (e)(4)(i) of this section);

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively; and

(C) Contain the following declaration (or a substantially similar declaration): THIS DOCUMENT SERVES AS NOTICE

OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS SECTION 1.338–2(e)(4). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS SECTION 1.338–9(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS.

(iv) *Timing of notice.* The notice required by this paragraph (e)(4) must be delivered to the U.S. person on or before the later of the 120th day after the acquisition date of the particular target or the day on which Form 8023 is filed. The notice is considered delivered on the date it is mailed to the proper address (or an address similar enough to complete delivery), unless the date it is mailed cannot be reasonably determined. The date of mailing will be determined under the rules of section 7502. For example, the date of mailing is the date of U.S. postmark or the applicable date recorded or marked by a designated delivery service.

(v) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in this paragraph (e)(4). If the form of notice fails to comply with all requirements of this paragraph (e)(4), the section 338 election is valid, but the waiver rule of § 1.338–10(b)(1) does not apply.

(vi) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (e)(4), even though it failed to provide notice or provide timely notice to each person described in this paragraph (e)(4), if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–3 Qualification for the section 338 election.

(a) *Scope.* This section provides rules on whether certain acquisitions of stock are qualified stock purchases and on other miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation (new P) to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include new P merging downstream into target, liquidating, or otherwise disposing of the target stock following the purported qualified stock purchase.

(2) *Purchase*—(i) *Definition.* The term *purchase* has the same meaning as in section 338(h)(3).

(ii) *Purchase of target.* A purchase of a share of target stock occurs so long as more than a nominal amount is paid for such share.

(iii) *Purchase of target affiliate.* Stock in a target affiliate acquired by new target in the deemed asset sale of target's assets is considered purchased if, under general principles of tax law, new target is considered to own stock of the target affiliate meeting the requirements of section 1504(a)(2), notwithstanding that no amount may be allocated to target's stock in the target affiliate.

(3) *Acquisitions of stock from related corporations*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation (R) is generally not considered acquired by purchase. See section 338(h)(3)(A)(iii).

(ii) *Time for testing relationship.* For purposes of section 338(h)(3)(A)(iii), a purchasing corporation is treated as related to another person if the relationship specified in section 338(h)(3)(A)(iii) exists—

(A) In the case of a single transaction, immediately after the purchase of Target stock;

(B) In the case of a series of acquisitions otherwise constituting a qualified stock purchase within the meaning of section 338(d)(3), immediately after the last acquisition in such series; and

(C) In the case of a series of transactions effected pursuant to an integrated plan to dispose of Target stock, immediately after the last transaction in such series.

(iii) *Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.* If section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of determining when the stock is considered acquired, target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)).

(iv) *Examples.* The following examples illustrate this paragraph (b)(3):

Example 1. (i) S is the parent of a group of corporations that are engaged in various businesses. Prior to January 1, Year 1, S decided to discontinue its involvement in one line of business. To accomplish this, S forms a new corporation, Newco, with a nominal amount of cash. Shortly thereafter, on January 1, Year 1, S transfers all the stock of the subsidiary conducting the unwanted business (Target) to Newco in exchange for 100 shares of Newco common stock. Prior to January 1, Year 1, S and Underwriter (U) had entered into a binding agreement pursuant to which U would purchase 60 shares of Newco common stock from S and then sell those shares in an Initial Public Offering (IPO). On January 6, Year 1, the IPO closes.

(ii) Newco's acquisition of Target stock is one of a series of transactions undertaken pursuant to one integrated plan. The series of transactions ends with the closing of the IPO and the transfer of all the shares of stock in accordance with the agreements. Immediately after the last transaction effected pursuant to the plan, S owns 40 percent of Newco, which does not give rise to a relationship described in section 338(h)(3)(A)(iii). See paragraph (b)(3)(ii)(C) of this section. Accordingly, S and Newco are not related for purposes of section 338(h)(3)(A)(iii).

(iii) Further, because Newco's basis in the Target stock is not determined by reference to S's basis in the Target stock and because the transaction is not an exchange to which section 351, 354, 355, or 356 applies, Newco's acquisition of the Target stock is a purchase within the meaning of section 338(h)(3).

Example 2. (i) On January 1 of Year 1, P purchases 75 percent in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, R acquires an additional 16 shares of T stock. On December 1 of Year 1, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(ii) Of the 12 shares of T stock purchased by P from R on December 1 of Year 1, 3 of those shares are deemed to have been acquired by P on January 1 of Year 1, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., 4×.75). The remaining 9 shares of T stock purchased by P from R on December 1 of Year 1, are deemed to have been acquired by P on June 1 of Year 1, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., (20×.75) -3). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (i.e., 3 shares constructively on January 1 of Year 1, 9 shares constructively on June 1 of Year 1, and 70 shares actually on December 1 of Year 1), a qualified stock purchase is made on December 1 of Year 1.

Example 3. (i) On February 1 of Year 1, P acquires 25 percent in value of the R stock

from B (the sole shareholder of P). That R stock is not acquired by purchase. See section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, P purchases an additional 25 percent in value of the R stock, and on January 1 of Year 2, P purchases another 25 percent in value of the R stock. On June 1 of Year 2, R acquires an additional 16 shares of the T stock. On December 1 of Year 2, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(ii) Of the 12 shares of the T stock purchased by P from R on December 1 of Year 2, 2 of those shares are deemed to have been acquired by P on June 1 of Year 1, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., 4×.5). For purposes of this attribution, the R stock need not be acquired by P by purchase. See section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50 percent in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1 of Year 2, 1 of those shares is deemed to have been acquired by P on January 1 of Year 2, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (i.e., (4×.75)—2). The remaining 9 shares of the T stock purchased by P from R on December 1 of Year 2, are deemed to have been acquired by P on June 1 of Year 2, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., (20×.75)—3). Because a qualified stock purchase of T by P is made on December 1 of Year 2, only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1 of Year 2 (i.e., on June 1 of Year 1), a qualified stock purchase is not made. (Under § 1.338–8(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 4. Assume the same facts as in *Example 3,* except that on February 1 of Year 1, P acquires 25 percent in value of the R stock by purchase. The result is the same as in *Example 3.*

(4) *Acquisition date for tiered targets*—(i) *Stock sold in deemed asset sale.* If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 338(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place after the deemed sale and purchase of target's assets.

(ii) *Examples.* The following examples illustrate this paragraph (b)(4):

Example 1. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1 of Year 1, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1 of Year 1, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1 of Year 1, because the deemed purchase of 50 shares of X stock by new T because of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its X stock on T's acquisition date, i.e., January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T and makes a section 338 election for T. On that day, T sells all of the stock of T1 to A. Although T held all of the T1 stock on T's acquisition date, T is not considered to have purchased the T1 stock because of the section 338 election for T. In order for T to be treated as purchasing the T1 stock, T must hold the T1 stock when T's deemed asset sale occurs. The deemed asset sale is considered the last transaction of old T at the close of T's acquisition date. Accordingly, the T1 stock actually disposed of by T on the acquisition date is not included in the deemed asset sale. Thus, T does not make a qualified stock purchase of T1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both—

(A) Held on that day by the purchasing corporation; and

(B) Purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur during the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (because of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. See paragraph (b)(3) of this section.

(iv) *Examples.* The following examples illustrate this paragraph (b)(5):

Example 1. QSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1 of Year 1, P purchases 40 shares of the T stock from A. On July 1 of Year 1, T redeems 25 shares from A. On December 1 of Year 1, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1 of Year 1, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. QSP on stock redemption date; redemption from unrelated person during 12-month period. The facts are the same as in *Example 1,* except that P purchases 60 shares of T stock on January 1 of Year 1 and none on December 1 of Year 1. P makes a qualified stock purchase of T on July 1 of Year 1, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3. Redemption from purchasing corporation not taken into account. On December 15 of Year 1, T redeems 30 percent of its stock from P. The redeemed stock was

held by P for several years and constituted P's total interest in T. On December 1 of Year 2, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1 of Year 2. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15 of Year 1 is not taken into account as a reduction in T's outstanding stock.

Example 4. Redemption from related person taken into account. On January 1 of Year 1, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1 of Year 1, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1 of Year 1, all 40 of the shares would have been considered purchased (because of section 338(h)(3)(C)(i)) during the 12-month period ending on April 1 of Year 1 (24 of the 40 shares would have been considered purchased by P on January 1 of Year 1 and the remaining 16 shares would have been considered purchased by P on April 1 of Year 1). See paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1 of Year 1, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election*—(1) *Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target even though target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target even though target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) The following examples illustrate this paragraph (c)(1):

Example 1. On January 1 of Year 1, P purchases 100 percent of the outstanding common stock of T. On June 1 of Year 1, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1 of Year 1, to make a section 338 election for T that results in a deemed asset sale of T's assets on January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1 of Year 1, T sells the T1 stock to an unrelated person. On April 1 of Year 1, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1 of Year 1, the section 338 election for T on April 1 of Year 1 results in a qualified stock purchase by T of T1 on January 1 of Year 1. See paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the acquisition of assets of the purchasing corporation by another corporation in a transaction described in section 381(a), provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(3) *Consequences of post-acquisition elimination of target*—(i) *Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target. Notwithstanding the rules of this paragraph (c)(3), section 354(a) (and so much of section 356 as relates to section 354) cannot apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization as determined without regard to this paragraph (c)(3).

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization.

(iii) *Control requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase will not prevent the purchasing corporation from qualifying as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* The following example illustrates this paragraph (c)(3):

Example. (i) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(ii) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(iii) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(iv) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(v) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 cannot apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer of T's assets is pursuant to a reorganization as determined

without regard to § 1.338–3(c)(3). Under general principles of tax law applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., *Yoc Heating* v. *Commissioner,* 61 T.C. 168 (1973); *Kass* v. *Commissioner,* 60 T.C. 218 (1973), aff'd, 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

§§ 1.338–4 and 1.338–5 [Redesignated as §§ 1.338–8 and 1.338–9]

Par. 3. Sections 1.338–4 and 1.338–5 are redesignated as §§ 1.338–8 and 1.338–9, respectively.

Par. 4. New §§ 1.338–4 and 1.338–5 are added to read as follows:

§ 1.338–4 Aggregate deemed sale price; various aspects of taxation of the deemed asset sale.

(a) *Scope.* This section provides rules under section 338(a)(1) to determine the aggregate deemed sale price (ADSP) for target. ADSP is the amount for which old target is deemed to have sold all of its assets in the deemed asset sale. ADSP is allocated among target's assets in accordance with § 1.338–6 to determine the amount for which each asset is deemed to have been sold. When an increase or decrease with respect to an element of ADSP is required, under general principles of tax law, after the close of new target's first taxable year, redetermined ADSP is allocated among target's assets in accordance with § 1.338–7. This section also provides rules regarding the recognition of gain or loss on the deemed sale of target affiliate stock. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Determination of ADSP*—(1) *General rule.* ADSP is the sum of—

(i) The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A)); and

(ii) The liabilities of old target.

(2) *Time and amount of ADSP*—(i) *Original determination.* ADSP is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADSP.

(ii) *Redetermination of ADSP.* ADSP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADSP. For example, ADSP is redetermined because of an increase or decrease in the amount realized for recently purchased stock or because liabilities not originally taken into account in determining ADSP are subsequently taken into account. An increase or decrease to one element of ADSP may cause an increase or decrease to the other element of ADSP. For example, if an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, any increase in the tax liability of target for the deemed sale gain is also taken into account when ADSP is redetermined. Increases or decreases with respect to the elements of ADSP that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining ADSP and the deemed sale gain as if they had been taken into account at the beginning of the day after the acquisition date. Increases or decreases with respect to the elements of ADSP that are taken into account after the close of new target's first taxable year result in the reallocation of ADSP among target's assets under § 1.338–7.

(iii) *Example.* The following example illustrates this paragraph (b)(2):

Example. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume further that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would not, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its amount realized. Accordingly, ADSP is not redetermined at the time of the reduction. See § 1.338–5(b)(2)(iii) *Example* 1 for the effect on AGUB.

(c) *Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock*—(1) *Determination of amount.* The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock is an amount equal to—

(i) The amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock determined as if old target were the selling shareholder and the installment method were not available and determined without regard to the selling costs taken into account in paragraph (c)(1)(iii) of this section;

(ii) Divided by the percentage of target stock (by value, determined on the acquisition date) attributable to that recently purchased target stock;

(iii) Less the selling costs incurred by the selling shareholders in connection with the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock that reduce their amount realized on the sale of the stock (e.g., brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. T has two classes of stock outstanding, voting common stock and preferred stock not taken into account for purposes of section 1504(a)(2). On March 1 of Year 1, P purchases 40 percent of the outstanding T stock from S1 for $500, 20 percent of the outstanding T stock from S2 for $225, and 20 percent of the outstanding T stock from S3 for $275. On that date, the fair market value of all the T voting common stock is $1,250 and the preferred stock $750. S1, S2, and S3 respectively incur $40, $35, and $25 of selling costs. S1 continues to own the remaining 20 percent of the outstanding T stock. The grossed-up amount realized on the sale to P of P's recently purchased T stock is calculated as follows: The total amount realized (without regard to selling costs) is $1,000 (500 + 225 + 275). The percentage of T stock by value on the acquisition date attributable to the recently purchased T stock is 50% (1,000/(1,250 + 750)). The selling costs are $100 (40 + 35 + 25). The grossed-up amount realized is $1,900 (1,000/.5 −100).

(d) *Liabilities of old target*—(1) *In general.* The liabilities of old target are the liabilities of target (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). In order to be taken into account in ADSP, a liability must be a liability of target that is properly taken into account in amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included that person's assumption of, or taking subject to, the liability. Thus, ADSP takes into account both tax credit recapture liability arising because of the

deemed asset sale and the tax liability for the deemed sale gain unless the tax liability is borne by some person other than the target. For example, ADSP would not take into account the tax liability for the deemed sale gain when a section 338(h)(10) election is made for a target S corporation because the S corporation shareholders bear that liability. However, if a target S corporation is subject to a tax under section 1374 or 1375, the liability for tax imposed by those sections is a liability of target taken into account in ADSP (unless the S corporation shareholders expressly assume that liability).

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining ADSP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the unrelated person's assumption of or taking subject to the liabilities. For example, if no amount of a target liability is properly taken into account in amount realized as of the beginning of the day after the acquisition date, the liability is not initially taken into account in determining ADSP (although it may be taken into account at some later date). As a further example, an increase or decrease in a liability that does not affect the amount of old target's basis, deductions, or noncapital nondeductible items arising from the incurrence of the liability is not taken into account in redetermining ADSP.

(3) *Interaction with deemed sale gain.* Though deemed sale gain increases or decreases ADSP by creating or reducing a tax liability, the amount of the tax liability itself is a function of the size of the deemed sale gain. Thus, the determination of ADSP may require trial and error computations.

(e) *Calculation of deemed sale gain.* Deemed sale gain on each asset is computed by reference to the ADSP allocated to that asset.

(f) *Other rules apply in determining ADSP.* ADSP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed sale for purposes of determining ADSP.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss, tax credit, or other carryovers to Year 1. Depreciation for Year 1 is not taken into account. T has no liabilities other than the Federal income tax liability resulting from the deemed asset sale, and the T shareholders have no selling costs. Assume that T's tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent and that any capital loss is offset by capital gain. On July 1 of Year 1, P purchases all of the stock of T and makes a section 338 election for T. The examples are as follows:

Example 1. One class. (i) On July 1 of Year 1, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000, which also equals the amount realized for the stock determined as if old target were the selling shareholder.

(ii) ADSP is determined as follows (In the following formula, G is the grossed-up amount realized on the sale to P of P's recently purchased T stock, L is T's liabilities other than T's tax liability for the deemed sale gain, T_R is the applicable tax rate, and B is the adjusted basis of the asset deemed sold):

$$ADSP = G + L + T_R \times (ADSP - B)$$
$$ADSP = (\$75{,}000/1) + \$0 + .34 \times (ADSP - \$50{,}400)$$
$$ADSP = \$75{,}000 + .34ADSP - \$17{,}136$$
$$.66ADSP = \$57{,}864$$
$$ADSP = \$87{,}672.72$$

(iii) Because ADSP for T ($87,672.72) does not exceed the fair market value of T's asset ($100,000), a Class V asset, T's entire ADSP is allocated to that asset. Thus, T has deemed sale gain of $37,272.72 (consisting of $29,600 of ordinary income and $7,672.72 of capital gain).

(iv) The facts are the same as in paragraph (i) of this *Example 1,* except that on July 1 of Year 1, P purchases only 80 of the 100 shares of T stock for $60,000. The grossed-up amount realized on the sale to P of P's recently purchased T stock (G) is $75,000 ($60,000/.8). Consequently, ADSP and deemed sale gain are the same as in paragraphs (ii) and (iii) of this *Example 1.*

(v) The facts are the same as in paragraph (i) of this *Example 1,* except that T also has goodwill (a Class VII asset) with an appraised value of $10,000. The results are the same as in paragraphs (ii) and (iii) of this *Example 1.* Because ADSP does not exceed the fair market value of the Class V asset, no amount is allocated to the Class VII assets (goodwill and going concern value).

Example 2. More than one class. (i) P purchases all of the T stock for $140,000, which also equals the amount realized for the stock determined as if old target were the selling shareholder. On July 1 of Year 1, T has liabilities (not including the tax liability for the deemed sale gain) of $50,000, cash (a Class I asset) of $10,000, actively traded securities (a Class II asset) with a basis of $4,000 and a fair market value of $10,000, goodwill (a Class VII asset) with a basis of $3,000, and the following Class V assets:

Asset	Basis	FMV	Ratio of asset FMV to total Class V FMV
Land	$5,000	$35,000	.14
Building	10,000	50,000	.20
Equipment A (Recomputed basis $80,000)	5,000	90,000	.36
Equipment B (Recomputed basis $20,000)	10,000	75,000	.30
Total	30,000	250,000	1.00

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities. The amount allocated to an asset (other than a Class VII asset) cannot exceed its fair market value (however, the fair market value of any property subject to nonrecourse indebtedness is treated as being not less than the amount of such indebtedness; see § 1.338–6(a)(2)). See § 1.338–6(c)(1) (relating to fair market value limitation).

(iii) The portion of ADSP allocable to the Class V assets is preliminarily determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I and the amount allocated to the Class II assets as II):

$$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V)]$$
$$ADS_{PV} = (\$140{,}000 - (\$10{,}000 + \$10{,}000)) + \$50{,}000 + .34 \times [(\$10{,}000 - \$4{,}000) + (ADSP_V - (\$5{,}000 + \$10{,}000 + \$5{,}000 + \$10{,}000))]$$
$$ADSP_V = \$161{,}840 + .34\ ADSP_V$$
$$16.66\ ADSP_V = \$161{,}840$$
$$ADSP_V = \$245{,}212.12$$

(iv) Because, under the preliminary calculations of ADSP, the amount to be allocated to the Class I, II, III, IV, V, and VI

assets does not exceed their aggregate fair market value, no ADSP amount is allocated to goodwill. Accordingly, the deemed sale of the goodwill results in a capital loss of $3,000. The portion of ADSP allocable to the Class V assets is finally determined by taking into account this loss as follows:

$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V) + (ADSP_{VII} - B_{VII})]$

$ADSP_V = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_V - \$30,000) + (\$0 - \$3,000)]$

$ADSP_V = \$160,820 + .34\ ADSP_V$

$.66\ ADSP_V = \$160,820$

$ADSP_V = \$243,666.67$

(v) The allocation of $ADSP_V$ among the Class V assets is in proportion to their fair market values, as follows:

Asset	ADSP	Gain
Land	$34,113.33	$29,113.33 (capital gain)
Building	48,733.34	38,733.34 (capital gain)
Equipment A	87,720.00	82,720.00 (75,000 ordinary income, 7,720 capital gain)
Equipment B	73,100.00	63,100.00 (10,000 ordinary income, 53,100 capital gain)
Totals	243,666.67	213,666.67

Example 3. More than one class. (i) The facts are the same as in *Example 2,* except that P purchases the T stock for $150,000, rather than $140,000. The amount realized for the stock determined as if old target were the selling shareholder is also $150,000.

(ii) As in *Example 2,* ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) The portion of ADSP allocable to the Class V assets as preliminarily determined under the formula set forth in paragraph (iii) of *Example 2* is $260,363.64. The amount allocated to the Class V assets cannot exceed their aggregate fair market value ($250,000). Thus, preliminarily, the ADSP amount allocated to Class V assets is $250,000.

(iv) Based on the preliminary allocation, the ADSP is determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I, the amount allocated to the Class II assets as II, and the amount allocated to the Class V assets as V):

$ADSP = G + L + T^R [(II\ B^{II}) + (V\ B^V) + (ADSP\ (I + II + V + B^{VII}))]$

$ADSP = \$150,000 + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (\$250,000 - \$30,000) + (ADSP\ (\$10,000 + \$10,000 + \$250,000 + \$3,000))]$

$ADSP = \$200,000 + .34ADSP\ \$15,980$

$.66ADSP = \$184,020$

$ADSP = \$278,818.18$

(v) Because ADSP as determined exceeds the aggregate fair market value of the Class I, II, III, IV, V, and VI assets, the $250,000 amount preliminarily allocated to the Class V assets is appropriate. Thus, the amount of ADSP allocated to Class V assets equals their aggregate fair market value ($250,000), and the allocated ADSP amount for each Class V asset is its fair market value. Further, because there are no Class VI assets, the allocable ADSP amount for the Class VII asset (goodwill) is $8,818.18 (the excess of ADSP over the aggregate ADSP amounts for the Class I, II, III, IV, V and VI assets).

Example 4. Amount allocated to T1 stock. (i) The facts are the same as in Example 2, except that T owns all of the T1 stock (instead of the building), and T1's only asset is the building. The T1 stock and the building each have a fair market value of $50,000, and the building has a basis of $10,000. A section 338 election is made for T1 (as well as T), and T1 has no liabilities other than the tax liability for the deemed sale gain. T is the common parent of a consolidated group filing a final consolidated return described in § 1.338 10(a)(1).

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) Because T does not recognize any gain on the deemed sale of the T1 stock under paragraph (h)(2) of this section, appropriate adjustments must be made to reflect accurately the fair market value of the T and T1 assets in determining the allocation of ADSP among T's Class V assets (including the T1 stock). In preliminarily calculating ADSPV in this case, the T1 stock can be disregarded and, because T owns all of the T1 stock, the T1 asset can be treated as a T asset. Under this assumption, ADSPV is $243,666.67. See paragraph (iv) of *Example 2.*

(iv) Because the portion of the preliminary ADSP allocable to Class V assets ($243,666.67) does not exceed their fair market value ($250,000), no amount is allocated to Class VII assets for T. Further, this amount ($243,666.67) is allocated among T's Class V assets in proportion to their fair market values. See paragraph (v) of *Example 2.* Tentatively, $48,733.34 of this amount is allocated to the T1 stock.

(v) The amount tentatively allocated to the T1 stock, however, reflects the tax incurred on the deemed sale of the T1 asset equal to $13,169.34 ($.34 \times (\$48,733.34 - \$10,000)$). Thus, the ADSP allocable to the Class V assets of T, and the ADSP allocable to the T1 stock, as preliminarily calculated, each must be reduced by $13,169.34. Consequently, these amounts, respectively, are $230,497.33 and $35,564.00. In determining ADSP for T1, the grossed-up amount realized on the deemed sale to new T of new T's recently purchased T1 stock is $35,564.00.

(vi) The facts are the same as in paragraph (i) of this Example 4, except that the T1 building has a $12,500 basis and a $62,500 value, all of the outstanding T1 stock has a $62,500 value, and T owns 80 percent of the T1 stock. In preliminarily calculating $ADSP_v$, the T1 stock can be disregarded but, because T owns only 80 percent of the T1 stock, only 80 percent of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80 percent of these amounts, the remaining calculations and results are the same as in paragraphs (ii), (iii), (iv), and (v) of this *Example 4,* except that the grossed-up amount realized on the sale of the recently purchased T1 stock is $44,455.00 ($35,564.00/0.8).

(h) *Deemed sale of target affiliate stock*—(1) *Scope.* This paragraph (h) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate when a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (h), the definition of domestic corporation in § 1.338–2(c)(9) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *In general.* Except as otherwise provided in this paragraph (h), if a section 338 election is made for target, target recognizes no gain or loss on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2);

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–10(a)(1); or

(iii) Target and the target affiliate file a combined return under § 1.338–10(a)(4).

(3) *Deemed sale of foreign target affiliate by a domestic target.* A domestic target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, e.g., sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–9.

(4) *Deemed sale producing effectively connected income.* A foreign target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* A domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* A foreign or domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that is a DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized by target on the deemed sale of stock of the target affiliate is determined as if such asset had not been contributed or transferred.

(8) *Examples.* The following examples illustrate this paragraph (h):

Example 1. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(ii) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(iii) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in Example 1, except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and section 338 elections are made for T1 and T2. T1 and T2 each own 50 percent of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed asset sales are reported on the T group's final consolidated return. See § 1.338–10(a)(1).

(ii) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (i) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248(c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(ii) P makes a qualified stock purchase of T and makes a section 338 election for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT1's deemed purchase of the FT2 stock results in a qualified stock purchase of FT2 and a section 338 election is made for FT2.

(iii) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (h)(3) of this section. FT1 does not recognize $75 of gain on the deemed sale of the FT2 stock under paragraph (h)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–9(b). For purposes of sections 901 through 908, the source and foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

§ 1.338 5 Adjusted grossed-up basis.

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis (AGUB) for target. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). AGUB is allocated among target's assets in accordance with § 1.338–6 to determine the price at which the assets are deemed to have been purchased. When an increase or decrease with respect to an element of AGUB is required, under general principles of tax law, after the close of new target's first taxable year, redetermined AGUB is allocated among target's assets in accordance with § 1.338–7.

(b) *Determination of AGUB*—(1) *General rule.* AGUB is the sum of—

(i) The grossed-up basis in the purchasing corporation's recently purchased target stock;

(ii) The purchasing corporation's basis in nonrecently purchased target stock; and

(iii) The liabilities of new target.

(2) *Time and amount of AGUB*—(i) *Original determination.* AGUB is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of AGUB.

(ii) *Redetermination of AGUB.* AGUB is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, with respect to an element of AGUB. For example, AGUB is redetermined because of an increase or decrease in the amount paid or incurred for recently purchased stock or nonrecently purchased stock or because liabilities not originally taken into account in determining AGUB are subsequently taken into account. An increase or decrease to an element of ADSP may cause an increase or decrease to an element of AGUB. For example, if

an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, any increase in tax liability of target for the deemed sale gain is also taken into account when AGUB is redetermined. An increase or decrease to one element of AGUB may also cause an increase or decrease to another element of AGUB. For example, if there is an increase in the amount paid or incurred for recently purchased stock after the acquisition date, any increase in the basis of nonrecently purchased stock because a gain recognition election was made is also taken into account when AGUB is redetermined. Increases or decreases with respect to the elements of AGUB that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining AGUB and the basis of target's assets as if they had been taken into account at the beginning of the day after the acquisition date. Increases or decreases with respect to the elements of AGUB that are taken into account after the close of new target's first taxable year result in the reallocation of AGUB among target's assets under § 1.338–7.

(iii) *Examples.* The following examples illustrate this paragraph (b)(2):

Example 1. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its basis. Accordingly, AGUB is redetermined at the time of the reduction. See paragraph (e)(2) of this section. Thus the purchase price reduction affects the basis of the truck only indirectly, through the mechanism of §§ 1.338–6 and 1.338–7. See § 1.338–4(b)(2)(iii) *Example* for the effect on ADSP.

Example 2. T, an accrual basis taxpayer, is a chemical manufacturer. In Year 1, T is obligated to remediate environmental contamination at the site of one of its plants. Assume that all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy but economic performance has not occurred with respect to the liability within the meaning of section 461(h). P acquires all of the stock of T in Year 1 and makes a section 338 election for T. Assume that, if a corporation unrelated to T had actually purchased T's assets and assumed T's obligation to remediate the contamination, the corporation would not satisfy the economic performance requirements until Year 5. Under section 461(h), the assumed liability would not be treated as incurred and taken into account in basis until that time. The incurrence of the liability in Year 5 under the economic performance rules is an increase in the amount of liabilities properly taken into account in basis and results in the redetermination of AGUB. (Respecting ADSP, compare § 1.461–4(d)(5), which provides that economic performance occurs for old T as the amount of the liability is properly taken into account in amount realized on the deemed asset sale. Thus ADSP is not redetermined when new T satisfies the economic performance requirements.)

(c) *Grossed-up basis of recently purchased stock.* The purchasing corporation's grossed-up basis of recently purchased target stock (as defined in section 338(b)(6)(A)) is an amount equal to—

(1) The purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section;

(2) Multiplied by a fraction, the numerator of which is 100 percent minus the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock, and the denominator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's recently purchased target stock;

(3) Plus the acquisition costs the purchasing corporation incurred in connection with its purchase of the recently purchased stock that are capitalized in the basis of such stock (e.g., brokerage commissions and any similar costs incurred by the purchasing corporation to acquire the stock).

(d) *Basis of nonrecently purchased stock; gain recognition election*—(1) *No gain recognition election.* In the absence of a gain recognition election under section 338(b)(3) and this section, the purchasing corporation retains its basis in the nonrecently purchased stock.

(2) *Procedure for making gain recognition election.* A gain recognition election may be made for nonrecently purchased stock of target (or a target affiliate) only if a section 338 election is made for target (or the target affiliate). The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable. If a section 338(h)(10) election is made for target, see § 1.338(h)(10)–1(d)(1) (providing that the purchasing corporation is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock).

(3) *Effect of gain recognition election*—(i) *In general.* If the purchasing corporation makes a gain recognition election, then for all purposes of the Internal Revenue Code—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (d)(3)(ii) of this section; and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock immediately following the deemed sale in paragraph (d)(3)(i)(A) of this section is the basis amount.

(ii) *Basis amount.* The basis amount is equal to the amount in paragraph (c)(1) of this section (the purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Thus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) S*tock subject to election.* The gain recognition election applies to

(A) All nonrecently purchased target stock; and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(e) *Liabilities of new target*—(1) *In general.* The liabilities of new target are the liabilities of target (and the liabilities to which target's assets are subject) as of the beginning of the day

after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). In order to be taken into account in AGUB, a liability must be a liability of target that is properly taken into account in basis under general principles of tax law that would apply if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liability. See § 1.338–4(d)(1) for examples of when tax liabilities are considered liabilities assumed by new target.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining AGUB and the amount of the liabilities taken into account is determined as if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liabilities. For example, an increase or decrease in a liability that does not affect the amount of new target's basis arising from the assumption of, or taking subject to, the liability is not taken into account in redetermining AGUB.

(3) *Interaction with deemed sale gain.* See § 1.338–4(d)(3).

(f) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the District Director may increase (or decrease) AGUB under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by the purchasing corporation after the acquisition date from minority shareholders.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), T has no liabilities other than the tax liability for the deemed sale gain, T shareholders incur no costs in selling the T stock, and P incurs no costs in acquiring the T stock. The examples are as follows:

Example 1. (i) Before July 1 of Year 1, P purchases 10 of the 100 shares of T stock for $5,000. On July 1 of Year 2, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1 of Year 2, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to Year 2. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed asset sale is 34 percent. The 10 shares purchased before July 1 of Year 1 constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1 of Year 2.

(ii) The ADSP formula as applied to these facts is the same as in § 1.338–4(g) *Example 1.* Accordingly, the ADSP for T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(iii) The total tax liability resulting from T's deemed asset sale, as calculated under the ADSP formula, is $12,672.72.

(iv) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows (In the following formula, GRP is the grossed-up basis in P's recently purchased T stock, BNP is P's basis in nonrecently purchased T stock, L is T's liabilities, and X is P's acquisition costs for the recently purchased T stock):

AGUB = GRP + BNP + L + X
AGUB = $60,000 × [(1 − .1)/.8] + $5,000 + $12,672.72 + 0
AGUB = $85,172.72

(v) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:

AGUB = $60,000 × [(1 − .1)/.8] + $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)] + $12,672.72
AGUB = $87,672.72

(vi) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:

AGUB = $60,000/.8 + $12,672.72
AGUB = $87,672.72

(vii) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (i.e., $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)]). Thus, P recognizes a gain in Year 2 with respect to its nonrecently purchased T stock of $2,500 (i.e., $7,500 − $5,000).

Example 2. On January 1 of Year 1, P purchases one-third of the T stock. On March 1 of Year 1, T distributes a dividend to all of its shareholders. On April 15 of Year 1, P purchases the remaining T stock and makes a section 338 election for T. In appropriate circumstances, the District Director may decrease the AGUB of T to take into account the payment of the dividend and properly reflect the fair market value of T's assets deemed purchased.

Example 3. (i) T's sole asset is a building worth $100,000. At this time, T has 100 shares of stock outstanding. On August 1 of Year 1, P purchases 10 of the 100 shares of T stock for $8,000. On June 1 of Year 2, P purchases 50 shares of T stock for $50,000. On June 15 of Year 2, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 of Year 2, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T. The AGUB of T is $108,800.

(ii) To prevent the shifting of basis from the contributed property to other assets of T, the District Director may allocate $10,800 of the AGUB to the land, leaving $98,000 to be allocated to the building. See paragraph (f) of this section. Otherwise, applying the allocation rules of § 1.338–6 would, on these facts, result in an allocation to the recently contributed land of an amount less than its value of $10,800, with the difference being allocated to the building already held by T.

Par. 5. Sections 1.338–6 and 1.338–7 are added to read as follows:

§ 1.338–6 Allocation of ADSP and AGUB among target assets.

(a) *Scope*—(1) *In general.* This section prescribes rules for allocating ADSP and AGUB among the acquisition date assets of a target for which a section 338 election is made.

(2) *Fair market value*—(i) *In general.* Generally, the fair market value of an asset is its gross fair market value (i.e., fair market value determined without regard to mortgages, liens, pledges, or other liabilities). However, for purposes of determining the amount of old target's deemed sale gain, the fair market value of any property subject to a nonrecourse indebtedness will be treated as being not less than the amount of such indebtedness. (For purposes of the preceding sentence, a liability that was incurred because of the acquisition of the property is disregarded to the extent that such liability was not taken into account in determining old target's basis in such property.)

(ii) *Transaction costs.* Transaction costs are not taken into account in allocating ADSP or AGUB to assets in the deemed sale (except indirectly through their effect on the total ADSP or AGUB to be allocated).

(iii) *Internal Revenue Service authority.* In connection with the examination of a return, the Internal Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

(b) *General rule for allocating ADSP and AGUB*—(1) *Reduction in the amount of consideration for Class I assets.* Both ADSP and AGUB, in the respective allocation of each, are first reduced by the amount of Class I acquisition date assets. Class I assets are cash and general deposit accounts

(including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions. If the amount of Class I assets exceeds AGUB, new target will immediately realize ordinary income in an amount equal to such excess. The amount of ADSP or AGUB remaining after the reduction is to be allocated to the remaining acquisition date assets.

(2) *Other assets*—(i) *In general.* Subject to the limitations and other rules of paragraph (c) of this section, ADSP and AGUB (as reduced by the amount of Class I assets) are allocated among Class II acquisition date assets of target in proportion to the fair market values of such Class II assets at such time, then among Class III assets so held in such proportion, then among Class IV assets so held in such proportion, then among Class V assets so held in such proportion, then among Class VI assets so held in such proportion, and finally to Class VII assets.

(ii) *Class II assets.* Class II assets are actively traded personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1 (determined without regard to section 1092(d)(3)). In addition, Class II assets include certificates of deposit and foreign currency even if they are not actively traded personal property. Examples of Class II assets include U.S. government securities and publicly traded stock.

(iii) *Class III assets.* Class III assets are accounts receivable, mortgages, and credit card receivables from customers which arise in the ordinary course of business.

(iv) *Class IV assets.* Class IV assets are stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(v) *Class V assets.* Class V assets are all assets other than Class I, II, III, IV, VI, and VII assets.

(vi) *Class VI assets.* Class VI assets are all section 197 intangibles, as defined in section 197, except goodwill and going concern value.

(vii) *Class VII assets.* Class VII assets are goodwill and going concern value (whether or not the goodwill or going concern value qualifies as a section 197 intangible).

(3) *Other items designated by the Internal Revenue Service.* Similar items may be added to any class described in this paragraph (b) by designation in the Internal Revenue Bulletin by the Internal Revenue Service.

(c) *Certain limitations and other rules for allocation to an asset*—(1) *Allocation not to exceed fair market value.* The amount of ADSP or AGUB allocated to an asset (other than Class VII assets) cannot exceed the fair market value of that asset at the beginning of the day after the acquisition date.

(2) *Allocation subject to other rules.* The amount of ADSP or AGUB allocated to an asset is subject to other provisions of the Internal Revenue Code or general principles of tax law in the same manner as if such asset were transferred to or acquired from an unrelated person in a sale or exchange. For example, if the deemed asset sale is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of AGUB allocated to a contract for the services of an athlete cannot exceed the limitation imposed by that section. As another example, the amount of AGUB allocated to an amortizable section 197 intangible resulting from an assumption-reinsurance transaction is determined under section 197(f)(5).

(3) *Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock*—(i) *Scope.* This paragraph (c)(3) applies if at the beginning of the day after the acquisition date—

(A) The purchasing corporation holds nonrecently purchased stock for which a gain recognition election under section 338(b)(3) and § 1.338–5(d) is not made; and

(B) The hypothetical purchase price determined under paragraph (c)(3)(ii) of this section exceeds the AGUB determined under § 1.338–5(b).

(ii) *Determination of hypothetical purchase price.* Hypothetical purchase price is the AGUB that would result if a gain recognition election were made.

(iii) *Allocation of AGUB.* Subject to the limitations in paragraphs (c)(1) and (2) of this section, the portion of AGUB (after reduction by the amount of Class I assets) to be allocated to each Class II, III, IV, V, VI, and VII asset of target held at the beginning of the day after the acquisition date is determined by multiplying—

(A) The amount that would be allocated to such asset under the general rules of this section were AGUB equal to the hypothetical purchase price; by

(B) A fraction, the numerator of which is actual AGUB (after reduction by the amount of Class I assets) and the denominator of which is the hypothetical purchase price (after reduction by the amount of Class I assets).

(4) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability taken into account in AGUB is considered to be an amount taken into account in determining new target's basis in property that secures the liability for purposes of applying § 1.1001–2(a). Thus, if a liability is taken into account in AGUB, § 1.1001–2(a)(3) does not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(d) *Examples.* The following examples illustrate §§ 1.338–4, 1.338–5, and this section:

Example 1. (i) T owns 90 percent of the outstanding T1 stock. P purchases 100 percent of the outstanding T stock for $2,000. There are no acquisition costs. P makes a section 338 election for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for T1. The grossed-up basis of the T stock is $2,000 (i.e., $2,000 × 1/1).

(ii) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale gain) that would, under general principles of tax law, be properly taken into account before the close of new T's first taxable year, are as follows:

Liabilities (nonrecourse mortgage plus unsecured liabilities)	$700
Taxes Payable	300
Total	1,000

(iii) The AGUB of T is determined as follows:

Grossed-up basis	$2,000
Total liabilities	1,000
AGUB	3,000

(iv) Assume that ADSP is also $3,000.

(v) Assume that, at the beginning of the day after the acquisition date, T's cash and the fair market values of T's Class II, III, IV, and V assets are as follows:

Asset Class	Asset	Fair market value
I	Cash	*$200
II	Portfolio of actively traded securities.	300
III	Accounts receivable	600
IV	Inventory	300
V	Building	800
V	Land	200
V	Investment in T1	450
	Total	2,850

*Amount.

(vi) Under paragraph (b)(1) of this section, the amount of ADSP and AGUB allocable to T's Class II, III, IV, and V assets is reduced by the amount of cash to $2,800, i.e., $3,000 − $200. $300 of ADSP and of AGUB is then allocated to actively traded securities. $600 of ADSP and of AGUB is then allocated to accounts receivable. $300 of ADSP and of AGUB is then allocated to the inventory. Since the remaining amount of ADSP and of AGUB is $1,600 (i.e., $3,000 − ($200 + $300 + $600 + $300)), an amount which exceeds the sum of the fair market values of T's Class V assets, the amount of ADSP and of AGUB allocated to each Class V asset is its fair market value:

Building	800
Land	200
Investment in T1	450
Total	$1,450

(vii) T has no Class VI assets. The amount of ADSP and of AGUB allocated to T's Class VII assets (goodwill and going concern value) is $150, i.e., $1,600 − $1,450.

(viii) The grossed-up basis of the T1 stock is $500, i.e., $450 × 1/.9.

(ix) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale gain) that would, under general principles of tax law, be properly taken into account before the close of new T's first taxable year, are as follows:

General Liabilities	$100
Taxes Payable	20
Total	120

(x) The AGUB of T1 is determined as follows:

Grossed-up basis of T1 Stock	$500
Liabilities	120
AGUB	620

(xi) Assume that ADSP is also $620.

(xii) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class IV and VI assets are as follows:

Asset Class	Asset	Fair Market Value
I	Cash	*$50
IV	Inventory	200
VI	Patent	350
	Total	600

*Amount.

(xiii) The amount of ADSP and of AGUB allocable to T1's Class IV and VI assets is first reduced by the $50 of cash.

(xiv) Because the remaining amount of ADSP and of AGUB ($570) is an amount which exceeds the fair market value of T1's only Class IV asset, the inventory, the amount allocated to the inventory is its fair market value ($200). After that, the remaining amount of ADSP and of AGUB ($370) exceeds the fair market value of T1's only Class VI asset, the patent. Thus, the amount of ADSP and of AGUB allocated to the patent is its fair market value ($350).

(xv) The amount of ADSP and of AGUB allocated to T1's Class VII assets (goodwill and going concern value) is $20, i.e., $570–$550.

Example 2. (i) Assume that the facts are the same as in *Example 1* except that P has, for five years, owned 20 percent of T's stock, which has a basis in P's hands at the beginning of the day after the acquisition date of $100, and P purchases the remaining 80 percent of T's stock for $1,600. P does not make a gain recognition election under section 338(b)(3).

(ii) Under § 1.338–5(c), the grossed-up basis of recently purchased T stock is $1,600, i.e., $1,600 ×(1 − .2)/.8.

(iii) The AGUB of T is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,600×(1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock	100
Liabilities	1,000
AGUB	2,700

(iv) Since P holds nonrecently purchased stock, the hypothetical purchase price of the T stock must be computed and is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,600×(1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5(d)(2) had been made ($1,600×.2/(1 − .2))	400
Liabilities	1,000
Total	3,000

(v) Since the hypothetical purchase price ($3,000) exceeds the AGUB ($2,700) and no gain recognition election is made under section 338(b)(3), AGUB is allocated under paragraph (c)(3) of this section.

(vi) First, an AGUB amount equal to the hypothetical purchase price ($3,000) is allocated among the assets under the general rules of this section. The allocation is set forth in the column below entitled *Original Allocation*. Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction having a numerator equal to the actual AGUB reduced by the amount of Class I assets ($2,700 − $200 = $2,500) and a denominator equal to the hypothetical purchase price reduced by the amount of Class I assets ($3,000 − $200 = $2,800), or 2,500/2,800. This produces the *Final Allocation:*

Class	Asset	Original allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*268
III	Accounts receivable	600	536
IV	Inventory	300	268
V	Building	800	714
V	Land	200	178
V	Investment in T1	450	402
VII	Goodwill and going concern value	150	134
	Total	$3,000	$2,700

*All numbers rounded for convenience.

§ 1.338–7 Allocation of redetermined ADSP and AGUB among target assets.

(a) *Scope.* ADSP and AGUB are redetermined at such time and in such amount as an increase or decrease would be required under general principles of tax law for the elements of ADSP or AGUB. This section provides rules for allocating redetermined ADSP or AGUB when increases or decreases with respect to the elements of ADSP or AGUB are required after the close of new target's first taxable year. For determining and allocating ADSP or AGUB when increases or decreases are required with respect to the elements of ADSP or AGUB before the close of new target's first taxable year, see §§ 1.338–4, 1.338–5, and 1.338–6.

(b) *Allocation of redetermined ADSP and AGUB.* When ADSP or AGUB is redetermined, a new allocation of ADSP or AGUB is made by allocating the redetermined ADSP or AGUB amount under the rules of § 1.338–6. If the allocation of the redetermined ADSP or AGUB amount under § 1.338–6 to a given asset is different from the original allocation to it, the difference is added

to or subtracted from the original allocation to the asset, as appropriate. Amounts allocable to an acquisition date asset (or with respect to a disposed-of acquisition date asset) are subject to all the asset allocation rules (for example, the fair market value limitation in § 1.338–6(c)(1)) as if the redetermined ADSP or AGUB were the ADSP or AGUB on the acquisition date.

(c) *Special rules for ADSP*—(1) *Increases or decreases in deemed sale gain taxable notwithstanding old target ceases to exist.* To the extent general principles of tax law would require a seller in an actual asset sale to account for events relating to the sale that occur after the sale date, target must make such an accounting. Target is not precluded from realizing additional deemed sale gain because the target is treated as a new corporation after the acquisition date.

(2) *Procedure for transactions in which section 338(h)(10) is not elected*—(i) *Deemed sale gain included in new target's return.* If an election under section 338(h)(10) is not made, any additional deemed sale gain of old target resulting from an increase or decrease in the ADSP is included in new target's income tax return for new target's taxable year in which the increase or decrease is taken into account. For example, if after the acquisition date there is an increase in the allocable ADSP of section 1245 property for which the recomputed basis (but not the adjusted basis) exceeds the portion of the ADSP allocable to that particular asset on the acquisition date, the additional gain is treated as ordinary income to the extent it does not exceed such excess amount. See paragraph (c)(2)(ii) of this section for the special treatment of old target's carryovers and carrybacks. Although included in new target's income tax return, the deemed sale gain is separately accounted for as an item of old target and may not be offset by income, gain, deduction, loss, credit, or other amount of new target. The amount of tax on income of old target resulting from an increase or decrease in the ADSP is determined as if such deemed sale gain had been recognized in old target's taxable year ending at the close of the acquisition date.

(ii) *Carryovers and carrybacks*—(A) *Loss carryovers to new target taxable years.* A net operating loss or net capital loss of old target may be carried forward to a taxable year of new target, under the principles of section 172 or 1212, as applicable, but is allowed as a deduction only to the extent of any recognized income of old target for such taxable year, as described in paragraph (c)(2)(i) of this section. For this purpose, however, taxable years of new target are not taken into account in applying the limitations in section 172(b)(1) or 1212(a)(1)(B) (or other similar limitations). In applying sections 172(b) and 1212(a)(1), only income, gain, loss, deduction, credit, and other amounts of old target are taken into account. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred that could be carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income.

(B) *Loss carrybacks to taxable years of old target.* An ordinary loss or capital loss accounted for as a separate item of old target under paragraph (c)(2)(i) of this section may be carried back to a taxable year of old target under the principles of section 172 or 1212, as applicable. For this purpose, taxable years of new target are not taken into account in applying the limitations in section 172(b) or 1212(a) (or other similar limitations).

(C) *Credit carryovers and carrybacks.* The principles described in paragraphs (c)(2)(ii)(A) and (B) of this section apply to carryovers and carrybacks of amounts for purposes of determining the amount of a credit allowable under part IV, subchapter A, chapter 1 of the Internal Revenue Code. Thus, for example, credit carryovers of old target may offset only income tax attributable to items described in paragraph (c)(2)(i) of this section.

(3) *Procedure for transactions in which section 338(h)(10) is elected.* If an election under section 338(h)(10) is made, any additional deemed sale gain resulting from an increase or decrease in the ADSP is accounted for in determining the taxable income (or other amount) of the member of the selling consolidated group, the selling affiliate, or the S corporation shareholders to which such income, loss, or other amount is attributable for the taxable year in which such increase or decrease is taken into account.

(d) *Special rules for AGUB*—(1) *Effect of disposition or depreciation of acquisition date assets.* If an acquisition date asset has been disposed of, depreciated, amortized, or depleted by new target before an amount is added to the original allocation to the asset, the increased amount otherwise allocable to such asset is taken into account under general principles of tax law that apply when part of the cost of an asset not previously taken into account in basis is paid or incurred after the asset has been disposed of, depreciated, amortized, or depleted. A similar rule applies when an amount is subtracted from the original allocation to the asset. For purposes of the preceding sentence, an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in AGUB would reduce its basis below zero.

(2) *Section 38 property.* Section 1.47–2(c) applies to a reduction in basis of section 38 property under this section.

(e) *Examples.* The following examples illustrate this section. Any amount described in the following examples is exclusive of interest. For rules characterizing deferred contingent payments as principal or interest, see §§ 1.483–4, 1.1274–2(g), and 1.1275–4(c). The examples are as follows:

Example 1. (i)(A) T's assets other than goodwill and going concern value, and their fair market values at the beginning of the day after the acquisition date, are as follows:

Asset class	Asset	Fair market value
V	Building	$100
V	Stock of X (not a target)	200
	Total	$300

(B) T has no liabilities other than a contingent liability that would not be taken into account under general principles of tax law in an asset sale between unrelated parties when the buyer assumed the liability or took property subject to it.

(ii)(A) On September 1, 2000, P purchases all of the outstanding stock of T for $270 and makes a section 338 election for T. The grossed-up basis of the T stock and T's AGUB are both $270. The AGUB is ratably allocated among T's Class V assets in proportion to their fair market values as follows:

Asset	Basis
Building ($270 × 100/300)	$90
Stock ($270 × 200/300)	180
Total	$270

(B) No amount is allocated to the Class VII assets. New T is a calendar year taxpayer. Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 2001, new T sells the X stock and uses the proceeds to purchase inventory.

(iv) Pursuant to events on June 30, 2002, the contingent liability of old T is at that time properly taken into account under general principles of tax law. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338–6. Because the redetermined AGUB for T ($330) exceeds the sum of the fair market values at the beginning of the day after the acquisition date of the Class V acquisition date assets

($300), AGUB allocated to those assets is limited to those fair market values under § 1.338–6(c)(1). As there are no Class VI assets, the remaining AGUB of $30 is allocated to goodwill and going concern value (Class VII assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Building	$90	$100	$10
X Stock	180	200	20
Goodwill and going concern value	0	30	30
Total	$270	$330	$60

(vi) Since the X stock was disposed of before the contingent liability was properly taken into account for tax purposes, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather, such amount ($20) is allowed as a capital loss to T for the taxable year 2002 under the principles of *Arrowsmith* v. *Commissioner,* 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building and the $30 increase in AGUB allocated to the goodwill and going concern value are treated as basis redeterminations in 2002. See paragraph (d)(1) of this section.

Example 2. (i) On January 1, 2002, P purchases all of the outstanding stock of T and makes a section 338 election for T. Assume that ADSP and AGUB of T are both $500 and are allocated among T's acquisition date assets as follows:

Asset class	Asset	Basis
V	Machinery	$150
V	Land	250
VII ...	Goodwill and going concern value.	100
Total		$500

(ii) On September 30, 2004, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 2007, the former shareholders refund $140 of the purchase price to P in a settlement of the lawsuit. Assume that, under general principles of tax law, both the seller and the buyer properly take into account such refund when paid. Assume also that the refund has no effect on the tax liability for the deemed sale gain. This refund results in a decrease of T's ADSP and AGUB of $140, from $500 to $360.

(iv) The redetermined ADSP and AGUB of $360 is allocated among T's acquisition date assets. Because ADSP and AGUB do not exceed the fair market value of the Class V assets, the ADSP and AGUB amounts are allocated to the Class V assets in proportion to their fair market values at the beginning of the day after the acquisition date. Thus, $135 ($150 ($360/($150 + $250))) is allocated to the machinery and $225 ($250 ($360/($150 + $250))) is allocated to the land. Accordingly, the basis of the machinery is reduced by $15 ($150 original allocation $135 redetermined allocation) and the basis of the land is reduced by $25 ($250 original allocation −$225 redetermined allocation). No amount is allocated to the Class VII assets. Accordingly, the basis of the goodwill and going concern value is reduced by $100 ($100 original allocation −$0 redetermined allocation).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery is treated as if it were disposed of before the decrease is taken into account. In 2007, T recognizes income of $15, the character of which is determined under the principles of *Arrowsmith* v. *Commissioner,* 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the goodwill and going concern value immediately before the decrease in AGUB is $40. A similar adjustment to income is made in 2007 with respect to the $60 of previously amortized goodwill and going concern value.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 2007, is as follows:

Asset	Basis
Machinery	$0
Land	225
Goodwill and going concern value	0

Example 3. (i) Assume that the facts are the same as § 1.338–6(d) *Example 2* except that the recently purchased stock is acquired for $1,600 plus additional payments that are contingent upon T's future earnings. Assume that, under general principles of tax law, such later payments are properly taken into account when paid. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocated among T's acquisition date assets under § 1.338–6(c)(3)(iii) as follows:

Class	Asset	Final allocation
I	Cash	$200
II	Portfolio of actively traded securities.	*268
III	Accounts receivable	536
IV	Inventory	268
V	Building	714
V	Land	178
V	Investment in T1	402
VII ...	Goodwill and going concern value.	134
	Total	$2,700

* All numbers rounded for convenience.

(ii) After the close of new target's first taxable year, P pays an additional $200 for its recently purchased T stock. Assume that the additional consideration paid would not increase T's tax liability for the deemed sale gain.

(iii) T's AGUB increases by $200, from $2,700 to $2,900. This $200 increase in AGUB is accounted for in accordance with the provisions of § 1.338–6(c)(3)(iii).

(iv) The hypothetical purchase price of the T stock is redetermined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,800 × (1 −.2)/.8)	$1,800
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5(d)(2) had been made ($1,800 × .2/(1 −.2))	450
Liabilities	1,000
Total	$3,250

(v) Since the redetermined hypothetical purchase price ($3,250) exceeds the redetermined AGUB ($2,900) and no gain recognition election was made under section 338(b)(3), the rules of § 1.338–6(c)(3)(iii) are reapplied using the redetermined hypothetical purchase price and the redetermined AGUB.

(vi) First, an AGUB amount equal to the redetermined hypothetical purchase price ($3,250) is allocated among the assets under the general rules of § 1.338 6. The allocation is set forth in the column below entitled *Hypothetical Allocation*. Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction with a numerator equal to the actual redetermined AGUB reduced by the amount of Class I assets ($2,900–$200 = $2,700) and a denominator equal to the redetermined hypothetical purchase price reduced by the amount of Class I assets ($3,250–$200 = $3,050), or 2,700/3,050. This produces the *Final Allocation*:

Class	Asset	Hypothetical allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*266
III	Accounts receivable	600	531
IV	Inventory	300	266
V	Building	800	708
V	Land	200	177
V	Investment in T1	450	398
VII	Goodwill and going concern value	400	354
	Total	$3,250	$2900

*All numbers rounded for convenience.

(vii) As illustrated by this example, reapplying § 1.338–6(c)(3) results in a basis increase for some assets and a basis decrease for other assets. The amount of redetermined AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original (c)(3) allocation	Redetermined (c)(3) allocation	Increase (decrease)
Portfolio of actively traded securities	$268	$266	$(2)
Accounts receivable	536	531	(5)
Inventory	268	266	(2)
Building	714	708	(6)
Land	178	177	(1)
Investment in T1	402	398	(4)
Goodwill and going concern value	134	354	220
Total	$2,500	$2,700	$200

Example 4. (i) On January 1, 2001, P purchases all of the outstanding T stock and makes a section 338 election for T. P pays $700 of cash and promises also to pay a maximum $300 of contingent consideration at various times in the future. Assume that, under general principles of tax law, such later payments are properly taken into account by P when paid. Assume also, however, that the current fair market value of the contingent payments is reasonably ascertainable. The fair market value of T's assets (other than goodwill and going concern value) as of the beginning of the following day is as follows:

Asset class	Assets	Fair market value
V	Equipment	$200
V	Non-actively traded securities.	100
V	Building	500
	Total	$800

(ii) T has no liabilities. The AGUB is $700. In calculating ADSP, assume that, under § 1.1001–1, the current amount realized attributable to the contingent consideration is $200. ADSP is therefore $900 ($700 cash plus $200).

(iii) (A) The AGUB of $700 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment ($700 × 200/800)	$175.00
Non-actively traded securities ($700 × 100/800)	87.50
Building ($700 × 500/800)	437.50
Total	$700.00

(B) No amount is allocated to goodwill or going concern value.

(iv) (A) The ADSP of $900 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment	$200
Non-actively traded securities	100
Building	500
Total	$800

(B) The remaining ADSP, $100, is allocated to goodwill and going concern value (Class VII).

(v) P and T file a consolidated return for 2001 and each following year with P as the common parent of the affiliated group.

(vi) In 2004, a contingent amount of $120 is paid by P. Assume that, under general principles of tax law, the payment is properly taken into account by P at the time made. In 2004, there is an increase in T's AGUB of $120. The amount of the increase allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Equipment	$175.00	$200.00	$25.00
Land	87.50	100.00	12.50
Building	437.50	500.00	62.50
Goodwill and going concern value	0.00	20.00	20.00
Total	$700.00	$820.00	$120.00

Par. 6. Section 1.338 10 is added to read as follows:

§ 1.338–10 Filing of returns.

(a) *Returns including tax liability from deemed asset sale*—(1) *In general.* Except as provided in paragraphs (a)(2) and (3) of this section, any deemed sale gain is reported on the final return of old target filed for old target's taxable year that ends at the close of the acquisition date. If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any deemed sale gain of any members of the consolidated group that are acquired by the purchasing corporation on the same acquisition date as old target).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If the selling group files a consolidated return for the period that includes the acquisition date, old target is disaffiliated from that group immediately before the deemed asset sale and must file a deemed sale return separate from the group that includes only the deemed sale gain and the carryover items specified in paragraph (a)(2)(iii) of this section. The deemed asset sale occurs at the close of the acquisition date and is the last transaction of old target. Any transactions of old target occurring on the acquisition date other than the deemed asset sale are included in the selling group's consolidated return. A deemed sale return includes a combined deemed sale return as defined in paragraph (a)(4) of this section.

(ii) *Separate taxable year.* The deemed asset sale included in the deemed sale return under this paragraph (a)(2) occurs in a separate taxable year, except that old target's taxable year of the sale and the consolidated year of the selling group that includes the acquisition date are treated as the same year for purposes of determining the number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Old target is an S corporation.* If target is an S corporation for the period that ends on the day before the acquisition date, old target must file a deemed sale return as a C corporation. For this purpose, the principles of paragraph (a)(2) of this section apply. This paragraph (a)(3) does not apply if an election under section 338(h)(10) is made for the S corporation.

(4) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return (combined return) may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1(b)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if—

(A) T and T1 are directly owned subsidiaries of S;

(B) S is the common parent of a consolidated group; and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed asset sales by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions (SRLY restrictions) of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies, when appropriate, to other tax attributes.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15). The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return;

(B) Contain the following declaration (or a substantially similar declaration): EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN;

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(iv) *Consequences of filing a combined return.* Each target included in a combined return is severally liable for any tax associated with the combined return. See § 1.338–1(b)(3).

(5) *Deemed sale excluded from purchasing corporation's consolidated return.* Old target may not be considered a member of any affiliated group that includes the purchasing corporation with respect to its deemed asset sale.

(6) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76(c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return; or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

(B) *Deemed extension.* For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until

the last date for making the election under section 338.

(C) *Erroneous filing of deemed sale return.* If, under this paragraph (a)(6)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(D) *Erroneous filing of return for regular tax year.* If, under this paragraph (a)(6)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(E) *Last date for payment of tax.* If either a substituted or amended final return of old target is filed under this paragraph (a)(6)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (a)(6)(i) of this section).

(7) *Examples.* The following examples illustrate this paragraph (a):

Example 1. (i) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30 of Year 1, P makes a qualified stock purchase of T from S. P makes a section 338 election for T, and T's deemed asset sale occurs as of the close of T's acquisition date (June 30).

(ii) T is considered disaffiliated for purposes of reporting the deemed sale gain. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability for the deemed sale gain is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year of the deemed asset sale, and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(iii) If P purchased the stock of T at 10 a.m. on June 30 of Year 1, the results would be the same. See paragraph (a)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1,* except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30 of Year 1, which return includes the deemed asset sale.

(b) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under subchapter A of chapter 68 of the Internal Revenue Code arising on or before the last day for making the election under section 338 because of circumstances that would not exist but for an election under section 338, is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause; and

(ii) Corrective action is taken on or before the last day.

(2) *Notification.* The Internal Revenue Service should be notified at the time of correction (e.g., by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (b) is being asserted.

(3) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (b)(1) of this section applies or would apply if there were an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (b)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing corporation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, at the place where the consolidated return was filed.

(4) *Examples.* The following examples illustrate this paragraph (b):

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20 of Year 1, P makes a qualified stock purchase of T. P does not join in filing a consolidated return. P makes a section 338 election for T on or before June 15 of Year 2, which causes T's taxable year to end as of the close of September 20 of Year 1. An income tax return for T's taxable period ending on September 20 of Year 1 was due on December 15 of Year 1. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15 of Year 2. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, i.e., March 31 of Year 2.) Interest on any underpayment of tax for old T's short taxable year ending September 20 of Year 1 runs from December 15 of Year 1. A statement indicating that the waiver rule of this paragraph is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1.* Assume further that new T adopts the calendar year by filing, on or before June 15 of Year 2, its first return (for the period beginning on September 21 of Year 1 and ending on December 31 of Year 1) indicating that a calendar year is chosen. See § 1.338–1(b)(1).Any additions to tax or amounts described in this paragraph (b) that arise because of the late filing of a return for the period ending on December 31 of Year 1 are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15 of Year 2, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2,* except that T's former taxable year ends on October 31. Although prior to the election old T had a return due on January 15 of Year 2 for its year ending October 31 of Year 1, that return need not be filed because a timely election under section 338 was made. Instead, old T must file a final return for the period ending on September 20 of Year 1, which is due on December 15 of Year 1.

§§ 1.338(b)–1, 1.338(b)–2T, and 1.338(b)–3T [Removed]

Par. 7. Sections 1.338(b)–1, 1.338(b)–2T, and 1.338(b)–3T, are removed.

Par. 8. Section 1.338(h)(10)–1 is revised to read as follows.

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

(a) *Scope.* This section prescribes rules for qualification for a section 338(h)(10) election and for making a section 338(h)(10) election. This section also prescribes the consequences of such election. The rules of this section are in addition to the rules of §§ 1.338–0 through 1.338–10 and 1.338(i)–1 and, in appropriate cases, apply instead of the rules of §§ 1.338–0 through 1.338–10 and 1.338(i)–1.

(b) *Definitions*—(1) *Consolidated target.* A *consolidated target* is a target that is a member of a consolidated group within the meaning of § 1.1502–1(h) on the acquisition date and is not the common parent of the group on that date.

(2) *Selling consolidated group.* A *selling consolidated group* is the consolidated group of which the consolidated target is a member on the acquisition date.

(3) *Selling affiliate; affiliated target.* A *selling affiliate* is a domestic corporation that owns on the acquisition date an amount of stock in a domestic target, which amount of stock is

described in section 1504(a)(2), and does not join in filing a consolidated return with the target. In such case, the target is an *affiliated target.*

(4) *S corporation target.* An *S corporation target* is a target that is an S corporation immediately before the acquisition date.

(5) *S corporation shareholders.* S *corporation shareholders* are the S corporation target's shareholders. Unless otherwise indicated, a reference to S corporation shareholders refers both to S corporation shareholders who do and those who do not sell their target stock.

(6) *Liquidation.* Any reference in this section to a *liquidation* is treated as a reference to the transfer described in paragraph (d)(4) of this section notwithstanding its ultimate characterization for Federal income tax purposes.

(c) *Section 338(h)(10) election*—(1) *In general.* A section 338(h)(10) election may be made for T if P acquires stock meeting the requirements of section 1504(a)(2) from a selling consolidated group, a selling affiliate, or the S corporation shareholders in a qualified stock purchase.

(2) *Simultaneous joint election requirement.* A section 338(h)(10) election is made jointly by P and the selling consolidated group (or the selling affiliate or the S corporation shareholders) on Form 8023 in accordance with the instructions to the form. S corporation shareholders who do not sell their stock must also consent to the election. The section 338(h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Irrevocability.* A section 338(h)(10) election is irrevocable. If a section 338(h)(10) election is made for T, a section 338 election is deemed made for T.

(4) *Effect of invalid election.* If a section 338(h)(10) election for T is not valid, the section 338 election for T is also not valid.

(d) *Certain consequences of section 338(h)(10) election.* For purposes of subtitle A of the Internal Revenue Code (except as provided in § 1.338–1(b)(2)), the consequences to the parties of making a section 338(h)(10) election for T are as follows:

(1) *P.* P is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock, if any. The effect of a gain recognition election includes a taxable deemed sale by P on the acquisition date of any nonrecently purchased target stock. See § 1.338–5(d).

(2) *New T.* The AGUB for new T's assets is determined under § 1.338–5 and is allocated among the acquisition date assets under §§ 1.338–6 and 1.338–7. Notwithstanding paragraph (d)(4) of this section (deemed liquidation of old T), new T remains liable for the tax liabilities of old T (including the tax liability for the deemed sale gain). For example, new T remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old T joined in the same consolidated return. See § 1.1502–6(a).

(3) *Old T—deemed sale*—(i) *In general.* Old T is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the assumption of or taking subject to liabilities in a single transaction at the close of the acquisition date (but before the deemed liquidation). See § 1.338–1(a) regarding the tax characterization of the deemed asset sale. ADSP for old T is determined under § 1.338–4 and allocated among the acquisition date assets under §§ 1.338–6 and 1.338–7. Old T realizes the deemed sale gain from the deemed asset sale before the close of the acquisition date while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders). If T is an affiliated target, or an S corporation target, the principles of §§ 1.338–2(c)(10) and 1.338–10(a)(1), (5), and (6)(i) apply to the return on which the deemed sale gain is reported. When T is an S corporation target, T's S election continues in effect through the close of the acquisition date (including the time of the deemed asset sale and the deemed liquidation) notwithstanding section 1362(d)(2)(B). Also, when T is an S corporation target, any direct and indirect subsidiaries of T which T has elected to treat as qualified subchapter S subsidiaries under section 1361(b)(3) remain qualified subchapter S subsidiaries through the close of the acquisition date. No similar rule applies when a qualified subchapter S subsidiary, as opposed to the S corporation that is its owner, is the target the stock of which is actually purchased.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed asset sale of a parent corporation is considered to precede that of its subsidiary. See § 1.338–3(4)(i).

(4) *Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization—(i) In general.* Old T is treated as if, before the close of the acquisition date, after the deemed asset sale in paragraph (d)(3) of this section, and while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders), it transferred all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceased to exist. The transfer from old T is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 336 or 337 applies.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed liquidation of a subsidiary corporation is considered to precede the deemed liquidation of its parent.

(5) *Selling consolidated group, selling affiliate, or S corporation shareholders—(i) In general.* If T is an S corporation target, S corporation shareholders (whether or not they sell their stock) take their pro rata share of the deemed sale gain into account under section 1366 and increase or decrease their basis in T stock under section 1367. Members of the selling consolidated group, the selling affiliate, or S corporation shareholders are treated as if, after the deemed asset sale in paragraph (d)(3) of this section and before the close of the acquisition date, they received the assets transferred by old T in the transaction described in paragraph (d)(4)(i) of this section. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 331 or 332 applies.

(ii) *Basis and holding period of T stock not acquired.* A member of the selling consolidated group (or the selling affiliate or an S corporation shareholder) retaining T stock is treated as acquiring the stock so retained on the day after the acquisition date for its fair market value. The holding period for the retained stock starts on the day after the acquisition date. For purposes of this

paragraph, the fair market value of all of the T stock equals the grossed-up amount realized on the sale to P of P's recently purchased target stock. See § 1.338–4(c).

(iii) *T stock sale.* Members of the selling consolidated group (or the selling affiliate or S corporation shareholders) recognize no gain or loss on the sale or exchange of T stock included in the qualified stock purchase (although they may recognize gain or loss on the T stock in the deemed liquidation).

(6) *Nonselling minority shareholders other than nonselling S corporation shareholders—(i) In general.* This paragraph (d)(6) describes the treatment of shareholders of old T other than the following: members of the selling consolidated group, the selling affiliate, S corporation shareholders (whether or not they sell their stock), and P. For a description of the treatment of S corporation shareholders, see paragraph (d)(5) of this section. A shareholder to which this paragraph (d)(6) applies is called a minority shareholder.

(ii) *T stock sale.* A minority shareholder recognizes gain or loss on the shareholder's sale or exchange of T stock included in the qualified stock purchase.

(iii) *T stock not acquired.* A minority shareholder does not recognize gain or loss under this section with respect to shares of T stock retained by the shareholder. The shareholder's basis and holding period for that T stock is not affected by the section 338(h)(10) election.

(7) *Consolidated return of selling consolidated group.* If P acquires T in a qualified stock purchase from a selling consolidated group

(i) The selling consolidated group must file a consolidated return for the taxable period that includes the acquisition date;

(ii) A consolidated return for the selling consolidated group for that period may not be withdrawn on or after the day that a section 338(h)(10) election is made for T; and

(iii) Permission to discontinue filing consolidated returns cannot be granted for, and cannot apply to, that period or any of the immediately preceding taxable periods during which consolidated returns continuously have been filed.

(8) *Availability of the section 453 installment method.* Solely for purposes of applying sections 453, 453A, and 453B, and the regulations thereunder (the installment method) to determine the consequences to old T in the deemed asset sale and to old T (and its shareholders, if relevant) in the deemed liquidation, the rules in paragraphs (d)(1) through (7) of this section are modified as follows:

(i) *In deemed asset sale.* Old T is treated as receiving in the deemed asset sale new T installment obligations, the terms of which are identical (except as to the obligor) to P installment obligations issued in exchange for recently purchased stock of T. Old T is treated as receiving in cash all other consideration in the deemed asset sale other than the assumption of, or taking subject to, old T liabilities. For example, old T is treated as receiving in cash any amounts attributable to the grossing-up of amount realized under § 1.338–4(c). The amount realized for recently purchased stock taken into account in determining ADSP is adjusted (and, thus, ADSP is redetermined) to reflect the amounts paid under an installment obligation for the stock when the total payments under the installment obligation are greater or less than the amount realized.

(ii) *In deemed liquidation.* Old T is treated as distributing in the deemed liquidation the new T installment obligations that it is treated as receiving in the deemed asset sale. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving in the deemed liquidation the new T installment obligations that correspond to the P installment obligations they actually received individually in exchange for their recently purchased stock. The new T installment obligations may be recharacterized under other rules. See for example § 1.453–11(a)(2) which, in certain circumstances, treats the new T installment obligations deemed distributed by old T as if they were issued by new T in exchange for the members' of the selling consolidated group, the selling affiliate's, or the S corporation shareholders' stock in old T. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving all other consideration in the deemed liquidation in cash.

(9) *Treatment consistent with an actual asset sale.* Old T may not assert any provision in section 338(h)(10) or this section to obtain a tax result that would not be obtained if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur.

(e) *Examples.* The following examples illustrate this section:

Example 1. (i) S1 owns all of the T stock and T owns all of the stock of T1 and T2. S1 is the common parent of a consolidated group that includes T, T1, and T2. P makes a qualified stock purchase of all of the T stock from S1. S1 joins with P in making a section 338(h)(10) election for T and for the deemed purchase of T1. A section 338 election is not made for T2.

(ii) S1 does not recognize gain or loss on the sale of the T stock and T does not recognize gain or loss on the sale of the T1 stock because section 338(h)(10) elections are made for T and T1. Thus, for example, gain or loss realized on the sale of the T or T1 stock is not taken into account in earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain or loss realized on the deemed sale of the T2 stock. See § 1.338–4(h).

(iii) The results would be the same if S1, T, T1, and T2 are not members of any consolidated group, because S1 and T are selling affiliates.

Example 2. (i) S and T are solvent corporations. S owns all of the outstanding stock of T. S and P agree to undertake the following transaction: T will distribute half its assets to S, and S will assume half of T's liabilities. Then, P will purchase the stock of T from S. S and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in paragraph (d) of this section are treated in the same manner as if they had actually occurred. Because S and P had agreed that, after T's actual distribution to S of part of its assets, S would sell T to P pursuant to an election under section 338(h)(10), and because paragraph (d)(4) of this section deems T subsequently to have transferred all its assets to its shareholder, T is deemed to have adopted a plan of complete liquidation under section 332. T's actual transfer of assets to S is treated as a distribution pursuant to that plan of complete liquidation.

Example 3. (i) S1 owns all of the outstanding stock of both T and S2. All three are corporations. S1 and P agree to undertake the following transaction. T will transfer substantially all of its assets and liabilities to S2, with S2 issuing no stock in exchange therefor, and retaining its other assets and liabilities. Then, P will purchase the stock of T from S1. S1 and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in this section are treated in the same manner as if they had actually occurred. Because old T transferred substantially all of its assets to S2, and is deemed to have distributed all its remaining assets and gone out of existence, the transfer of assets to S2, taking into account the related transfers, deemed and actual, qualifies as a

reorganization under section 368(a)(1)(D). Section 361(c)(1) and not section 332 applies to T's deemed liquidation.

Example 4. (i) T owns two assets: an actively traded security (Class II) with a fair market value of $100 and an adjusted basis of $100, and inventory (Class IV) with a fair market value of $100 and an adjusted basis of $100. T has no liabilities. S is negotiating to sell all the stock in T to P for $100 cash and contingent consideration. Assume that under generally applicable tax accounting rules, P's adjusted basis in the T stock immediately after the purchase would be $100, because the contingent consideration is not taken into account. Thus, under the rules of § 1.338–5, AGUB would be $100. Under the allocation rules of § 1.338–6, the entire $100 would be allocated to the Class II asset, the actively traded security, and no amount would be allocated to the inventory. P, however, plans immediately to cause T to sell the inventory, but not the actively traded security, so it requests that, prior to the stock sale, S cause T to create a new subsidiary, Newco, and contribute the actively traded security to the capital of Newco. Because the stock in Newco, which would not be actively traded, is a Class V asset, under the rules of § 1.338–6 $100 of AGUB would be allocated to the inventory and no amount of AGUB would be allocated to the Newco stock. Newco's own AGUB, $0 under the rules of § 1.338–5, would be allocated to the actively traded security. When P subsequently causes T to sell the inventory, T would realize no gain or loss instead of realizing gain of $100.

(ii) Assume that, if the T stock had not itself been sold but T had instead sold both its inventory and the Newco stock to P, T would for tax purposes be deemed instead to have sold both its inventory and actively traded security directly to P, with P deemed then to have created Newco and contributed the actively traded security to the capital of Newco. Section 338, if elected, generally recharacterizes a stock sale as a deemed sale of assets. The tax results of the deemed sale of assets should, where possible, be like those of an actual asset sale. Hence, the deemed sale of assets under section 338(h)(10) should be treated as one of the inventory and actively traded security themselves, not of the inventory and Newco stock. That is the substance of the transaction. The anti-abuse rule of § 1.338–1(c) does not apply, because the substance of the deemed sale of assets is a sale of the inventory and the actively traded security themselves, not of the inventory and the Newco stock. Otherwise, the anti-abuse rule might apply.

Example 5. (i) T, a member of a selling consolidated group, has only one class of stock, all of which is owned by S1. On March 1 of Year 2, S1 sells its T stock to P for $80,000, and joins with P in making a section 338(h)(10) election for T. There are no selling costs or acquisition costs. On March 1 of Year 2, T owns land with a $50,000 basis and $75,000 fair market value and equipment with a $30,000 adjusted basis, $70,000 recomputed basis, and $60,000 fair market value. T also has a $40,000 liability. S1 pays old T's allocable share of the selling group's consolidated tax liability for Year 2 including the tax liability for the deemed sale gain (a total of $13,600).

(ii) ADSP of $120,000 ($80,000 + $40,000 + 0) is allocated to each asset as follows:

Assets	Basis	FMV	Fraction	Allocable ADSP
Land	$50,000	$75,000	5/9	$66,667
Equipment	30,000	60,000	4/9	53,333
Total	$80,000	$135,000	1	$120,000

(iii) Under paragraph (d)(3) of this section, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income).

(iv) Under paragraph (d)(5)(iii) of this section, S1 recognizes no gain or loss upon its sale of the old T stock to P. S1 also recognizes no gain or loss upon the deemed liquidation of T. See paragraph (d)(4) of this section and section 332.

(v) P's basis in new T stock is P's cost for the stock, $80,000. See section 1012.

(vi) Under § 1.338–5, the AGUB for new T is $120,000, i.e., P's cost for the old T stock ($80,000) plus T's liability ($40,000). This AGUB is allocated as basis among the new T assets under §§ 1.338–6 and 1.338–7.

Example 6. (i) The facts are the same as in *Example 5,* except that S1 sells 80 percent of the old T stock to P for $64,000, rather than 100 percent of the old T stock for $80,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 5,* except that:

(A) P's basis for its 80-percent interest in the new T stock is P's $64,000 cost for the stock. See section 1012.

(B) Under § 1.338–5, the AGUB for new T is $120,000 (i.e., $64,000/.8 + $40,000 + $0).

(C) Under paragraph (d)(4) of this section, S1 recognizes no gain or loss with respect to the retained stock in T. See section 332.

(D) Under paragraph (d)(5)(ii) of this section, the basis of the T stock retained by S1 is $16,000 (i.e., $120,000 − $40,000 (the ADSP amount for the old T assets over the sum of new T's liabilities immediately after the acquisition date) ×.20 (the proportion of T stock retained by S1)).

Example 7. (i) The facts are the same as in *Example 6,* except that K, a shareholder unrelated to T or P, owns the 20 percent of the T stock that is not acquired by P in the qualified stock purchase. K's basis in its T stock is $5,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 6.*

(iii) Under paragraph (d)(6)(iii) of this section, K recognizes no gain or loss, and K's basis in its T stock remains at $5,000.

Example 8. (i) The facts are the same as in *Example 5,* except that the equipment is held by T1, a wholly-owned subsidiary of T, and a section 338(h)(10) election is also made for T1. The T1 stock has a fair market value of $60,000. T1 has no assets other than the equipment and no liabilities. S1 pays old T's and old T1's allocable shares of the selling group's consolidated tax liability for Year 2 including the tax liability for T and T1's deemed sale gain.

(ii) ADSP for T is $120,000, allocated $66,667 to the land and $53,333 to the stock. Old T's deemed sale gain is $16,667 (the capital gain on its deemed sale of the land). Under paragraph (d)(5)(iii) of this section, old T does not recognize gain or loss on its deemed sale of the T1 stock. See section 332.

(iii) ADSP for T1 is $53,333 (i.e., $53,333 + $0 + $0). On the deemed sale of the equipment, T1 recognizes ordinary income of $23,333.

(iv) Under paragraph (d)(5)(iii) of this section, S1 does not recognize gain or loss upon its sale of the old T stock to P.

Example 9. (i) The facts are the same as in *Example 8,* except that P already owns 20 percent of the T stock, which is nonrecently purchased stock with a basis of $6,000, and that P purchases the remaining 80 percent of the T stock from S1 for $64,000.

(ii) The results are the same as in *Example 8,* except that under paragraph (d)(1) of this section and § 1.338–5(d), P is deemed to have made a gain recognition election for its nonrecently purchased T stock. As a result, P recognizes gain of $10,000 and its basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (i.e., $64,000 + $16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (i.e., $64,000 (the basis of the recently purchased T stock) ×(1 .2)/(.8) (the fraction in section 338(b)(4))).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (i.e., $64,000 (the grossed-up basis in the recently purchased T stock) ×(.2)/(1.0 − .2) (the fraction in section 338(b)(3)(B))).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (i.e., $16,000 − $6,000).

Example 10. (i) T is an S corporation whose sole class of stock is owned 40 percent each by A and B and 20 percent by C. A and B each has an adjusted basis of $10,000 in the stock. C has an adjusted basis of $5,000 in the stock. A, B, and C hold no installment obligations to which section 453A applies. On March 1 of Year 1, A sells its stock to P for $40,000 in cash and B sells its stock to P for a $25,000 note issued by P and real estate having a fair market value of $15,000. The $25,000 note, due in full in Year 7, is not publicly traded and bears adequate stated interest. A and B have no selling expenses.

T's sole asset is real estate, which has a value of $110,000 and an adjusted basis of $35,000. Also, T's real estate is encumbered by long-outstanding purchase-money indebtedness of $10,000. The real estate does not have built-in gain subject to section 1374. A, B, and C join with P in making a section 338(h)(10) election for T.

(ii) Solely for purposes of application of sections 453, 453A, and 453B, old T is considered in its deemed asset sale to receive back from new T the $25,000 note (considered issued by new T) and $75,000 of cash (total consideration of $80,000 paid for all the stock sold, which is then divided by .80 in the grossing-up, with the resulting figure of $100,000 then reduced by the amount of the installment note). Absent an election under section 453(d), gain is reported by old T under the installment method.

(iii) In applying the installment method to old T's deemed asset sale, the contract price for old T's assets deemed sold is $100,000, the $110,000 selling price reduced by the indebtedness of $10,000 to which the assets are subject. (The $110,000 selling price is itself the sum of the $80,000 grossed-up in paragraph (ii) above to $100,000 and the $10,000 liability.) Gross profit is $75,000 ($110,000 selling price − old T's basis of $35,000). Old T's gross profit ratio is 0.75 (gross profit of $75,000 ÷ $100,000 contract price). Thus, $56,250 (0.75 × the $75,000 cash old T is deemed to receive in Year 1) is Year 1 gain attributable to the sale, and $18,750 ($75,000 − $56,250) is recovery of basis.

(iv) In its liquidation, old T is deemed to distribute the $25,000 note to B, since B actually sold the stock partly for that consideration. To the extent of the remaining liquidating distribution to B, it is deemed to receive, along with A and C, the balance of old T's liquidating assets in the form of cash. Under section 453(h), B, unless it makes an election under section 453(d), is not required to treat the receipt of the note as a payment for the T stock; P's payment of the $25,000 note in Year 7 to B is a payment for the T stock. Because section 453(h) applies to B, old T's deemed liquidating distribution of the note is, under section 453B(h), not treated as a taxable disposition by old T.

(v) Under section 1366, A reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases A's $10,000 adjusted basis in the T stock to $32,500. Next, in old T's deemed liquidation, A is considered to receive $40,000 for its old T shares, causing it to recognize an additional $7,500 gain in Year 1.

(vi) Under section 1366, B reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases B's $10,000 adjusted basis in its T stock to $32,500. Next, in old T's deemed liquidation, B is considered to receive the $25,000 note and $15,000 of other consideration. Applying section 453, including section 453(h), to the deemed liquidation, B's selling price and contract price are both $40,000. Gross profit is $7,500 ($40,000 selling price − B's basis of $32,500). B's gross profit ratio is 0.1875 (gross profit of $7,500 ÷ $40,000 contract price). Thus, $2,812.50 (0.1875 $15,000) is Year 1 gain attributable to the deemed liquidation. In Year 7, when the $25,000 note is paid, B has $4,687.50 (0.1875 × $25,000) of additional gain.

(vii) Under section 1366, C reports 20 percent, or $11,250, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases C's $5,000 adjusted basis in its T stock to $16,250. Next, in old T's deemed liquidation, C is considered to receive $20,000 for its old T shares, causing it to recognize an additional $3,750 gain in Year 1. Finally, under paragraph (d)(5)(ii) of this section, C is considered to acquire its stock in T on the day after the acquisition date for $20,000 (fair market value=grossed-up amount realized of $100,000 × 20%). C's holding period in the stock deemed received in new T begins at that time.

(f) *Inapplicability of provisions.* The provisions of section 6043, § 1.331–1(d), and § 1.332–6 (relating to information returns and recordkeeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (d)(4) of this section.

(g) *Required information.* The Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form.

Par. 9. Section 1.338(i)–1 is revised to read as follows:

§ 1.338(i)–1 Effective dates.

The provisions of §§ 1.338–0 through 1.338–10 and 1.338(h)(10)–1 apply to any qualified stock purchase occurring after the date that final regulations are published in the **Federal Register**. For rules applicable to qualified stock purchases before the date that final regulations are published in the **Federal Register**, see §§ 1.338–0 through 1.338–5, 1.338(b)–1, 1.338(b)–2T, 1.338(b)–3T, 1.338(h)(10)–1, and 1.338(i)–1 as contained in 26 CFR part 1 revised April 1, 1999.

Par. 10. Section 1.1060–1 is added to read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

(a) *Scope*—(1) *In general.* This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the seller) and the transferee (the purchaser) each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method as described in §§ 1.338–6 and 1.338–7 in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. For rules relating to distributions of partnership property or transfers of partnership interests which are subject to section 1060(d), see § 1.755–2T.

(2) *Effective date.* The provisions of this section apply to any asset acquisition occurring after the date that final regulations are published in the **Federal Register**.

(3) *Outline of topics.* In order to facilitate the use of this section, this paragraph (a)(3) lists the major paragraphs in this section as follows:

(a) Scope.
(1) In general.
(2) Effective date.
(3) Outline of topics.
(b) Applicable asset acquisition.
(1) In general.
(2) Assets constituting a trade or business.
(i) In general.
(ii) Goodwill or going concern value.
(iii) Factors indicating goodwill or going concern value.
(3) Examples.
(4) Asymmetrical transfers of assets.
(5) Related transactions.
(6) More than a single trade or business.
(7) Covenant entered into by the seller.
(8) Partial non-recognition exchanges.
(c) Allocation of consideration among assets under the residual method.
(1) Consideration.
(2) Allocation of consideration among assets.
(3) Certain costs.
(4) Effect of agreement between parties.
(d) Examples.
(e) Reporting requirements.
(1) Applicable asset acquisitions.
(i) In general.
(ii) Time and manner of reporting.
(A) In general.
(B) Additional reporting requirement.
(2) Transfers of interests in partnerships.

(b) *Applicable asset acquisition*—(1) *In general.* An applicable asset acquisition is any transfer, whether direct or indirect, of a group of assets if the assets transferred constitute a trade or business in the hands of either the seller or the purchaser and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.

(2) *Assets constituting a trade or business*—(i) *In general.* For purposes of this section, a group of assets constitutes a trade or business if—

(A) The use of such assets would constitute an active trade or business under section 355; or

(B) Its character is such that goodwill or going concern value could under any circumstances attach to such group.

(ii) *Goodwill or going concern value.* Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor. Going concern value is the additional value that attaches to property because of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership. It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(iii) *Factors indicating goodwill or going concern value.* In making the determination in paragraph (b)(2) of this section, all the facts and circumstances surrounding the transaction are taken into account. Whether sufficient consideration is available to allocate to goodwill or going concern value after the residual method is applied is not relevant in determining whether goodwill or going concern value could attach to a group of assets. Factors to be considered include—

(A) The presence of any intangible assets (whether or not those assets are section 197 intangibles), provided, however, that the transfer of such an asset in the absence of other assets will not be a trade or business for purposes of section 1060;

(B) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and

(C) Related transactions, including lease agreements, licenses, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) *Examples.* The following examples illustrate paragraphs (b)(1) and (2) of this section:

Example 1. S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has no secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets that constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

Example 2. S, a sole proprietor who operates a car wash, both leases the building housing the car wash and sells all of the car wash equipment to P. S's use of the building and the car wash equipment constitute a trade or business. P begins operating a car wash in the building it leases from S. Because the assets transferred together with the asset leased are assets which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

Example 3. S, a corporation, owns a retail store business in State X and conducts activities in connection with that business enterprise that meet the active trade or business requirement of section 355. P is a minority shareholder of S. S distributes to P all the assets of S used in S's retail business in State X in complete redemption of P's stock in S held by P. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange under sections 302(a) and 302(b)(3), and P's basis in the assets distributed to it is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

Example 4. S is a manufacturing company with an internal financial bookkeeping department. P is in the business of providing a financial bookkeeping service on a contract basis. As part of an agreement for P to begin providing financial bookkeeping services to S, P agrees to buy all of the assets associated with S's internal bookkeeping operations and provide employment to any of S's bookkeeping department employees who choose to accept a position with P. In addition to selling P the assets associated with its bookkeeping operation, S will enter into a long term contract with P for bookkeeping services. Because assets transferred from S to P, along with the related contract for bookkeeping services, are a trade or business in the hands of P, the sale of the bookkeeping assets from S to P is an applicable asset acquisition.

(4) *Asymmetrical transfers of assets.* If, under general principles of tax law, a seller is not treated as transferring the same assets as the purchaser is treated as acquiring, the assets acquired by the purchaser constitute a trade or business, and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration, then the purchaser is subject to section 1060.

(5) *Related transactions.* Whether the assets transferred constitute a trade or business is determined by aggregating all transfers from the seller to the purchaser in a series of related transactions. Except as provided in paragraph (b)(8) of this section, all assets transferred from the seller to the purchaser in a series of related transactions are included in the group of assets among which the consideration paid or received in such series is allocated under the residual method. The principles of § 1.338–1(c) are also applied in determining which assets are included in the group of assets among which the consideration paid or received is allocated under the residual method.

(6) *More than a single trade or business.* If the assets transferred from a seller to a purchaser include more than one trade or business, then, in applying this section, all of the assets transferred (whether or not transferred in one transaction or a series of related transactions and whether or not part of a trade or business) are treated as a single trade or business.

(7) *Covenant entered into by the seller.* If, in connection with an applicable asset acquisition, the seller enters into a covenant (e.g., a covenant not to compete) with the purchaser, that covenant is treated as an asset transferred as part of a trade or business.

(8) *Partial non-recognition exchanges.* A transfer may constitute an applicable asset acquisition notwithstanding the fact that no gain or loss is recognized with respect to a portion of the group of assets transferred. All of the assets transferred, including the non-recognition assets, are taken into account in determining whether the group of assets constitutes a trade or business. The allocation of consideration under paragraph (c) of this section is done without taking into account either the non-recognition assets or the amount of money or other property that is treated as transferred in exchange for the non-recognition assets (together, the non-recognition exchange property). The basis in and gain or loss recognized with respect to the non-recognition exchange property are

determined under such rules as would otherwise apply to an exchange of such property. The amount of the money and other property treated as exchanged for non-recognition assets is the amount by which the fair market value of the non-recognition assets transferred by one party exceeds the fair market value of the non-recognition assets transferred by the other (to the extent of the money and the fair market value of property transferred in the exchange). The money and other property that are treated as transferred in exchange for the non-recognition assets (and which are not included among the assets to which section 1060 applies) are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, then from Class IV assets, then from Class V assets, then from Class VI assets, and then from Class VII assets. For this purpose, liabilities assumed (or to which a non-recognition exchange property is subject) are treated as Class I assets. See *Example 1* in paragraph (d) of this section for an example of the application of section 1060 to a single transaction which is, in part, a non-recognition exchange.

(c) *Allocation of consideration among assets under the residual method*—(1) *Consideration.* The seller's consideration is the amount, in the aggregate, realized from selling the assets in the applicable asset acquisition under section 1001(b). The purchaser's consideration is the amount, in the aggregate, of its cost of purchasing the assets in the applicable asset acquisition that is properly taken into account in basis.

(2) *Allocation of consideration among assets.* For purposes of determining the seller's amount realized for each of the assets sold in an applicable asset acquisition, the seller allocates consideration to all the assets sold by using the residual method under §§ 1.338–6 and 1.338–7, substituting consideration for ADSP. For purposes of determining the purchaser's basis in each of the assets purchased in an applicable asset acquisition, the purchaser allocates consideration to all the assets purchased by using the residual method under §§ 1.338–6 and 1.338–7, substituting consideration for AGUB. In allocating consideration, the rules set forth in paragraphs (c)(3) and (4) of this section apply in addition to the rules in §§ 1.338–6 and 1.338–7.

(3) *Certain costs.* The seller and purchaser each adjusts the amount allocated to an individual asset to take into account the specific identifiable costs incurred in transferring that asset in connection with the applicable asset acquisition (e.g., real estate transfer costs or security interest perfection costs). Costs so allocated increase, or decrease, as appropriate, the total consideration that is allocated under the residual method. No adjustment is made to the amount allocated to an individual asset for general costs associated with the applicable asset acquisition as a whole or with groups of assets included therein (e.g., non-specific appraisal fees or accounting fees). These latter amounts are taken into account only indirectly through their effect on the total consideration to be allocated.

(4) *Effect of agreement between parties.* If, in connection with an applicable asset acquisition, the seller and purchaser agree in writing as to the allocation of any amount of consideration to, or as to the fair market value of, any of the assets, such agreement is binding on them to the extent provided in this paragraph (c)(4). Nothing in this paragraph (c)(4) restricts the Commissioner's authority to challenge the allocations or values arrived at in an allocation agreement. This paragraph (c)(4) does not apply if the parties are able to refute the allocation or valuation under the standards set forth in *Commissioner* v. *Danielson,* 378 F.2d 771 (3d Cir.), *cert. denied,* 389 U.S. 858 (1967) (a party wishing to challenge the tax consequences of an agreement as construed by the Commissioner must offer proof that, in an action between the parties to the agreement, would be admissible to alter that construction or show its unenforceability because of mistake, undue influence, fraud, duress, etc.).

(d) *Examples.* The following examples illustrate this section:

Example 1. (i) On January 1, 2001, A transfers assets X, Y, and Z to B in exchange for assets D, E, and F plus $1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each of the DEF and XYZ groups of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

By A		By B	
Asset	Fair market value	Asset	Fair market value
X	$400	D	$40
Y	400	E	30
Z	200	F	30
		Cash (amount)	1,000
Total	$1,000	Total	$1,100

(iv) Under paragraph (b)(8) of this section, for purposes of allocating consideration under paragraph (c) of this section, the like-kind assets exchanged and any money or other property that are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z are like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. In addition, $900 of the $1,000 cash B gave to A for A's like-kind assets is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, $900 of the cash is excluded from the application of the section 1060 allocation rules.

(vii) $100 of the cash is allocated under section 1060 and paragraph (c) of this section.

(viii) A, as transferor of assets X, Y, and Z, received $100 that must be allocated under section 1060 and paragraph (c) of this section. Since A transferred no Class I, II, III, IV, V, or VI assets to which section 1060 applies, in determining its amount realized for the part of the exchange to which section 1031 does not apply, the $100 is allocated to Class VII assets (goodwill and going concern value).

(ix) A, as transferee of assets D, E, and F, gave consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 and paragraph (c) of this section are not applied to determine the bases of the assets A received.

(x) B, as transferor of assets D, E, and F, received consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 do not apply in determining B's gain or loss.

(xi) B, as transferee of assets X, Y, and Z, gave A $100 that must be allocated under section 1060 and paragraph (c) of this section. Since B received from A no Class I, II, III, IV, V, or VI assets to which section 1060 applies, the $100 consideration is allocated by B to Class VII assets (goodwill and going concern value).

Example 2. (i) On January 1, 2001, S, a sole proprietor, sells to P, a corporation, a group of assets that constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes in P's favor a covenant not to compete. P pays S $3,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, Class V, and Class VI assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Actively traded securities	$500
	Total Class II	500
III	Accounts receivable	200
	Total Class III	200
V	Furniture and fixtures	800
	Building	800
	Land	200
	Equipment	400
	Total Class V	2,200
VI	Covenant not to compete	900
	Total Class VI	900

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (c) of this section in accordance with the agreed upon fair market values of the assets, so that $500 is allocated to Class II assets, $200 is allocated to the Class III asset, $2,200 is allocated to Class V assets, $900 is allocated to Class VI assets, and $200 ($4,000 total consideration less $3,800 allocated to assets in Classes II, III, V, and VI) is allocated to the Class VII assets (goodwill and going concern value).

(iv) In connection with the examination of P's return, the District Director, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the District Director correctly determines that the fair market value of the covenant not to compete was $500. Since the allocation of consideration among Class II, III, V, and VI assets results in allocation up to the fair market value limitation, the $600 of unallocated consideration resulting from the District Director's redetermination of the value of the covenant not to compete is allocated to Class VII assets (goodwill and going concern value).

(e) *Reporting requirements*—(1) *Applicable asset acquisitions*—(i) *In general.* Unless otherwise excluded from this requirement by the Commissioner, the seller and the purchaser in an applicable asset acquisition each must report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration.

(ii) *Time and manner of reporting*—(A) *In general.* The seller and the purchaser each must file asset acquisition statements on Form 8594 with their income tax returns or returns of income for the taxable year that includes the first date assets are sold pursuant to an applicable asset acquisition. This reporting requirement applies to all asset acquisitions described in this section. For reporting requirements relating to asset acquisitions occurring before the date final regulations are published in the **Federal Register,** as described in paragraph (a)(2) of this section, see the temporary regulations under section 1060 in effect prior to the date final regulations are published in the **Federal Register** (§ 1.1060–1T as contained in 26 CFR part 1 revised April 1, 1999).

(B) *Additional reporting requirement.* When an increase or decrease in consideration is taken into account after the close of first taxable year that includes the first date assets are sold in an applicable asset acquisition, the seller and the purchaser each must file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account.

(2) *Transfers of interests in partnerships.* For reporting requirements relating to the transfer of the partnership interest, see § 1.755–2T(c).

§ 1.1060–1T [Removed]

Par. 11. Section 1.1060–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. In § 602.101, paragraph (b) is amended by removing the entries for 1.338(b)–1 and 1.1060–1T from the table.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

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Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206
Amendments to Gas Valuation Regulations for Indian Leases; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Amendments to Gas Valuation Regulations for Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. These changes add alternative valuation methods to the existing regulations to ensure that Indian lessors receive maximum revenues from their mineral resources as required by the unique terms of Indian leases and MMS's trust responsibility to the Indian lessor. Further, these changes will improve the accuracy of royalty payments at the time the royalties are due.

DATES: The effective date of this final rule is January 1, 2000.

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SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Donald T. Sant and Richard Adamski of the Royalty Management Program, MMS, and Peter Schaumberg of the Office of the Solicitor, Department of the Interior.

I. Background

MMS's purposes in revising the current regulations regarding the valuation of gas production from Indian leases are:

(1) To ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of the Interior's (Secretary) trust responsibility and lease terms; and

(2) To improve the regulatory framework so that information is available which would permit lessees to comply with the regulatory requirements at the time that royalties are due.

II. Comments on Proposed Rule

On September 23, 1996, MMS published a notice of proposed rulemaking (61 FR 49894) to amend the valuation regulations for gas production from Indian leases. The framework for the proposed rule was the product of an Indian Gas Valuation Negotiated Rulemaking Committee (the Committee). The proposed rulemaking provided for a 60-day comment period, which ended November 22, 1996, and was extended to December 3, 1996 (61 FR 59849, November 25, 1996). During the public comment period, MMS received 13 written comments: seven responses from industry, four from industry trade groups or associations, one from an Indian tribe, and one from an Indian agency. A public hearing was held in Oklahoma City, Oklahoma, on October 23, 1996. MMS reopened the public comment period until April 4, 1997 (62 FR 10247, March 6, 1997) to receive comments on the issue of proceeds received from contract settlements. Two comments were received: one from industry and one from an industry trade association.

MMS has considered carefully all of the public comments received during this rulemaking. MMS hereby adopts final regulations governing the valuation of gas produced from Indian leases. These regulations will apply prospectively to gas produced on or after the effective date specified in the DATES section of this preamble.

This final rule reflects certain changes to the proposed rule. However, none of these changes are significant in that they affect the basic structure or approach of the new gas valuation rules.

General Comments

All commenters endorsed the concept of revising the existing regulations to provide simplicity and certainty, decrease administrative costs, and decrease litigation. Industry generally supports the use of independent published index prices for valuing gas produced from Indian leases. Industry also supports the concept of an alternative ''percentage increase'' to satisfy the dual accounting requirement contained in most Indian leases to the extent the lessee chooses to use this alternative methodology voluntarily. Industry objects to the following parts of the proposed rule:

- The safety net concept for nondedicated sales.
- The separate dual accounting requirement on natural gas liquids.
- The gross proceeds requirement if gas production was subject to a previous contract that was part of a gas contract settlement.

The Rocky Mountain Oil and Gas Association (RMOGA) states in its comments that ''it believes the inclusion of a safety net provision is a profound violation of the original consensus on gross proceeds and major portion lease requirements.'' RMOGA also states that ''Indeed, the concept of a safety net was not raised until many months after the vote on the formula had been taken.'' The Independent Petroleum Association of Mountain States (IPAMS) also objects to ''the belated introduction of the ''safety net'' requirement which, as discussed in more detail below, undermines the compromise that was reached on the major portion index value and dual accounting formulae.'' The Council of Petroleum Accountants Societies (COPAS) states ''The COPAS representative on the Committee voted in favor of the original index-based formula at the Committee's May 1995 meeting based on the belief that the use of that formula would satisfy both the gross proceeds and major portion clauses contained in most Indian leases, with the exception of gas sold under certain high-priced dedicated contracts. The record will show that this was clearly the focus of the Committee's discussions leading up to the vote, and that the prospect of a ''safety net'' for nondedicated contracts was not raised until several months later, and came as a surprise to the industry members.''

Response. A review of the record generally contradicts these comments. The first formal proposals for valuation of gas production using index formulas were made at the April 12–13, 1995, meeting of the Committee. The proposal of the Federal Government members was patterned after the Federal Gas Valuation Negotiated Rulemaking Committee proposal (Final Report, March 1995) and included an analysis of gross proceeds for sales before the index point to ensure the validity of index-based values. The proposal offered by the Indian representatives included the concept of a safety net. The proposal to be taken back to the committee members' constituents, dated April 13, 1995, 2:45 p.m. version, stated that ''a safety net must be developed to protect the Indian lessor in certain circumstances.''

The meeting notes for the June 14–15, 1995, meeting at which the index formula was adopted included, under the ''safety net'' heading: ''big discussion as to what to compare to the formula value. Is it the amount accruing

to the lessee (because we do not want to use the term gross proceeds)?'' A subgroup was formed at the July 12–13, 1995, meeting to bring safety net options to the next meeting. A second subgroup was formed at the August 8–10, 1995, meeting to further analyze the options for the safety net. The options these subgroups developed all had some concept of obtaining additional royalty for high-value sales beyond the index-pricing point or of gathering data to validate the index. The safety net was voted on and approved at the next meeting on October 17–19, 1995.

Certainly, the group may have adopted a different proposal had different dynamics occurred within the group or a different sequence of events occurred. But the proposed safety net was a product of the decisions the Committee made.

MMS and the one Indian commenter believe that the safety net is an essential part of the proposed rule, and MMS will retain the safety net in the final rule. The Indian comment aptly summarizes the issue: ''The once-a-year calculation of a safety net price is a small concession by Indian lessees to accomplish certainty and to foster general confidence in the validity of the published index prices. The calculation of the safety net price does not require a detailed ''tracing'' of molecules produced from all Indian leases to all distant sales points.'' In addition, the regulation permits only 1 year for MMS to verify a lessee's safety net calculation. There should not be a continuation of audit disputes and litigation over the safety net or problems in administering it.

MMS agrees that the gross proceeds requirement in the proposed rule dealing with the issue of gas contract settlements changed the Committee's agreement that the index formula was to replace both the gross proceeds requirement and the major portion requirement. The comment period was specifically reopened to address this issue. Only two comments were received. In addition, courts in two different circuits have issued decisions in gas contract settlements cases during and after the comment period, as explained more fully below, that affect the handling of the gas contract settlements issue in this rule. This final rule includes the concept that some contract settlement proceeds are royalty bearing, as explained below, but does not require a monthly gross proceeds comparison to the index formula. Those contract settlement proceeds that are royalty-bearing will be part of gross proceeds when value is determined by gross proceeds. Examples include production under a dedicated contract and gas produced in nonindex areas where the initial value is determined by gross proceeds. For index areas, MMS will require the gross proceeds for gas sold under nondedicated contracts to be calculated only if the contract settlement proceeds per MMBtu, when added to 80 percent of the safety net price, exceed the index formula value for the month, including any increase for dual accounting. This computation would be made after the safety net prices were reported to MMS by the lessee.

After publication of the final rule, MMS plans to hold training sessions with industry to illustrate the various procedures for computing value under this rule.

Specific Comments and Other Principal Changes to the Proposed Rule

Comment on § 202.550(a)(1)—now § 202.550(b). MMS received five comments on this issue. The commenters did not object to the tribe rather than MMS deciding when the lessor would take gas as royalty in kind as long as the Indian lessor was subject to the same rules of notification with which MMS must comply.

Response. The tribe will abide by the terms of notification in the lease. No change is made in the final rule.

Comment on § 202.550(a)(2)—now § 202.550(d). MMS specifically requested comment on whether the Department should continue to approve requests for royalty rate reductions on allotted leases when a lessee demonstrates economic hardship. Twelve commenters believe that MMS should continue to provide this approval because of the difficulty in identifying and locating allottee lessors. Two commenters believe that the lease language and the language in 25 U.S.C. 396 do not expressly allow the Secretary to approve a reduction without full consent of every lessor.

Response. MMS agrees that under current law the Secretary may not approve royalty rate reductions without full consent. No change is made in the final rule.

Comment on § 202.550(b)—now § 202.551. Four commenters supported the concept that you should pay royalties on your entitled share of gas production from Indian leases not in approved Federal unit or communitization agreements rather than on your actual takes.

Response. MMS disagrees and we changed the final rule to require royalties on your actual takes for leases not in an approved Federal agreement (AFA). This is consistent with the requirement for Federal leases under the Royalty Simplification and Fairness Act of 1996 (Pub. L. 104–185, as corrected by Pub. L. 104–200). If another person takes some of your entitled share but does not pay for the royalties owed, you are liable for those royalties.

Comment on § 202.550(d)—now § 202.555. Five commenters stated that transportation field fuel and reinjected unprocessed gas, gas plant products, and residue should also be listed as gas not subject to royalty.

Response. Any production that is reinjected and is not produced from the lease, is not subject to royalty until it is again produced and removed from the lease. Transportation field fuel is subject to the requirements of the regulation. We do not believe the suggested change is necessary.

Structure changes to part 202. In an effort to make the final rule easier to read, we restructured § 202.550 to create more sections with headings. Also, we made some changes to clarify the regulatory provisions in this part. None of these changes were intended to change the principal intent of the rule.

One change was made to proposed § 202.550(b), now § 202.551. This section explains the volumes for which you must pay royalties for leases not committed to an approved Federal unit or communitization agreement. Under this section you are liable for royalties on your entitled share of production. Thus, if you hold 40 percent of the operating rights, you are liable for 40 percent of the royalties. However, under this section you must report and pay royalties based on your takes. So if you take 30 percent of the gas production, you must report and pay on that volume. The same applies if you take 50 percent. To address concerns about liability for volumes not taken, we added a new provision to this section so that all interest owners for the lease may ask MMS for permission to report and pay on entitlements. If MMS grants the request, it will provide valuation instructions consistent with the provisions in part 202 for over-taken and under-taken volumes. See the new §§ 202.552, 202.553, and 202.554 (proposed § 202.550(c)) which explain how to value over-taken and under-taken volumes for leases in approved Federal unit or communitization agreements. MMS will apply a similar approach for stand-alone leases.

Comment on § 206.170(c). Eleven commenters believe that the lessee and tribal lessor should be allowed to negotiate alternate valuation methods

on their own without MMS approval. The commenters agree that MMS should be part of the negotiation process between lessees and allottees.

Response. MMS is confident that tribes can negotiate independently with lessees. Consistent with the Secretary's trust responsibility, MMS will review and approve agreements for alternate valuation methodologies that are negotiated by the tribe and do not breach the trust responsibility of the Secretary. MMS will take a more active role in negotiations between lessees and allottee lessors. MMS does not believe it is necessary to change the language in the final rule.

Comment on § 206.171. Ten commenters recommend that the definition of ''marketing affiliate'' be reinstated in the final rule. Two commenters noted that in the definition of ''posted price'' it is unnecessary and misleading to refer to marketable condition. They state that gas, in a publicly available price bulletin, is by definition in marketable condition.

Response. We know of no company that meets the requirements of the regulatory definition of ''marketing affiliate'' at 30 CFR 206.171. MMS did not include the definition in the final rule. MMS agrees that the definition of ''posted price'' is unnecessary and has removed the definition in the final rule. MMS has also removed references to ''posted price'' under the benchmarks at § 206.174(c)(2) and the transportation factor under § 206.178(a)(5).

Comment on § 206.172. One commenter listed the following concerns:

- How would a publication become approved?

Response. Publications will be approved if they meet MMS's criteria, which are listed under § 206.172(d)(4).

- What kind of market condition changes will be considered to require a Technical Conference for disqualifying an index zone?

Response. MMS will closely monitor the market sales prices realized in the short and long-term markets. If it appears that index-based values no longer represent reasonable values obtained in the entire market, then MMS will convene a Technical Conference.

- How often will MMS publish the list of acceptable publications in the **Federal Register**?

Response. We plan to update the list of acceptable publications whenever we need to add a new publication or we need to drop a current publication.

- How will independent payors who do not receive the **Federal Register** be notified?

Response. MMS will make sure that all payors are notified through periodic ''Dear Payor Letters'' and publication of those letters on the Internet.

- Which tables within the publications will be used and can they vary from month to month?

Response. When MMS publishes the list of acceptable publications, we will be very specific as to the proper tables and pipelines within the publications you should use in computing the index-based formula price.

- How will MMS determine that the published price does not reflect value accurately?

Response. MMS will closely monitor published prices and compare them to prices published in other publications and to prices received in the entire gas market. MMS will investigate price changes.

- Does this mean each payor will have to subscribe to all MMS-approved publications?

Response. No, MMS will calculate the index-based formula price for each index zone on a monthly basis and provide this information to all interested payors.

- Why is a safety net price required if rates have been accepted by MMS previously?

Response. The safety net price is intended to capture the significantly higher values for sales occurring beyond the index point.

Comment on § 206.172(b)(1)(ii). Two commenters recommended that this paragraph be modified to refer to gas that is not processed before it flows into a mainline and should not be limited to pipelines with an index point.

Response. The Committee spent time discussing the best way to describe when and where gas is or is not processed. The Committee believed the term ''mainline'' was not used consistently throughout the industry. MMS will change § 206.176 of this title to state that dual accounting is not required if gas is not processed before it flows into a mainline pipeline for nonindex areas. MMS believes that for index areas the language of the proposed rule is the proper terminology. We did not define ''mainline'' but intend to have the same characteristics as a pipeline in an index zone with an index.

Comment on § 206.172(b)(2)(ii)—now 206.172(b)(2). Twelve commenters objected to the inclusion of the contract settlement provision in the proposed rule because in addition to the index-based value calculation, it would require a gross proceeds calculation. The same commenters stated that the Committee did not agree to include gas contract settlement language and recommended that this paragraph be deleted. One commenter supported the inclusion of gas contract settlement language because of the position that royalty is due, at a minimum, on all the components of a lessee's gross proceeds.

Response. The Committee was unable to reach consensus on the issue of contract settlements. The Committee spent considerable time discussing whether contract settlement amounts should be included in the safety net calculation. The Committee agreed to language in the proposed rule which would exclude contract settlement amounts from the safety net value and agreed to address the issue in 30 CFR 206.172 of the proposed rule.

MMS acknowledges that the issue of royalty on contract settlement proceeds is currently in litigation. Under judicial decisions issued as of the time of this rule, some contract settlement payments are or may be royalty-bearing while others are not. The final rule includes contract settlement amounts as part of royalty value only when value is determined by gross proceeds and only when the contract settlement payment is of the type that is royalty-bearing as a part of gross proceeds. Value is determined by gross proceeds when valuing production sold under dedicated contracts or the initial value in nonindex areas. For nondedicated contracts, gross proceeds will only need to be calculated when the safety net price plus the royalty-bearing contract settlement proceeds increment exceeds the index formula value including the dual accounting increase. We will modify the current policy whenever necessary to conform with the outcome of ongoing litigation.

This rule does not change which contract settlement payments are royalty-bearing or to what extent a particular payment is royalty-bearing. If and to the extent that a particular contract settlement payment would be royalty-bearing as part of the lessee's gross proceeds before this rule, it is royalty-bearing under this rule when value is determined by gross proceeds. If a contract settlement payment is not royalty-bearing before this rule, it likewise has no royalty consequence under this rule.

In *Mobil Exploration and Producing U.S. Inc.* (MMS–94–0151–OCS, May 4, 1998), the Department determined that contract settlement payments to buy out of the terms of a gas contract and

terminate the sales relationship entirely are not royalty-bearing. It also determined that payments to compromise Mobil's purchaser's liability for accrued but unpaid take-or-pay liabilities were not royalty-bearing.

In *United States* v. *Century Offshore Management Corp.*, 111 F.3d 443 (6th Cir., 1997), the Sixth Circuit Court of Appeals concluded that MMS could collect royalties on what MMS had identified as a ''buydown'' payment.

Comment on § 206.172(c)(1) and (2). Two commenters suggested that these paragraphs should make it clear that both transportation and processing allowances are used in dual accounting. These same commenters stated that the reference in paragraph (c)(2)(iii) to subpart B of this part should be more specific.

Response. We have included ''and/or transportation allowances'' in § 206.172(c)(2)(ii). The reference to the entire subpart B of this part is necessary so that drip condensate may be valued correctly under various sale scenarios.

Comment on § 206.172(d) (1) through (6). One commenter stated that the index-based valuation formula accomplished the Committee's goals of availability, timeliness, and satisfying the Indian lease language. One commenter believed that the 10 percent reduction to the index-based value may be considerably lower than actual transportation prices. This commenter suggests the reduction should be between 15 and 20 percent. Five commenters recommended that MMS should clarify in § 206.172(d)(6) that individual index prices will be excluded if MMS determines the index price does not accurately reflect the value of production in that index zone ''on a prospective basis only.''

Response. The 10 percent reduction to the index-based value was a compromise reached by the Committee to reflect average transportation costs. MMS believes that this percentage combined with the administrative savings realized by not having to file forms and track actual costs should adequately compensate the lessee in most cases. MMS believes that § 206.172(d)(6) makes clear our intent to exclude an individual index price only after notification by publication in the **Federal Register**. We do not believe the suggested change adds to or clarifies the sentence.

Comment on § 206.172(e). One commenter stated that the safety net comparison of values is absolutely essential for the protection of the Indian lessor and for the validation of the published index price ranges. Twelve commenters strenuously object to inclusion of a ''safety net'' for the following reasons:

(1) The index-based formula will yield a value that is far in excess of market value. This formula price should satisfy the gross proceeds and major portion clauses of an Indian lease without any need for a ''safety net'' on nondedicated sales.

(2) The safety net provision, to tie value to markets downstream of an index point, implies a duty to market even further from the field or area.

(3) The concept of a safety net was not raised until many months after the vote on the formula had been taken.

(4) The certainty, simplicity, and any administrative benefits gained from the use of the index-based valuation formula are negated with the safety net.

(5) The safety net provision would require tracing gas, and would inevitably lead to a continuation of the current cycle of endless audit disputes and litigation with regard to gas valuation on Indian leases.

Response. The comment that the idea of a safety net was not raised until many months after the vote on the index-based formula was taken is inaccurate. As discussed above, a review of the Committee's meeting minutes for April 1995 indicates that the concept of some type of safety net was part of the original valuation proposal from the Indian representatives and part of the original draft of the index-based formula. The safety net was conceived as a comparison of the index-based value to some other value that would represent the actual proceeds accruing to the lessee. In June 1995, the Committee voted on and adopted the index-based formula. The safety net provision, although part of the proposal, had not yet been discussed in detail by the Committee. A subgroup composed of industry, Indian, and Federal representatives was formed in July 1995 to explore the safety net issue. The Committee continued to periodically discuss the safety net issue over the next year and voted in October 1995 to include a safety net in the proposed rule and finally adopted the language that is contained in the proposed rule in May 1996.

The safety net, by comparing index prices to prices that reflect sales made beyond an index point, ensures that the index-based value represents the value of all market transactions. The safety net is calculated using prices received for gas sold downstream of the index point. The lessee includes only sales under those contracts that establish a delivery point beyond the first index-pricing point to which the gas flows. It includes only the lessee's or its affiliate's sales prices, and it does not require detailed calculations for the costs of transportation. The safety net price captures the significantly higher values for sales occurring beyond the index point. Although the safety net requires tracing the gas beyond the index-pricing point, confidentiality should not be an issue because only the lessee's and its affiliate's sales prices are used in the volume weighted average calculation. MMS has added ''or your affiliate's'' at § 206.172(e)(3) to make it clear it is either the lessee's or its affiliate's arm's-length sales contract that is used in the safety net.

MMS has only 1 year from the date the lessee's safety net prices on Form MMS–4411, Safety Net Report, are due to order the lessee to amend its safety net price calculation. If MMS does not order any adjustment, then the safety net price is final. This provides certainty to the lessee and alleviates extended audit disputes. MMS has determined that the safety net is necessary to ensure that Indian lessors receive royalties on the proper value of production as discussed above.

MMS has added at § 206.172(e)(4)(i) that 80 percent of the safety net value minus 125 percent of the index formula value is the safety net differential.

MMS has revised § 206.172(e)(4)(ii) to clarify that additional royalty is due if the safety net differential under § 206.172(e)(4)(i) is a positive number. The proposed rule did not include a multiplication by any lease royalty rates. In the final rule, paragraph (e)(5)(i) identifies the Indian leases which had production that was sold beyond the index-pricing point and multiplies the production by the safety net differential and by the royalty rate in the lease. Paragraph (e)(5)(ii) describes how you allocate production to Indian leases when production has been commingled with non-Indian production and then sold beyond the first index pricing point.

Comment on § 206.173. Nine commenters supported the use of the alternative methodology for dual accounting, if its use is optional. Two commenters stated that § 206.173(a)(2)(iii) of this title is grammatically incorrect and should be revised to read: ''When you elect to use the alternative methodology for a designated area, you must also use the alternative methodology for any new wells commenced and any new leases acquired in the designated area during the term of the election.''

Response. We agree with the comment and made the suggested wording change to § 206.173(a)(2)(iii) in the final rule.

Also, § 206.173(b)(4) is modified to read ''if any of your gas from the lease is processed during a month'' instead of ''if you process any gas from the lease'' to make it clear that dual accounting is required for all lease production if any of your production is processed, not just for the gas production you process from your Indian lease.

The last sentence of § 206.174(a)(1) was changed to make it clear that a separate major portion calculation other than the index value is not required for leases in an index zone with dedicated contracts.

Comment on § 206.174(a)(4)(ii)—now 206.174(a)(4)(iii). Five commenters suggested that MMS include in the final rule a process by which industry may contest MMS's major portion calculation. These same commenters recommended insertion of the phrase ''less applicable allowances'' after the phrase ''Form MMS–2014'' in the first sentence to clarify that allowances will be deducted before the major portion price is calculated.

Response. A lessee or Indian lessor may appeal the major portion value under 30 CFR part 290. MMS will calculate the major portion value using values from Form MMS–2014, Report of Sales and Royalty Remittance, which have been reduced by applicable transportation allowances. MMS does not agree that the suggested wording change is clarifying or necessary.

Comment on § 206.174(g)(2). One commenter suggested that the final rule require that the minimum value for gas plant products be based on the highest price, or at the very least, the average of the highest prices found in commercial price bulletins. Twelve commenters believe that the ''minimum value'' for gas plant products would effectively establish a dual accounting requirement for liquids values within the dual accounting calculation, and a major portion requirement on liquids within the major portion calculation, neither of which is required or even suggested by the lease terms. These same twelve commenters believed that the index-based formula would satisfy the gross proceeds and major portion requirements for the entire gas stream. One commenter stated that prices published in one of the publications MMS suggested are not available until 90 days after production. This would make timely reporting of gas plant product values impossible. Twelve commenters responded to MMS's request for comments on several specific issues as follows:

- Is a minimum value needed when a lessee chooses the actual dual accounting methodology?

Comment. No. It was demonstrated during the review of the percentage dual accounting alternative that liquid valuation was not a significant factor in the calculation.

- Are there other better methods to use?

Comment. No. No method is preferable to any other because the concept of a minimum value for gas plant products is objectionable.

- Are Conway and Mont Belvieu the proper locations to look for prices for gas plant products?

Comment. Eleven commenters stated that the proper location to look for gas plant products values is the point at which the products are sold. This would be consistent with the lease language which refers to the field or area. One commenter stated that if MMS is looking for some form of gas plant liquid postings, then it should look to the locations of those postings.

- Are the 7.0 and 8.0 cents per gallon the right deductions for transportation and fractionation?

Comment. Eleven commenters found this question irrelevant because the entire concept is objectionable. One commenter stated that the deductions appear reasonable for Conway and Mount Belvieu price postings.

- Would a percentage of the price or actual rates paid be a better deduction?

Comment. Eleven commenters found this question irrelevant because the entire concept is objectionable. One commenter stated that a percentage might provide more certainty but that may be difficult to develop because of price fluctuations.

Response. The Indian lease terms require that ''value'' be calculated based on the highest price paid or offered for the major portion of oil, gas, and all other hydrocarbon substances produced and sold from the field. To ensure that Indian lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms, MMS is adopting a minimum value for gas plant products in the final rule. We have researched the problem with the availability of published price data and determined that the necessary pricing data are available within a week after the end of the month. We appreciate the comments received in response to the specific issues and because no viable alternatives were suggested we will not make any changes in the final rule.

Non-Binding Guidance Under § 206.174(f)

The rule provides that lessees can request and MMS can provide non-binding valuation guidance. MMS cannot issue binding guidance regarding valuation. If a lessee seeks binding guidance, it must ask the Assistant Secretary.

Comment on § 206.174(l)(1). Seven commenters stated that audit closure should not just be limited to leases in Montana and North Dakota. The same commenters also recommend deleting the requirement to report adjustments that would result in additional royalty.

Response. MMS has determined that lessees must make adjustments sooner, and MMS must complete audits sooner for leases in Montana and North Dakota. The rule would be limited to Indian leases in these two States because at this time there are no acceptable published indexes applicable to that area. The Committee discussed what would happen if an area such as the San Juan Basin were disqualified as an index area, and agreed that time limitations would not be appropriate in that case. Naming Montana and North Dakota was the most straightforward way to write the rule. Otherwise, we would need to discuss what happens if an area such as the San Juan Basin becomes disqualified as an index area. We did not make any changes in the final rule.

Comment on § 206.174(l)(1)(ii). Two commenters suggested that to conform to parallel language in paragraph (l)(1)(i), the closing language of the last sentence should be amended to read, ''after the last day of the 12th month *following* the last day to report adjustments.''

Response. We agree and made the change in the final rule.

Comment on § 206.174(l)(2)(i). Two commenters suggested amending the opening phrase of this paragraph to read, ''If you have a pending dispute with your purchaser *that affects valuation.* * * *'' These commenters feel that MMS might otherwise unnecessarily try to avoid audit closure.

Response. MMS agrees and we made the change in the final rule.

Comment on § 206.174(l)(2)(i). Two commenters suggested amending the opening phrase of this paragraph to read, ''If you have a pending *dispute that affects valuation* with the person transporting. * * *''

Response. MMS agrees and we made the change in the final rule. We also consolidated paragraphs (i) and (ii) in

the final rule and adjusted the numbering accordingly.

Comment on § 206.174(l)(2)(ii). Two commenters suggested that this provision should be modified to read, ''If there is a written agreement between you and MMS or its delegee *to extend the time limit,* the time period is extended * * *.''

Response. We made the proposed change in the final rule.

Comment on § 206.176(a)(1)(i) and (ii). Five commenters recommended replacing the word ''*including* * * * applicable allowances'' with the word ''less'' to avoid the implication that allowances are not deductible.

Response. We agree and made the suggested word change where appropriate in the final rule.

Comment on § 206.176(c). Eight commenters stated that the Committee agreed that the gas must be traced to the mainline. Whether the pipeline has an index is irrelevant and in any case does not take into account valuation in nonindex areas. This reference should also be corrected in § 206.172(b)(1)(ii) and wherever discussed in the preamble.

Response. We generally agree with the commenters and note that although the Committee spent considerable time trying to determine the correct wording, no decision was ever reached. We changed the wording of the first sentence in § 206.176(c) of the final rule by adding the phrase ''* * * or into a *mainline pipeline* not in an index zone.'' We did not change the wording in § 206.172(b)(1)(ii) for the reasons discussed above. We did not define mainline but intend it to have the same characteristics as a pipeline in an index zone with an index. We have also added wording clarifying that accounting for comparison is not required if the gas produced from the lease is not processed.

Comment on § 206.176(e). Two commenters believe there is no need to compute the weighted average Btu when the alternative method is not being used. This paragraph need only state that you do not have to perform dual accounting for a facility measurement point with a Btu content of less than 1,000 Btu/cf. Likewise, the cross-reference to § 206.173 is not necessary.

Response. We believe that the cross-reference adds clarity, and we did not make the change in the final rule.

Comment on § 206.178(a)(1)(i). One commenter stated that transportation contracts, invoices, or non-arm's-length transportation cost documentation should be made available only upon audit and review. One commenter supported the routine submittal of transportation contracts because the information contained in those contracts will permit the timely verification of the deduction and satisfies the Committee's goal related to closure.

Response. MMS agrees with the need to routinely submit transportation contracts, and we did not make any changes in the final rule.

Comment on § 206.178(f). Two commenters stated that the first sentence of this paragraph should specify that ''you are required to report and pay additional royalties *on the difference,* plus interest * * *.''

Response. We do not believe that the additional wording is necessary and did not make any changes in the final rule.

Comment on § 206.178(g). Seven commenters recommended that the exception for Federal Energy Regulatory Commission (FERC) or State-approved tariffs contained in the regulations published in 1988 be reinstated in the final rule.

Response. We will allow the lessee to deduct only those costs associated with specifically identifiable actual or theoretical losses that are part of the lessee's arm's-length transportation contract. We did not make any change in the final rule.

Comment on § 206.179. One commenter agreed that MMS should not allow extraordinary cost deductions. Two commenters believe that the provisions in the 1988 regulations covering extraordinary processing allowances should be reinstated in the rule.

Response. MMS believes at this time that it is a better exercise of the Secretary's trust responsibility to not allow extraordinary cost allowances for Indian leases.

Comment on § 206.179(f). Two commenters believe that this paragraph is out of place. It should be moved to § 220.550(d) and should include unprocessed gas as well as residue gas and gas plant products.

Response. We assume that the commenters made a typographic error and the correct cite should be § 202.550(d). We do not believe that moving the paragraph will add to or clarify the rule. No change was made in the final rule.

FERC Order 636 Changes. On December 16, 1997, MMS issued a final regulation amending the existing transportation allowance regulation for both Federal and Indian leases (62 FR 65753). These changes result from FERC Order 636.

Many of the transportation allowance provisions changed in that rulemaking were the same as those proposed in this rulemaking. Therefore, this final rule incorporates changes to the transportation allowance rules in §§ 206.177 and 206.178 resulting from the recent final rule.

Paperwork Reduction Act

MMS requested comments on two new forms, Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), and Form MMS–4411, Safety Net Report, as they relate to the Paperwork Reduction Act.

Comment on the Paperwork Reduction Act. Eleven commenters believe that Form MMS–4410 is unnecessary because the same result can be more efficiently accomplished through the use of a specific transaction code on Form MMS–2014. These same commenters stated that because they are totally opposed to the entire ''safety net'' concept, Form MMS–4411 is not needed. The eleven commenters also believe that MMS's estimate of additional costs to the entire industry of only $935,000 per year is absurdly low.

Response. Form MMS–4410 will ensure that the lessee is not in violation of lease terms specifying dual accounting by verifying whether or not dual accounting is required. The form will benefit industry because, by submitting the form, the lessee will not have to perform dual accounting. Further, the form is only a one time certification, which will require less burden than using a reporting code on Form MMS–2014 that would have to be used for every report month. Form MMS–4411 is critical in using the index pricing method to satisfy the gross proceeds and major portion requirements of Indian leases. The form is necessary to ensure that index pricing represents market value and that the tribes do not suffer significant revenue losses. The commenters' statement that the $935,000 estimate is too low was not supported with any verifying data of what the estimate should be. MMS performed an analysis to determine this estimate, as explained in the September 23, 1996, proposed rule, and maintains that this estimate is reasonable.

III. Principal Changes between the Proposed Rule and the Final Rule

Addition of § 206.172(f) and (g). The final rule adds additional paragraphs (f) and (g) to § 206.172. Paragraph (f) permits an Indian tribe to request that some or all of its leases be excluded from valuation under § 206.172. If MMS, after consultation with the Bureau of Indian Affairs (BIA), approves the

request, value is determined under § 206.174 beginning with production on the first day of the second month following the date MMS publishes notice in the **Federal Register**. If the tribe requests to exclude only some of its leases, the request will only be approved if the leases may be segregated into one or more groups based on fields within the reservation.

This change is included in the final rule because a revenue analysis indicated the Jicarilla Apache Tribe would receive less revenue under the index methodology than under a gross proceeds methodology. Specifically, royalties reported to MMS on MMS's Form MMS–2014 for 1995 and 1996 exceeded the calculated values using the index formula in § 206.172. The proposed rule provided for MMS to disqualify an index zone, but not to disqualify a reservation within an index zone.

A tribe may also ask MMS to terminate this exclusion. If MMS, after consultation with the BIA, terminates the exclusion, value would be determined under § 206.172. Termination of an exclusion cannot take effect earlier than 1 year after the first day of the production month that the exclusion was effective.

Paragraph (g) for Indian allotted leases contains provisions similar to paragraph (f) and provides that MMS, with BIA consultation, may exclude any allotted leases from valuation under § 206.172.

Addition of § 206.174(a)(4)(iv). A new paragraph (iv) in § 206.174(a)(4) permits using data other than values reported on Form MMS–2014 in calculating the major portion value. The alternative data would be data for production in the designated area reported to a State tax authority or price data from leases MMS has reviewed in the designated area. This change was needed because the revenue analysis indicated that some Indian leases in Oklahoma would receive less revenue under the index methodology than under a gross proceeds methodology and we therefore expect that several tribes in Oklahoma will request their leases to be excluded from index valuation. Indian gas production is only about 2 percent of production in Oklahoma. Since this amount of gas is too small to be representative of all gas production values in a designated area, we needed an additional data source beyond information on a Form MMS–2014. The revenue analysis for the Jicarilla Apache reservation showed similar results and under § 206.172(f), and MMS expects the Jicarilla Apache will request its leases to be excluded from index valuation.

IV. Procedural Matters

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this final rule, call 1–888–734–3247.

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Approximately 700 entities pay royalties to MMS on production from Indian lands, 400 of which are small businesses because they employ 500 or less employees. This rule will not have a significant administrative impact on these small entities because it decreases rather than increases the reporting burden. The reduced reporting results from using the alternative method for dual accounting and the relief from complying with major portion requirements under index pricing. For example, the average Indian royalty payor will expend approximately $8,500 less annually for administrative costs to comply with this amended rule than under existing regulations. We estimate that the 200 smallest companies (0–4 employees) would have an average administrative savings of $700 per year.

The rule would also have a royalty impact on small businesses due to the index pricing formula for index-based areas and the major portion provision for non-index areas. We estimate that 35 percent of the total gas royalties paid on Indian tribal lands derive from the 400 small businesses that pay Indian gas royalties.

In our cost benefit analysis of the rule's impact, we estimated that the index pricing formula would increase Indian revenues by about $ 2.4 million annually. Therefore, small businesses would incur an annual increase of about $2,100 per company ($2,400,000 x .35 ÷ 400). This represents about a 5 percent increase in royalties, so a very small company (e.g., 0–4 employees) that pays, for example, only $500 per year in royalties would pay approximately an additional $25.

In non-index areas, we estimate that the major portion provisions of the new rule would increase Indian revenues by $57,000 annually. Small businesses on average would account for about $50 each ($57,000 × .35 ÷ 400). However, given the significant administrative savings of the rule described above, we believe any increase in royalties paid by small companies will be more than offset by savings in reporting burdens.

Likewise, this rule will not adversely impact small tribal governments. This rule will increase annual royalty revenues to tribal governments by approximately $2.5 million.

Unfunded Mandates Reform Act of 1995

This Department has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector.

Executive Order 12630

The Department certifies that this rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Executive Order 12988

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring Office of Management and Budget review. MMS estimates that this rule will result in an overall $7.4 million administrative cost savings to industry.

Paperwork Reduction Act

This final rule contains information collection requirements. These requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Numbers 1010–0075.

As discussed below, this final rule impacts an existing collection of information on Forms MMS–4109 and MMS–4295, which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork

and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, DC 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, PO Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is: RMP.comments@mms.gov.

As a predecessor to this rulemaking, on September 23, 1996, MMS published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) (61 FR 49894) to amend its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. The NPR introduced two new forms—Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting) (OMB Control Number 1010–0104), and Form MMS–4411, Safety Net Report (OMB Control Number 1010–0103). These forms were approved by OMB on November 5, 1996. Forms MMS–4295 and 4109 were also mentioned in this NPR. No comments were received from the public on these allowance forms.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received to determine if a further rulemaking is necessary.

The burden hours associated with the existing information collection titled Gas Processing Allowance Summary Report (Form MMS–4109) and Gas Transportation Allowance Report (Form MMS–4295), OMB Control Number 1010–0075, will be reduced by this final rulemaking. Instead of submitting estimated processing or transportation cost information on the forms and then following up with actual cost information at the end of the reporting cycle, the rule will require only responses with actual cost information. In addition, Indian lessees that have arm's-length transportation and processing contracts will submit copies of the actual contracts to MMS.

MMS estimates that 65 Indian lessees will submit approximately 3,000 allowance data lines annually. Lessees may be involved in more than one type of allowance proposal and may submit both a processing allowance line and a transportation allowance line. Based on past experience, MMS estimates that lessees can complete an allowance data line in about ¼ hour.

The estimate of the total annual burden hours to respondents for this information collection is 750 hours (3,000 allowance data lines × ¼ hour). The Gas Transportation Allowance Report, Form MMS–4295, accounts for approximately 2,400 responses annually (80 percent of the forms received), and the Gas Processing Allowance Summary Report, Form MMS–4109, accounts for approximately 600 responses annually (20 percent of the forms received). Therefore, the annual estimate of the burden hours by form is 600 hours for Form MMS–4295 and 150 hours for Form MMS–4109.

The MMS estimates that this information collection will result in a decrease to industry of about 2,755 burden hours annually. The MMS attributes this decrease primarily to the decrease in the number of responses to only actual cost information as discussed above. A further decrease will result from certain lessees electing the alternative method for valuing processed gas, which requires no processing allowance to be taken and no accompanying allowance report to be submitted.

In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. For instance your comments may address the following areas. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: March 23, 1999.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 202 and 206 are amended as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

§ 202.51 [Amended]

2. Paragraph (b) of § 202.51 is revised to read as follows:

* * * * *

(b) The definitions in subparts B, C, D, and E, of part 206 of this title are applicable to subparts B, C, D, and J of this part.

3. The heading for Subpart D—Federal and Indian Gas is revised to read as follows:

Subpart D—Federal Gas

§ 202.150 [Amended]

4. In § 202.150 the words ''or Indian'' are removed from. (b)(1), (e)(1) and (e)(2).

§ 202.150 [Amended]

5. In § 202.150 the words ''and Indian'' and ''or Indian'' are removed from paragraph (f).

§ 202.151 [Amended]

6. In § 202.151, the words ''and Indian'' are removed from paragraph (a)(2).

7. A new subpart J is added to read as follows:

Subpart J—Gas Production from Indian Leases

Sec.
202.550 How do I determine the royalty due on gas production?
202.551 How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?
202.552 How do I determine how much royalty I must pay if my lease is in an approved Federal unit or communitization agreement (AFA)?
202.553 How do I value my production if I take more than my entitled share?
202.554 How do I value my production that I do not take if I take less than my entitled share?
202.555 What portion of the gas that I produce is subject to royalty?
202.556 How do I determine the value of avoidably lost, wasted, or drained gas?
202.557 Must I pay royalty on insurance compensation for unavoidably lost gas?
202.558 What standards do I use to report and pay royalties on gas?

Subpart J— Gas Production From Indian Leases

§ 202.550 How do I determine the royalty due on gas production?

If you produce gas from an Indian lease subject to this subpart, you must determine and pay royalties on gas production as specified in this section.

(a) *Royalty rate.* You must calculate your royalty using the royalty rate in the lease.

(b) *Payment in value or in kind.* You must pay royalty in value unless:

(1) The Tribal lessor requires payment in kind; or

(2) You have a lease on allotted lands and MMS requires payment in kind.

(c) *Royalty calculation.* You must use the following calculations to determine royalty due on the production from or attributable to your lease.

(1) When paid in value, the royalty due is the unit value of production for royalty purposes, determined under 30 CFR part 206, multiplied by the volume of production multiplied by the royalty rate in the lease.

(2) When paid in kind, the royalty due is the volume of production multiplied by the royalty rate.

(d) *Reduced royalty rate.* The Indian lessor and the Secretary may approve a request for a royalty rate reduction. In your request you must demonstrate economic hardship.

(e) *Reporting and paying.* You must report and pay royalties as provided in part 218 of this title.

§ 202.551 How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?

(a) You are liable for royalty on your entitled share of gas production from your Indian lease, except as provided in §§ 202.555, 202.556, and 202.557.

(b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes. If another person takes some of your entitled share but does not pay the royalties owed, you are liable for those royalties.

(c) You and all other persons paying royalties on the lease may ask MMS for permission to report and pay royalties based on your entitlements. In that event, MMS will provide valuation instructions consistent with this part and part 206 of this title.

§ 202.552 How do I determine how much royalty I must pay if my lease is in an approved Federal unit or communitization agreement (AFA)?

You must pay royalties each month on production allocated to your lease under the terms of an AFA. To determine the volume and the value of your production, you must follow these three steps:

(a) You must determine the volume of your entitled share of production allocated to your lease under the terms of an AFA. This may include production from more than one AFA.

(b) You must value the production you take using 30 CFR part 206. If you take more than your entitled share of production, see § 202.553 for information on how to value this production. If you take less than your entitled share of production, see § 202.554 for information on how to value production you are entitled to but do not take.

§ 202.553 How do I value my production if I take more than my entitled share?

If you take more than your entitled share of production from a lease in an AFA for any month, you must determine the weighted-average value of all of the production that you take using the procedures in 30 CFR part 206, and use that value for your entitled share of production.

§ 202.554 How do I value my production that I do not take if I take less than my entitled share?

If you take none or only part of your entitled production from a lease in an AFA for any month, use this section to value the production that you are entitled to but do not take.

(a) If you take a significant volume of production from your lease during the month, you must determine the weighted average value of the production that you take using 30 CFR part 206, and use that value for the production that you do not take.

(b) If you do not take a significant volume of production from your lease during the month, you must use paragraph (c) or (d) of this section, whichever applies.

(c) In a month where you do not take production or take an insignificant volume, and if you would have used § 206.172(b) to value the production if you had taken it, you must determine the value of production not taken for that month under § 206.172(b) as if you had taken it.

(d) If you take none of your entitled share of production from a lease in an AFA, and if that production cannot be valued under § 206.172(b), then you must determine the value of the production that you do not take using the first of the following methods that applies:

(1) The weighted average of the value of your production (under 30 CFR part 206) in that month from other leases in the same AFA.

(2) The weighted average of the value of your production (under 30 CFR part 206) in that month from other leases in the same field or area.

(3) The weighted average of the value of your production (under 30 CFR part 206) during the previous month for production from leases in the same AFA.

(4) The weighted average of the value of your production (under 30 CFR part 206) during the previous month for production from other leases in the same field or area.

(5) The latest major portion value that you received from MMS calculated under 30 CFR 206.174 for the same MMS-designated area.

(e) You may take less than your entitled share of AFA production for any month, but pay royalties on the full volume of your entitled share under this section. If you do, you will owe no additional royalty for that lease for that month when you later take more than your entitled share to balance your account. The provisions of this paragraph (e) also apply when the other AFA participants pay you money to balance your account.

§ 202.555 What portion of the gas that I produce is subject to royalty?

(a) All gas produced from or allocated to your Indian lease is subject to royalty except the following:

(1) Gas that is unavoidably lost.

(2) Gas that is used on, or for the benefit of, the lease.

(3) Gas that is used off-lease for the benefit of the lease when the Bureau of Land Management (BLM) approves such off-lease use.

(4) Gas used as plant fuel as provided in 30 CFR 206.179(e).

(b) You may use royalty-free only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility when you use gas for one of the following purposes:

(1) On, or for the benefit of, the lease at a production facility handling production from more than one lease with BLM's approval.

(2) At a production facility handling unitized or communitized production.

(c) If the terms of your lease are inconsistent with this subpart, your lease terms will govern to the extent of that inconsistency.

§ 202.556 How do I determine the value of avoidably lost, wasted, or drained gas?

If BLM determines that a volume of gas was avoidably lost or wasted, or a volume of gas was drained from your Indian lease for which compensatory royalty is due, then you must determine the value of that volume of gas under 30 CFR part 206.

§ 202.557 Must I pay royalty on insurance compensation for unavoidably lost gas?

If you receive insurance compensation for unavoidably lost gas, you must pay royalties on the amount of that compensation. This paragraph does not apply to compensation through self-insurance.

§ 202.558 What standards do I use to report and pay royalties on gas?

(a) You must report gas volumes as follows:

(1) Report gas volumes and Btu heating values, if applicable, under the same degree of water saturation. Report gas volumes and Btu heating value at a standard pressure base of 14.73 psia and a standard temperature of 60 degrees Fahrenheit. Report gas volumes in units of 1,000 cubic feet (Mcf).

(2) You must use the frequency and method of Btu measurement stated in your contract to determine Btu heating values for reporting purposes. However, you must measure the Btu value at least semi-annually by recognized standard industry testing methods even if your contract provides for less frequent measurement.

(b) You must report residue gas and gas plant product volumes as follows:

(1) Report carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any gas marketed as a separate product by using the same standards specified in paragraph (a) of this section.

(2) Report natural gas liquid (NGL) volumes in standard U.S. gallons (231 cubic inches) at 60 degrees F.

(3) Report sulfur (S) volumes in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

8. The authority citation for 30 CFR part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

9. Subpart E of part 206 is revised to read as follows:

Subpart E—Indian Gas

Sec.
206.170 What does this subpart contain?
206.171 What definitions apply to this subpart?
206.172 How do I value gas produced from leases in an index zone?
206.173 How do I calculate the alternative methodology for dual accounting?
206.174 How do I value gas production when an index-based method cannot be used?
206.175 How do I determine quantities and qualities of production for computing royalties?
206.176 How do I perform accounting for comparison?

Transportation Allowances

206.177 What general requirements regarding transportation allowances apply to me?
206.178 How do I determine a transportation allowance?

Processing Allowances

206.179 What general requirements regarding processing allowances apply to me?
206.180 How do I determine an actual processing allowance?
206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?

Subpart E—Indian Gas

§ 206.170 What does this subpart contain?

This subpart contains royalty valuation provisions applicable to Indian lessees.

(a) This subpart applies to all gas production from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. This subpart does not apply to Federal leases.

(b) If the specific provisions of any Federal statute, treaty, negotiated agreement, settlement agreement resulting from any administrative or judicial proceeding, or Indian oil and gas lease are inconsistent with any regulation in this subpart, then the Federal statute, treaty, negotiated agreement, settlement agreement, or lease will govern to the extent of that inconsistency.

(c) You may calculate the value of production for royalty purposes under methods other than those the regulations in this title require, but only if you, the tribal lessor, and MMS jointly agree to the valuation methodology. For leases on Indian allotted lands, you and MMS must agree to the valuation methodology.

(d) All royalty payments you make to MMS are subject to monitoring, review, audit, and adjustment.

(e) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.171 What definitions apply to this subpart?

The following definitions apply to this subpart and to subpart J of part 202 of this title:

Accounting for comparison means the same as dual accounting.

Active spot market means a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index-pricing point in the index zone.

Allowance means a deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable, actual costs of processing gas determined under this subpart. Transportation allowance means an allowance for the reasonable, actual cost of transportation determined under this subpart.

Approved Federal Agreement (AFA) means a unit or communitization agreement approved under departmental regulations.

Area means a geographic region at least as large as the defined limits of an oil or gas field, in which oil or gas lease products have similar quality, economic, or legal characteristics. An area may be all lands within the boundaries of an Indian reservation.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between

independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. The following percentages (based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership) determine if persons are affiliated:

(1) Ownership in excess of 50 percent constitutes control.

(2) Ownership of 10 through 50 percent creates a presumption of control.

(3) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify the percentage of ownership or control of the entity. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other persons who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Dedicated means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract *and* that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

Drip condensate means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a gas processing plant by mechanical means, often referred to as scrubber condensate.

Dual Accounting (or *accounting for comparison*) refers to the requirement to pay royalty based on a value which is the higher of the value of gas prior to processing less any applicable allowances as compared to the combined value of drip condensate, residue gas, and gas plant products after processing, less applicable allowances.

Entitlement (or *entitled share*) means the gas production from a lease, or allocable to lease acreage under the terms of an AFA, multiplied by the operating rights owner's percentage of interest ownership in the lease or the acreage.

Facility measurement point (or *point of royalty settlement*) means the point where the BLM-approved measurement device is located for determining the volume of gas removed from the lease. The facility measurement point may be on the lease or off-lease with BLM approval.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas. However, it does not include residue gas.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area; or a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, and gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, or field gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest is exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Index means the calculated composite price ($/MMBtu) of spot-market sales published by a publication that meets MMS-established criteria for acceptability at the index-pricing point.

Index-pricing point (IPP) means any point on a pipeline for which there is an index.

Index zone means a field or an area with an active spot market and published indices applicable to that field or area that are acceptable to MMS under § 206.172(d)(2).

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

For purposes of this subpart, this definition excludes Federal leases.

Lease products means any leased minerals attributable to, originating from, or allocated to a lease.

Lessee means any person to whom the United States, a tribe, and/or individual Indian landowner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease (including operating rights owners) as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Marketable condition means a condition in which lease products are sufficiently free from impurities and otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

MMS means the Minerals Management Service, Department of the Interior. MMS includes, where appropriate, tribal auditors acting under agreements under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* or other applicable agreements.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

Natural gas liquids (NGL's) means those gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

Net-back method (or *work-back method*) means a method for calculating market value of gas at the lease under which costs of transportation, processing, and manufacturing are deducted from the proceeds received for, or the value of, the gas, residue gas, or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share means the specified share of the net profit from production of oil and gas as provided in the agreement.

Operating rights owner (or *working interest owner*) means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title (see BLM regulations at 43 CFR 3100.0–5(d)).

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Point of royalty measurement means the same as facility measurement point.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, desulphurization (or ''sweetening''), and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the ''MMS Royalty Management Program Oil and Gas Payor Handbook.''

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration. It also does not normally require a cancellation notice to terminate, and does not contain an obligation, or imply an intent, to continue in subsequent periods.

Takes means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Work-back method means the same as net-back method.

§ 206.172 How do I value gas produced from leases in an index zone?

(a) *What leases this section applies to.* This section explains how lessees must value, for royalty purposes, gas produced from Indian leases located in an index zone. For other leases, value must be determined under § 206.174.

(1) You must use the valuation provision of this section if your lease is in an index zone and meets one of the following two requirements:

(i) Has a major portion provision;

(ii) Does not have a major portion provision, but provides for the Secretary to determine the value of production.

(2) This section does not apply to carbon dioxide, nitrogen, or other non-hydrocarbon components of the gas stream. However, if they are recovered and sold separately from the gas stream, you must determine the value of these products under § 206.174.

(b) *Valuing residue gas and gas before processing.* (1) Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (b) explains how you must value the following four types of gas:

(i) Gas production before processing;

(ii) Gas production that you certify on Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later;

(iii) Residue gas after processing; and

(iv) Gas that is never processed.

(2) The value of gas production that is not sold under an arm's-length dedicated contract is the index-based value determined under paragraph (d) of this section unless the gas was subject to a previous contract which was part of a gas contract settlement. If the previous contract was subject to a gas contract settlement and if the royalty-bearing contract settlement proceeds per MMBtu added to the 80 percent of the safety net prices calculated at § 206.172(e)(4)(i) exceeds the index-based value that applies to the gas under this section (including any adjustments required under § 206.176), then the value of the gas is the higher of the value determined under this section (including any adjustments required under § 206.176) or § 206.174.

(3) The value of gas production that is sold under an arm's-length dedicated contract is the higher of the index-based value under paragraph (d) of this section or the value of that production determined under § 206.174(b).

(c) *Valuing gas that is processed before it flows into a pipeline with an index.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (c) explains how you must value gas that is processed before it flows into a pipeline with an index. You must value this gas production based on the higher of the following two values:

(1) The value of the gas before processing determined under paragraph (b) of this section.

(2) The value of the gas after processing, which is either the alternative dual accounting value under § 206.173 or the sum of the following three values:

(i) The value of the residue gas determined under paragraph (b)(2) or (3) of this section, as applicable;

(ii) The value of the gas plant products determined under § 206.174, less any applicable processing and/or transportation allowances determined under this subpart; and

(iii) The value of any drip condensate associated with the processed gas determined under subpart B of this part.

(d) *Determining the index-based value for gas production.* (1) To determine the index-based value per MMBtu for production from a lease in an index zone, you must use the following procedures:

(i) For each MMS-approved publication, calculate the average of the highest reported prices for all index-pricing points in the index zone, except for any prices excluded under paragraph (d)(6) of this section;

(ii) Sum the averages calculated in paragraph (d)(1)(i) of this section and divide by the number of publications; and

(iii) Reduce the number calculated under paragraph (d)(1)(ii) of this section by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. The result is the index-based value per MMBtu for production from all leases in that index zone.

(2) MMS will publish in the **Federal Register** the index zones that are eligible for the index-based valuation method under this paragraph. MMS will monitor the market activity in the index zones and, if necessary, hold a technical conference to add or modify a particular index zone. Any change to the index zones will be published in the **Federal Register**. MMS will consider the following five factors and conditions in determining eligible index zones:

(i) Areas for which MMS-approved publications establish index prices that accurately reflect the value of production in the field or area where the production occurs;

(ii) Common markets served;

(iii) Common pipeline systems;

(iv) Simplification; and

(v) Easy identification in MMS's systems, such as counties or Indian reservations.

(3) If market conditions change so that an index-based method for determining value is no longer appropriate for an index zone, MMS will hold a technical conference to consider disqualification of an index zone. MMS will publish notice in the **Federal Register** if an index zone is disqualified. If an index zone is disqualified, then production from leases in that index zone cannot be valued under this paragraph.

(4) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including, but not limited to the following five criteria:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently referenced in purchase or sales contracts;

(iii) Publications that use adequate survey techniques, including the gathering of information from a substantial number of sales;

(iv) Publications that publish the range of reported prices they use to calculate their index; and

(v) Publications independent from DOI, lessors, and lessees.

(5) Any publication may petition MMS to be added to the list of acceptable publications.

(6) MMS may exclude an individual index price for an index zone in an MMS-approved publication if MMS determines that the index price does not accurately reflect the value of production in that index zone. MMS will publish a list of excluded indices in the **Federal Register**.

(7) MMS will reference which tables in the publications you must use for determining the associated index prices.

(8) The index-based values determined under this paragraph are not subject to deductions for transportation or processing allowances determined under §§ 206.177, 206.178, 206.179, and 206.180.

(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (1) Notwithstanding any other provision of this section, the value for royalty purposes of gas production from an Indian lease that is sold beyond the first index pricing point through which it flows cannot be less than the value determined under this paragraph (e).

(2) By June 30 following any calendar year, you must calculate for each month of that calendar year your safety net price per MMBtu using the procedures in paragraph (e)(3) of this section. You must calculate a safety net price for each month and for each index zone where you have an Indian lease for which you report and pay royalties.

(3) Your safety net price (S) for an index zone is the volume-weighted average contract price per delivered MMBtu under your or your affiliate's arm's-length contracts for the disposition of residue gas or unprocessed gas produced from your Indian leases in that index zone as computed under this paragraph (e)(3).

(i) Include in your calculation only sales under those contracts that establish a delivery point beyond the first index pricing point through which the gas flows, and that include any gas produced from or allocable to one or more of your Indian leases in that index zone, even if the contract also includes gas produced from Federal, State, or fee properties. Include in your volume-weighted average calculation those volumes that are allocable to your Indian leases in that index zone.

(ii) Do not reduce the contract price for any transportation costs incurred to deliver the gas to the purchaser.

(iii) For purposes of this paragraph (e), the contract price will not include the following amounts:

(A) Any amounts you receive in compromise or settlement of a predecessor contract for that gas;

(B) Deductions for you or any other person to put gas production into marketable condition or to market the gas; and

(C) Any amounts related to marketable securities associated with the sales contract.

(4) Next, you must determine for each month the safety net differential (SND). You must perform this calculation separately for each index zone.

(i) For each index zone, the safety net differential is equal to: $SND = [(0.80 \times S) - (1.25 \times I)]$ where (I) is the index-based value determined under 30 CFR 206.172(d).

(ii) If the safety net differential is positive you owe additional royalties.

(5)(i) To calculate the additional royalties you owe, make the following calculation for each of your Indian leases in that index zone that produced gas that was sold beyond the first index-pricing point through which the gas flowed and that was used in the calculation in paragraph (e)(3) of this section:

Lease royalties owed = $SND \times V \times R$, where R = the lease royalty rate and V = the volume allocable to the lease which produced gas that was sold beyond the first index pricing point.

(ii) If gas produced from any of your Indian leases is commingled or pooled with gas produced from non-Indian properties, and if any of the combined gas is sold at a delivery point beyond the first index pricing point through which the gas flows, then the volume allocable to each Indian lease for which gas was sold beyond the first index

pricing point in the calculation under paragraph (e)(5)(i) of this section is the volume produced from the lease multiplied by the proportion that the total volume of gas sold beyond the first index pricing point bears to the total volume of gas commingled or pooled from all properties.

(iii) Add the numbers calculated for each lease under paragraph (e)(5)(i) of this section. The total is the additional royalty you owe.

(6) You have the following responsibilities to comply with the minimum value for royalty purposes:

(i) You must report the safety net price for each index zone to MMS on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year;

(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year; and

(iii) MMS may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later. If MMS does not order any amendments within that one-year period, your safety net price calculation is final.

(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section. MMS will consult with BIA regarding the request.

(i) If MMS approves the request for your lease, you must value your production under § 206.174 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

(ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation.

(2) An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section. MMS will consult with BIA regarding the request.

(i) If MMS approves the request, you must value your production under § 206.172 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

(ii) Termination of an exclusion under paragraph (f)(2)(i) of this section cannot take effect earlier than 1 year after the first day of the production month that the exclusion was effective.

(3) The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution.

(g) *Excluding Indian allotted leases from valuation under this section.* (1)(i) MMS may exclude any Indian allotted leases from valuation under this section. MMS will consult with BIA regarding the exclusion.

(ii) If MMS excludes your lease, you must value your production under § 206.174 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

(iii) If MMS excludes any Indian allotted leases under this paragraph (g)(1), it will exclude all Indian allotted leases in the same field.

(2)(i) MMS may terminate the exclusion of any Indian allotted leases from valuation under this section. MMS will consult with BIA regarding the termination.

(ii) If MMS terminates the exclusion, you must value your production under § 206.172 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

§ 206.173 How do I calculate the alternative methodology for dual accounting?

(a) *Electing a dual accounting method.* (1) If you are required to perform the accounting for comparison (dual accounting) under § 206.176, you have two choices. You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).

(2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. Your election for a designated area must apply to all of your Indian leases in that area.

(i) MMS will publish in the **Federal Register** a list of the lease prefixes that will be associated with each designated area for purposes of this section. The MMS-designated areas are as follows:

(A) Alabama-Coushatta;

(B) Blackfeet Reservation;

(C) Crow Reservation;

(D) Fort Belknap Reservation;

(E) Fort Berthold Reservation;

(F) Fort Peck Reservation;

(G) Jicarilla Apache Reservation;

(H) MMS-designated groups of counties in the State of Oklahoma;

(I) Navajo Reservation;

(J) Northern Cheyenne Reservation;

(K) Rocky Boys Reservation;

(L) Southern Ute Reservation;

(M) Turtle Mountain Reservation;

(N) Ute Mountain Ute Reservation;

(O) Uintah and Ouray Reservation;

(P) Wind River Reservation; and

(Q) Any other area that MMS designates. MMS will publish a new area designation in the **Federal Register**.

(ii) You may elect to begin using the alternative methodology for dual accounting at the beginning of any month. The first election to use the alternative methodology will be effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative methodology must remain in effect for 2 calendar years. You may return to the actual dual accounting method only at the beginning of the next election period or with the written approval of MMS and the tribal lessor for tribal leases, and MMS for Indian allottee leases in the designated area.

(iii) When you elect to use the alternative methodology for a designated area, you must also use the alternative methodology for any new wells commenced and any new leases acquired in the designated area during the term of the election.

(b) *Calculating value using the alternative methodology for dual accounting.* (1) The alternative methodology adjusts the value of gas before processing determined under either § 206.172 or § 206.174 to provide the value of the gas after processing. You must use the value of the gas after processing for royalty payment purposes. The amount of the increase depends on your relationship with the owner(s) of the plant where the gas is processed. If you have no direct or indirect ownership interest in the processing plant, then the increase is lower, as provided in the table in paragraph (b)(2)(ii) of this section. If you have a direct or indirect ownership interest in the plant where the gas is processed, the increase is higher, as provided in paragraph (b)(2)(ii) of this section.

(2) To calculate the value of the gas after processing using the alternative methodology for dual accounting, you must apply the increase to the value before processing, determined in either § 206.172 or § 206.174, as follows:

(i) Value of gas after processing = (value determined under either § 206.172 or § 206.174, as applicable) × (1 + increment for dual accounting); and

(ii) In this equation, the increment for dual accounting is the number you take from the applicable Btu range, determined under paragraph (b)(3) of this section, in the following table:

BTU range	Increment if Lessee has no ownership interest in plant	Increment if lessee has an ownership interest in plant
1001 to 1050	.0275	.0375
1051 to 1100	.0400	.0625
1101 to 1150	.0425	.0750
1151 to 1200	.0700	.1225
1201 to 1250	.0975	.1700
1251 to 1300	.1175	.2050
1301 to 1350	.1400	.2400
1351 to 1400	.1450	.2500
1401 to 1450	.1500	.2600
1451 to 1500	.1550	.2700
1501 to 1550	.1600	.2800
1551 to 1600	.1650	.2900
1601 to 1650	.1850	.3225
1651 to 1700	.1950	.3425
1701+	.2000	.3550

(3) The applicable Btu for purposes of this section is the volume weighted-average Btu for the lease computed from measurements at the facility measurement point(s) for gas production from the lease.

(4) If any of your gas from the lease is processed during a month, use the following two paragraphs to determine which amounts are subject to dual accounting and which dual accounting method you must use.

(i) Weighted-average Btu content determined under paragraph (b)(3) of this section is greater than 1,000 Btu's per cubic foot (Btu/cf). All gas production from the lease is subject to dual accounting and you must use the alternative method for all that gas production if you elected to use the alternative method under this section.

(ii) Weighted-average Btu content determined under paragraph (b)(3) of this section is less than or equal to 1,000 Btu/cf. Only the volumes of lease production measured at facility measurement points whose quality exceeds 1,000 Btu/cf are subject to dual accounting, and you may use the alternative methodology for these volumes. For gas measured at facility measurement points for these leases where the quality is equal to or less than 1,000 Btu/cf, you are not required to do dual accounting.

§ 206.174 How do I value gas production when an index-based method cannot be used?

(a) *Situations in which an index-based method cannot be used.* (1) Gas production must be valued under this section in the following situations.

(i) Your lease is not in an index zone (or MMS has excluded your lease from an index zone).

(ii) If your lease is in an index zone and you sell your gas under an arm's-length dedicated contract, then the value of your gas is the higher of the value received under the dedicated contract determined under § 206.174(b) or the value under § 206.172.

(iii) Also use this section to value any other gas production that cannot be valued under § 206.172, as well as gas plant products, and to value components of the gas stream that have no Btu value (for example, carbon dioxide, nitrogen, etc.).

(2) The value for royalty purposes of gas production subject to this subpart is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) You must determine the value of gas production that is processed and is subject to accounting for comparison using the procedure in § 206.176.

(4) This paragraph applies if your lease has a major portion provision. It also applies if your lease does not have a major portion provision but the lease provides for the Secretary to determine value.

(i) The value of production you must initially report and pay is the value determined in accordance with the other paragraphs of this section.

(ii) MMS will determine the major portion value and notify you in the **Federal Register** of that value. The value of production for royalty purposes for your lease is the higher of either the value determined under this section which you initially used to report and pay royalties, or the major portion value calculated under this paragraph (a)(4). If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS by the due date specified in the written notice from MMS of the major portion value. Late-payment interest under 30 CFR 218.54 on any underpayment will not begin to accrue until the date the amended Form MMS–2014 is due to MMS.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, MMS will calculate the major portion value for each designated area (which are the same designated areas as under § 206.173) using values reported for unprocessed gas and residue gas on Form MMS–2014 for gas produced from leases on that Indian reservation or other designated area. MMS will array the reported prices from highest to lowest price. The major portion value is that price at which 25 percent (by volume) of the gas (starting from the highest) is sold. MMS cannot unilaterally change the major portion value after you are notified in writing of what that value is for your leases.

(iv) MMS may calculate the major portion value using different data than the data described in paragraph (a)(4)(iii) of this section or data to augment the data described in paragraph (a)(4)(iii) of this section. This may include price data reported to the State tax authority or price data from leases MMS has reviewed in the designated area. MMS may use this alternate or the augmented data source beginning with production on the first day of the month following the date MMS publishes notice in the **Federal Register** that it is calculating the major portion using a method in this paragraph (a)(4)(iv) of this section.

(b) *Arm's-length contracts.* (1) The value of gas, residue gas, or any gas plant product you sell under an arm's-length contract is the gross proceeds accruing to you or your affiliate, except as provided in paragraphs (b)(1)(ii)–(iv) of this section.

(i) You have the burden of demonstrating that your contract is arm's-length.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether or not your contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you or your affiliate for the gas, residue gas, or gas plant product. If the contract does not reflect the total consideration, then MMS may require that the gas, residue gas, or gas plant product sold under that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to you or your affiliate, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to you or your affiliate under an arm's-length contract do not reflect the value of the gas, residue gas, or gas plant products because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the gas, residue gas, or gas plant product be valued under paragraphs (c)(2) or (3) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your value.

(iv) This paragraph applies to situations where a pipeline purchases

gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price specified in the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessees must value all over-delivered volumes under paragraph (c)(2) or (3) of this section.

(2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product.

(c) *Non-arm's-length contracts.* If your gas, residue gas, or any gas plant product is not sold under an arm's-length contract, then you must value the production using the first applicable method of the following three methods:

(1) The gross proceeds accruing to you under your non-arm's-length contract sale (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). For residue gas or gas plant products, the comparable arm's-length contracts must be for gas from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors will be considered: price, time of execution, duration, market or markets served, terms, quality of gas, residue gas, or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the gas, residue gas, or gas plant products.

(2) A value determined by consideration of other information relevant in valuing like-quality gas, residue gas, or gas plant products, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, or for residue gas or gas plant products from the same gas plant or other nearby processing plants. Other factors to consider include prices received in spot sales of gas, residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such gas, residue gas, or gas plant products.

(3) A net-back method or any other reasonable method to determine value.

(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to the determination of royalty value.

(1) Such data will be subject to review and audit, and MMS will direct you to use a different value if we determine upon review or audit that the value you reported is inconsistent with the requirements of these regulations.

(2) You must make all such data available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. This includes your arm's-length sales and volume data for like-quality gas, residue gas, and gas plant products that are sold, purchased, or otherwise obtained from the same processing plant or from nearby processing plants, or from the same or nearby field or area.

(e) *Improper values.* If MMS determines that you have not properly determined value, you must pay the difference, if any, between royalty payments made based upon the value you used and the royalty payments that are due based upon the value MMS established. You also must pay interest computed on that difference under 30 CFR 218.54. If you are entitled to a credit, MMS will provide instructions on how to take that credit.

(f) *Value guidance.* You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with a non-binding determination of the guidance you request.

(g) *Minimum value of production.* (1) For gas, residue gas, and gas plant products valued under this section, under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee (including its affiliates) for gas, residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(2) For gas plant products valued under this section and not valued under § 206.173, the alternative methodology for dual accounting, the minimum value of production for each gas plant product is as follows:

(i) Leases in certain States and areas have specific minimum values.

(A) For production from leases in Colorado in the San Juan Basin, New Mexico, and Texas, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Mont Belvieu, Texas, minus 8.0 cents per gallon.

(B) For production in Arizona, in Colorado outside the San Juan Basin, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Conway, Kansas, minus 7.0 cents per gallon;

(ii) You may use any commercial price bulletin, but you must use the same bulletin for all of the calendar year. If the commercial price bulletin you are using stops publication, you may use a different commercial price bulletin for the remaining part of the calendar year; and (iii) If you use a commercial price bulletin that is published monthly, the monthly average minimum price is the bulletin's minimum price. If you use a commercial price bulletin that is published weekly, the monthly average minimum price is the arithmetic average of the bulletin's weekly minimum prices. If you use a commercial price bulletin that is published daily, the monthly average minimum price is the arithmetic average of the bulletin's minimum prices for each Wednesday in the month.

(h) *Marketable condition/Marketing.* You are required to place gas, residue gas, and gas plant products in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor. When your gross proceeds establish the value under this section, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services to place the gas, residue gas, or gas plant products in marketable condition or to market the gas, the cost of which ordinarily is your responsibility.

(i) *Highest obtainable price or benefit.* For gas, residue gas, and gas plant products valued under this section, value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty at a value based upon

that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If you make timely application for a price increase or benefit allowed under your contract but the purchaser refuses, and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph is not intended to permit you to avoid your royalty payment obligation in situations where your purchaser fails to pay, in whole or in part, or timely, for a quantity of gas, residue gas, or gas plant product.

(j) *Non-binding MMS reviews.* Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in an MMS redetermination of value under this section will be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) *Confidential information.* Certain information submitted to MMS to support valuation proposals, including transportation allowances and processing allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart must be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

(l) *Time limits on adjustments and audits for certain Indian leases.* (1) If you determine the value of production under this section from leases in Montana and North Dakota, you have time limits to make adjustments to your reported royalty value. If you know of an adjustment that would result in additional royalty owed, you are required to report that adjustment and pay the additional royalty by the time limit established in this paragraph. MMS also has time limits to complete royalty audits for these leases only. There are exceptions to these time limits in paragraph (l)(2) of this section.

(i) If your royalty valuation does not include a non-arm's-length allowance under this subpart, you have until the last day of the 13th month following the production month to report any adjustments on Form MMS–2014. MMS must complete royalty audits timely and may not issue demands or orders or initiate other action to collect royalty underpayment for this production from the lessee after the last day of the 12th month following the last day to make adjustments.

(ii) If your royalty valuation includes a non-arm's-length allowance under this subpart, you have until the last day of the 9th month following the month you submit to MMS your actual transportation allowance report, or your actual processing allowance report, to report any adjustments on Form MMS–2014. MMS must complete royalty audits timely and may not issue demands or orders or initiate any other action to collect royalty underpayments for this production from the lessee after the last day of the 12th month following the last day to report adjustments.

(2) Exceptions to the time limits in paragraph (l)(1) of this section are as follows:

(i) If you have a pending dispute with your purchaser or with the person transporting or processing your gas production that affects valuation, the time periods to make adjustments in paragraphs (l)(1)(i) and (ii) of this section will be extended for 6 months after your dispute is finally resolved. The time period to complete audits and issue demands or orders is correspondingly extended;

(ii) If there is a written agreement between you and MMS or its delegee (if applicable) to extend the time limit, the time period is extended for the period stated in the agreement;

(iii) If there is a pending regulatory proceeding by any agency with jurisdiction over sales prices for gas that could affect the value of the gas, the time period to make adjustments in paragraphs (l)(1)(i) and (ii) of this section will be extended for 90 days after final resolution of the pending regulatory proceeding, including any period for judicial review. The time period to complete audits and issue demands or orders is correspondingly extended;

(iv) If the lessee fails or refuses to provide records or information in its possession or control necessary to complete the audit, the time period to issue demands or orders will be extended for any time periods that MMS cannot obtain the records or information; and

(v) The time period in paragraphs (l)(1)(i) and (ii) of this section will not apply in situations involving fraud or intentional misrepresentation or concealment of a material fact for the purpose of evading a payment obligation.

(3) For purposes of this paragraph (l), *demand* or *order* means an order to pay a specific amount or an amount that the lessee may easily calculate. It also includes an order to perform a restructured accounting based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months. The order to perform a restructured accounting must specify the reasons and the factual bases for the order.

(4) If an audit discloses overpayments for any lease, the lessee may credit those overpayments against any underpayments due on that same lease.

§ 206.175 How do I determine quantities and qualities of production for computing royalties?

(a) For unprocessed gas, you must pay royalties on the quantity and quality at the facility measurement point BLM either allowed or approved.

(b) For residue gas and gas plant products, you must pay royalties on your share of the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(c) If you have no ownership interest in the processing plant and you do not operate the plant, you may use the contract volume allocation to determine your share of plant products.

(d) If you have an ownership interest in the plant or if you operate it, use the following procedure to determine the quantity of the residue gas and gas plant products attributable to you for royalty payment purposes:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which you must pay royalty is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content, the volumes of residue gas and gas plant products allocable to each lease are

based on theoretical volumes of residue gas and gas plant products measured in the lease gas stream. You must calculate the portion of net plant output of residue gas and gas plant products attributable to each lease as follows:

(i) First, compute the theoretical volumes of residue gas and of gas plant products attributable to the lease by multiplying the lease volume of the gas stream by the tested residue gas content (mole percentage) or gas plant product (GPM) content of the gas stream;

(ii) Second, calculate the theoretical volumes of residue gas and of gas plant products delivered from all leases by summing the theoretical volumes of residue gas and of gas plant products delivered from each lease; and

(iii) Third, calculate the theoretical quantities of net plant output of residue gas and of gas plant products attributable to each lease by multiplying the net plant output of residue gas, or gas plant products, by the ratio in which the theoretical volumes of residue gas, or gas plant products, is the numerator and the theoretical volume of residue gas, or gas plant products, delivered from all leases is the denominator.

(4) You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If MMS approves a different method, it will be applicable to all gas production from your Indian leases that is processed in the same plant.

(e) You may not take any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas incurred prior to the facility measurement point will not be subject to royalty if BLM determines that the loss was unavoidable.

§ 206.176 How do I perform accounting for comparison?

(a) This section applies if the gas produced from your Indian lease is processed and that Indian lease requires accounting for comparison (also referred to as actual dual accounting). Except as provided in paragraphs (b) and (c) of this section, the actual dual accounting value, for royalty purposes, is the greater of the following two values:

(1) The combined value of the following products:

(i) The residue gas and gas plant products resulting from processing the gas determined under either § 206.172 or § 206.174, less any applicable allowances; and

(ii) Any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing determined under § 206.52, less applicable allowances.

(2) The value of the gas prior to processing determined under either § 206.172 or § 206.174, including any applicable allowances.

(b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section.

(c) Accounting for comparison is not required for gas if no gas from the lease is processed until after the gas flows into a pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. If you do not perform dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed.

(d) Except as provided in paragraph (e) of this section, if you value any gas production from a lease for a month using the dual accounting provisions of this section or the alternative dual accounting methodology of § 206.173, then the value of that gas is the minimum value for any other gas production from that lease for that month flowing through the same facility measurement point.

(e) If the weighted-average Btu quality for your lease is less than 1,000 Btu's per cubic foot, see § 206.173(b)(4)(ii) to determine if you must perform a dual accounting calculation.

Transportation Allowances

§ 206.177 What general requirements regarding transportation allowances apply to me?

(a) When you value gas under § 206.174 at a point off the lease, unit, or communitized area (for example, sales point or point of value determination), you may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease, unit, or communitized area. The allowance is based on the reasonable actual costs you incurred to transport unprocessed gas, residue gas, or gas plant products from a lease to a point off the lease, unit, or communitized area. This would include, if appropriate, transportation from the lease to a gas processing plant off the lease, unit, or communitized area and from the plant to a point away from the plant. You may not deduct any allowance for gathering costs.

(b) You must allocate transportation costs among all products you produce and transport as provided in § 206.178.

(c)(1) Except as provided in paragraphs (c)(2) and (3) of this section, your transportation allowance deduction for each selling arrangement may not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product. For purposes of this section, natural gas liquids are considered one product.

(2) If you ask MMS, MMS may approve a transportation allowance deduction in excess of the limitations in paragraph (c)(1) of this section. To receive this approval, you must demonstrate that the transportation costs incurred in excess of the limitations in paragraph (c)(1) of this section were reasonable, actual, and necessary. Under no circumstances may an allowance reduce the value for royalty purposes under any selling arrangement to zero.

(3) Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination.

(d) If MMS conducts a review or audit and determines that you have improperly determined a transportation allowance authorized by this subpart, then you will be required to pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 206.178 How do I determine a transportation allowance?

(a) *Determining a transportation allowance under an arm's-length contract.* (1) This paragraph explains how to determine your allowance if you have an arm's-length transportation contract.

(i) If you have an arm's-length contract for transportation of your production, the transportation allowance is the reasonable, actual costs you incur for transporting the unprocessed gas, residue gas and/or gas plant products under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. Your allowances also are subject to paragraph (e) of this section. You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on the Form MMS–2014.

(ii) When either MMS or a tribe conducts reviews and audits, they will

examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter of the transportation. If the contract reflects more than the total consideration, then MMS may require that the transportation allowance be determined under paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the transportation allowance be determined under paragraph (b) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs.

(2) This paragraph explains how to allocate the costs to each product if your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract.

(i) If your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported. To make this allocation, use the same proportion as the ratio that the volume of each product (excluding waste products which have no value) bears to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without MMS approval, or without lessor approval on tribal leases.

(ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. MMS will approve the method if we determine that it meets one of the two following requirements:

(A) The methodology in paragraph (a)(2)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the methodology in paragraph (a)(2)(i) of this section.

(3) This paragraph explains how to allocate costs to each product if your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use the transportation allowance determined in accordance with your proposed allocation procedure until MMS decides whether to accept your cost allocation.

(ii) You are required to submit all relevant data to support your allocation proposal. MMS will then determine the gas transportation allowance based upon your proposal and any additional information MMS deems necessary.

(4) If your payments for transportation under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price includes a reduction for a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. However, the transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Determining a transportation allowance under a non-arm's-length or no contract.* (1) This paragraph explains how to determine your allowance if you have a non-arm's-length transportation contract or no contract.

(i) When you have a non-arm's-length transportation contract or no contract, including those situations where you perform transportation services for yourself, the transportation allowance is based upon your reasonable, allowable, actual costs for transportation as provided in this paragraph.

(ii) All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. However, MMS may approve a longer time period. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may require you to modify your actual transportation allowance deduction.

(2) This paragraph explains what actual transportation costs are allowable under a non-arm's-length contract or no contract situation. The transportation allowance for non-arm's-length or no-contract situations is based upon your actual costs for transportation during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that you can document.

(ii) Allowable maintenance expenses include maintenance of the transportation system, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or a unit of production method. Once you make an election, you may not change methods without MMS approval. A change in ownership of a

transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation. With or without a change in ownership, a transportation system may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you will multiply the undepreciated capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you will multiply the initial capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. The rate must be redetermined at the beginning of each subsequent transportation allowance reporting period that is determined under paragraph (b)(4) of this section.

(3) This paragraph explains how to allocate transportation costs to each product and transportation system.

(i) The deduction for transportation costs must be determined based on your cost of transporting each product through each individual transportation system. If you transport more than one product in a gaseous phase, the allocation of costs to each of the products transported must be made in a consistent and equitable manner. The allocation should be in the same proportion that the volume of each product (excluding waste products that have no value) bears to the volume of all products in the gaseous phase (excluding waste products that have no value). Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval.

(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. MMS will approve the method upon determining that it meets one of the two following requirements:

(A) The methodology in paragraph (b)(3)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the method in paragraph (b)(3)(i) of this section.

(4) Your transportation allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.

(5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. You may use the transportation allowance determined in accordance with your proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. You are required to submit all relevant data to support your proposal. MMS will then determine the transportation allowance based upon your proposal and any additional information MMS deems necessary.

(c) *Using the alternative transportation calculation when you have a non-arm's-length or no contract.* (1) As an alternative to computing your transportation allowance under paragraph (b) of this section, you may use as the transportation allowance 10 percent of your gross proceeds but not to exceed 30 cents per MMBtu.

(2) Your election to use the alternative transportation allowance calculation in paragraph (c)(1) of this section must be made at the beginning of a month and must remain in effect for an entire calendar year. Your first election will remain in effect until the end of the succeeding calendar year, except for elections effective January 1 that will be effective only for that calendar year.

(d) *Reporting your transportation allowance.* (1) If MMS requests, you must submit all data used to determine your transportation allowance. The data must be provided within a reasonable period of time that MMS will determine.

(2) You must report transportation allowances as a separate line item on Form MMS–2014. MMS may approve a different reporting procedure on allottee leases, and with lessor approval on tribal leases.

(e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. If the transportation allowance you are entitled to is greater than the amount you took on Form MMS–2014 for any royalties during the reporting period, you are entitled to a credit. No interest will be paid on the overpayment.

(f) *Determining allowable costs for transportation allowances.* Lessees may include, but are not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* You must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC orders in 18 CFR part 284.

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service.

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs.

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses.

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-

arm's-length transportation arrangements.

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as ''parking'' or ''banking''), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less.

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* MMS allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 206.174(h).

(g) *Determining nonallowable costs for transportation allowances.* Lessees may not include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days.

(2) *Aggregater/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production.

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to the following:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within tolerances.

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* You must follow the provisions of this section to determine transportation costs when establishing value using either a net-back valuation procedure or any other procedure that allows deduction of actual transportation costs.

Processing Allowances

§ 206.179 What general requirements regarding processing allowances apply to me?

(a) When you value any gas plant product under § 206.174, you may deduct from value the reasonable actual costs of processing.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. Natural gas liquids are considered as one product.

(c) The processing allowance deduction based on an individual product may not exceed 66 2/3 percent of the value of each gas plant product determined under § 206.174. Before you calculate the 66 2/3 percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under § 206.177.

(d) Processing cost deductions will not be allowed for placing lease products in marketable condition. These costs include among others, dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Costs for the removal of acid gases, commonly referred to as sweetening, are not allowed unless the acid gases removed are further processed into a gas plant product. In such event, you will be eligible for a processing allowance determined under this subpart. However, MMS will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) You will be allowed a reasonable amount of residue gas royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of your residue gas necessary for the operation of the processing plant will be allowed royalty free.

(f) You do not owe royalty on residue gas, or any gas plant product resulting from processing gas, that is reinjected into a reservoir within the same lease, unit, or approved Federal agreement, until such time as those products are finally produced from the reservoir for sale or other disposition. This paragraph applies only when the reinjection is included in a BLM-approved plan of development or operations.

(g) If MMS determines that you have determined an improper processing allowance authorized by this subpart, then you will be required to pay any additional royalties plus late payment interest determined under 30 CFR 218.54. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 206.180 How do I determine an actual processing allowance?

(a) *Determining a processing allowance if you have an arms's-length processing contract.* (1) This paragraph explains how you determine an allowance under an arm's-length processing contract.

(i) The processing allowance is the reasonable actual costs you incur to process the gas under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. You are required to submit to MMS a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report that deducts the allowance on the Form MMS–2014.

(ii) When MMS conducts reviews and audits, we will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the processor for the processing. If the contract reflects more than the total consideration, then MMS may require that the processing allowance be determined under paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the

processing allowance be determined under paragraph (b) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your processing costs.

(2) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accordance with the contract. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use your proposed allocation procedure until MMS issues its determination. You are required to submit all relevant data to support your proposal. MMS will then determine the processing allowance based upon your proposal and any additional information MMS deems necessary. You may not take a processing allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your payments for processing under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1) This paragraph applies if you have a non-arm's-length processing contract or no contract, including those situations where you perform processing for yourself.

(i) If you have a non-arm's-length contract or no contract, the processing allowance is based upon your reasonable actual costs of processing as provided in paragraph (b)(2) of this section.

(ii) All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. MMS may approve a longer time period. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may require you to modify your processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations is based upon your actual costs for processing during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the processing plant.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the processing plant, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. After you elect to use either method for a processing plant, you may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or a unit-of-production method. Once you make an election, you may not change methods without MMS approval. A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation. However, for processing plants you or your affiliate purchase that do not have a previously claimed MMS depreciation schedule, you may treat the processing plant as a newly installed facility for depreciation purposes. A processing plant may be depreciated only once, regardless of whether there is a change in ownership. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you must multiply the undepreciable capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you must multiply the initial capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.

(4) The processing allowance for each gas plant product must be determined based on your reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(c) *Reporting your processing allowance.* (1) If MMS requests, you must submit all data used to determine your processing allowance. The data must be provided within a reasonable period of time, as MMS determines.

(2) You must report gas processing allowances as a separate line item on the Form MMS–2014. MMS may approve a different reporting procedure for allottee leases, and with lessor approval on tribal leases.

(d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. If the

processing allowance you are entitled is greater than the amount you took on Form MMS–2014, you are entitled to a credit. However, no interest will be paid on the overpayment.

(e) *Other processing cost determinations.* You must follow the provisions of this section to determine processing costs when establishing value using either a net-back valuation procedure or any other procedure that requires deduction of actual processing costs.

§ 206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?

Where accounting for comparison (dual accounting) is required for gas production from a lease but neither you nor someone acting on your behalf processes the gas, and you have elected to perform actual dual accounting under § 206.176, you must use the first applicable of the following methods to establish processing costs for dual accounting purposes:

(a) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that some gas has previously been processed under these agreements.

(b) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that the agreements are in effect for plants to which the lease is physically connected and under which gas from other leases in the field or area is being or has been processed.

(c) A proposed comparable processing fee submitted to either the tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.

(d) Processing costs based on the regulations in §§ 206.179 and 206.180.

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Part V

Department of Housing and Urban Development

Notice of Funding Availability: Resident Opportunities and Self Sufficiency (ROSS) Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4520–N–01]

Notice of Funding Availability: Resident Opportunities and Self Sufficiency (Ross) Program (Formerly Economic Development and Supportive Services, Tenant Opportunities Program and Public Housing Service Coordinators)

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY:

Purpose of Program

The purpose of ROSS is to link services to public and Indian housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self-sufficient.

Available Funds

Approximately $66.6 million is being made available for the ROSS Program under this NOFA.

Eligible Applicants

Grants may be made to Public Housing Agencies (PHAs) on behalf of public housing residents, or directly to resident management corporations, resident councils, or resident organizations (including nonprofit entities supported by residents). Intermediary Resident Organizations (IROs) and those non-profits that operate associations and networks that administer programs benefiting public and assisted resident organizations are also eligible recipients for ROSS funding categories where specifically noted in this NOFA. Indian Tribes (Tribes) and Tribally designated housing entities (TDHEs) are eligible for grants under the Technical Assistance/Training Support for Resident Organizations and Resident Service Delivery Models (RSDM) funding categories.

Application Deadline

Completed applications (one original and two copies) must be submitted by the time described in section I. of this NOFA, below, on: October 12, 1999 for Resident Management and Business Development; October 12, 1999 for Capacity Building and/or Conflict Resolution; November 8, 1999 for Resident Service Delivery Models; and September 9, 1999 for Service Coordinators.

Match

All grants require a match of at least 25% of the grant amount. This match does not have to be a cash match. It can be in-kind and/or cash contributions.

Additional Information

If you are interested in applying for funding under any of these programs, please review carefully the following information.

I. Application Due Date, Application Kits, Further Information and Technical Assistance

Application Due Date

Except for the Resident Service Delivery Models funding category, eligible applications will be funded on a first-come, first-served basis, and applicants are urged to make their submissions as soon as possible before the due dates listed above.

(1) *Mailed Applications (Other than Overnight or Express Mail Delivery)*

Your application will be considered timely filed if postmarked before midnight, local time, on the application due date and received on or within ten (10) days of the application due date.

(2) *Applications Sent by Overnight/Express Mail Delivery*

Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

(3) *Hand Carried Applications*

Applications must be delivered by 6:00 pm local time on the due date. Hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm.

Address for Submitting Applications

By the application due date an original and one copy of the application must be received at the Grants Management Center (GMC); one copy must be received at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public Housing, or, in the case of Indian Tribes/TDHEs, an original and one copy to ONAP, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202. Applications, other than those from Tribes/TDHEs, should be sent to the GMC at the following address: Grants Management Center, Attention: Director, 501 School Street, SW, Suite 800, Washington, DC 20024. A list of HUD Field Offices is included in the application kit for this NOFA.

For Application Kits

For an application kit and any supplemental information please call the PIH Information and Resource Center at 1–800–955–2232. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to ROSS and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance

For answers to your questions, you have several options. For ROSS and any of its funding categories, you may call the local HUD field office with delegated responsibilities over the pertinent housing agency/authority. Answers may also be obtained by calling the Public and Indian Housing Information and Resource Center at 1–800–955–2232. Information on this NOFA may also be obtained through the HUD web site on the Internet at http://www.HUD.gov.

II. Amount Allocated

(A) Total Amount

Approximately $66.6 million in funding is being made available under this NOFA. This amount is comprised of approximately $40 million from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), (FY 1999 Appropriations Act), and approximately $26.6 million of carryover funds from the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997), (FY 1998 Appropriations Act).

(B) Allocation

To the extent that there are a sufficient number of qualified applications, not less than 25% percent of funds available for ROSS shall be provided directly to resident councils, resident organizations, and resident management corporations. This requirement will be implemented by the awards made to resident organizations for the Technical Assistance/Training

Support for Resident Organizations and the Resident Service Delivery Models funding categories.

III. General Program Description; Funding Categories

(A) General Program Description

The Quality Housing and Work Responsibility Act of 1998 (the Public Housing Reform Act) (title V of the FY 1999 Appropriations Act) institutes various public housing reforms aimed at creating mixed income communities. Reforms contained in the Public Housing Reform Act will: reduce the costs of public and assisted housing by streamlining regulations; facilitate the formation of local partnerships; leverage State, local, and private resources; and uphold and protect residents' right to organize and empower themselves to improve their own communities. Specific provisions grant Public Housing Agencies (PHAs) increased flexibility to develop local situations to address housing needs, but they are required to use that flexibility to better serve their residents by creating healthier, more economically integrated communities. Several initiatives are intended to enhance the quality of life for public housing residents while promoting self-sufficiency and personal responsibility in communities.

Section 538 of the Public Housing Reform Act adds a new section 34 to the United States Housing Act of 1937 which provides a mandate to link services and public housing residents for economic self-sufficiency. The Resident Opportunities and Self Sufficiency (ROSS) Program responds to this initiative by redefining, restructuring and consolidating certain aspects of previous programs while incorporating objectives contained in the Public Housing Reform Act.

The newly enacted legislative authority formally recognizes a vital connection between providing housing delivery and other services that are necessary for improvements in the quality of life for public housing residents. Through ROSS the Department will programmatically address essential links of services to public housing residents. The purpose of ROSS is to provide linkages to public housing residents by providing supportive services, resident empowerment activities and assisting residents in becoming economically self-sufficient. This program purpose is consistent with the Department's goal to most effectively focus resources on ''welfare to work'' and on independent living for the elderly and persons with disabilities. HUD believes that it is imperative that housing authorities and residents work together to meet the challenge of welfare reform.

Under the ROSS Program, priority will be given to funding those models that are successful models and may have proven themselves on a limited basis in practical situations. The ROSS Program seeks to provide assistance to implement practical solutions within the grant term, thereby delivering results in the form of improved economic self-sufficiency for public housing residents. This philosophy should be reflected in the proposed grant activities for all funding categories within the ROSS program.

As indicated in section II., above, of this NOFA, the funding sources for this first ROSS Program NOFA are the FY 1997 Appropriations Act, the FY 1998 Appropriations Act and the FY 1999 Appropriations Act, specifically, from funds made available under these Acts for Economic Development and Supportive Services (EDSS), the Tenant Opportunities Program (TOP), and Public Housing Service Coordinators. HUD has determined that these programs are sufficiently similar to the new ROSS Program under section 34 of the 1937 Act to permit the funds appropriated for them to be made available under ROSS. However, the specific statutory provisions under the FY 1997, 1998 and 1999 Appropriations Acts that apply to the use of these funds must still be observed, even though they do not appear in section 34. For example, Indian Tribes and TDHEs are eligible for funding under the FY 1998 and 1999 Appropriations Acts, and they are eligible under this NOFA although section 34 does not mention them. Similarly, the provisions in this NOFA that Section 8 recipients may be among those participating or receiving benefits are taken from the Appropriations Acts; section 34 only permits public housing residents, not Section 8 recipients, to participate and receive benefits. HUD anticipates that funding in subsequent appropriations acts will be specifically targeted for section 34, and the ''blending'' of requirements to address statutory provisions, as in this NOFA, will not be necessary.

(B) Funding Categories

The following are funding categories under ROSS:

(1) Technical Assistance/Training Support for Resident Organizations

(a) *Resident Management and Business Development.* Resident Management and Business Development grants will be made directly to resident organizations and to Tribes/TDHEs that partner with Tribal resident organizations (ROs) and Tribal resident management corporations (RMCs) to: increase resident involvement and participation in their housing developments; develop resident management opportunities; provide resident-led business or cooperative development opportunities; and obtain necessary supportive services for self-sufficiency. (See section IV.(A) of this NOFA for a specific requirements for this funding category.)

(b) *Resident Capacity Building and/or Conflict Resolution.* The Resident Capacity Building funding category provides grants to Intermediary Resident Organizations (IROs) on behalf of public housing residents, which include Public Housing Site-Based Resident Councils; Resident Management Corporations; and Tribes/TDHEs on behalf of tribal housing residents, Tribal ROs and Tribal RMCs; and those non-profits which operate associations and networks that administer programs that benefit public and Tribal housing resident organizations, for assistance to site-based resident associations who do not yet have the capacity to administer a welfare-to-work program or conduct management activities. The funds will be used to help establish new resident organizations or enhance the capacity of existing organizations to enable them to participate in housing agency decision-making, manage all or a portion of their developments, and/or apply for and administer grants. (See section IV.(B) of this NOFA for specific requirements for this funding category). The Conflict Resolution (CR) funding category provides assistance to Intermediary Resident Organizations (IROs), Tribes/TDHEs that partner with Tribal resident organizations and Tribal resident management corporations, and those non-profits which operate associations and networks that administer programs that benefit public and Tribal housing resident organizations, to partner with professional mediators to resolve conflicts involving public housing residents, tribal housing residents, and/or site-based resident associations. (See section IV.(B) of this NOFA for a specific requirements for this funding category.)

(2) Resident Service Delivery Models

The Resident Service Delivery Models (RSDM) funding category provides grants to Public Housing Agencies (PHAs), Indian Tribes and Tribally designated housing entities (TDHEs) on behalf of public and Tribal housing residents, or directly to resident management corporations, resident

councils, or resident organizations, including nonprofit entities supported by residents. There are two types of grants: (1) Family—program related and supportive services to establish and implement comprehensive programs that achieve resident self-sufficiency for families, or (2) Elderly and Disabled—independent living for the elderly and persons with disabilities. (See section V. of this NOFA for a specific requirements for this funding category.)

(3) Service Coordinator Renewals

The Service Coordinator grant category provides resources to PHAs to address the needs of public housing residents who are elderly and disabled persons. Service coordinators help residents obtain supportive services that are needed to enable independent living. Only renewals of prior Public Housing Elderly and Disabled Service Coordinator grants will be funded under this NOFA; no applications for new Service Coordinator grants will be accepted. (See section VI. of this NOFA for a specific requirements for this funding category.)

(C) Number of Applications Permitted

Each applicant may submit no more than one application under this NOFA. The only exception is that applicants for Service Coordinator Renewal grants under section VI. of this NOFA may also apply in one additional funding category. To avoid a duplication of funding, in any funding category listed here (Resident Management and Business Development; Capacity Building, Conflict Resolution; Resident Service Delivery Models—Family, Resident Service Delivery Models—Elderly/Disabled), there may be no more than one application per PHA development. (i.e., a PHA and one of its RAs may not both successfully submit an application for a Resident Service Delivery Models'Family grant to serve the same development.)

IV. Technical Assistance/Training Support for Resident Organizations

(A) Resident Management and Business Development

(1) Program Description

These grants are available to establish and strengthen organizational capacity for site-based resident associations that do not have the capacity to administer a welfare-to-work program or conduct management activities.

(2) Amount Allocated

(a) A total of $6 million, of which $500,000 is for Tribes/TDHEs that partner with Tribal ROs and Tribal RMCs, is being made available for awards to qualified applicants for Resident Management and Business Development (RMBD) grants.

(b) *Maximum Grant Award* for this funding category shall be $100,000 per applicant.

(3) Eligible Applicants

Site-Based Resident Associations (RAs), City-Wide Resident Organizations (CWROs), and Tribes/TDHEs that partner with Tribal ROs and Tribal RMCs. If an RA is a beneficiary or recipient of proposed grant activities by a CWRO, then that RA cannot also apply under this category. Previous TOP grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of this NOFA. Applications from a Tribe or TDHE must include a Memorandum of Understanding (MOU) (see section IV.(A)(8)(b), below, of this NOFA) with the Tribal RO or RMC.

(4) Eligible Participants

For applications that are not from a Tribe or TDHE, at least 75 percent of the persons participating and receiving benefits from RMBD activities must be residents of conventional public housing; any other persons (up to 25 percent per grantee) participating or receiving benefits from these programs must be recipients of Section 8 assistance. In addition, all applicants must provide evidence that at least 51 percent of those served by the activities are households affected by welfare reform.

(5) Eligible Activities

Under this funding category funds may be used for the activities described below.

(a) Training related to resident-owned business or cooperative development and technical assistance for job training and placement in RMC developments;

(b) Technical assistance and training in resident managed business development through: feasibility and market studies; development of business plans; outreach activities; and innovative financing methods including revolving loan funds and the development of credit unions; and legal advice in establishing a resident-managed business entity or cooperative.

(c) Establishing and funding revolving loan funds;

(d) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a development;

(e) Training residents with respect to fair housing requirements; and

(f) Gaining assistance in negotiating management contracts and designing a long-range planning system.

(g) Providing social support needs (such as self sufficiency and youth initiatives) including:

(i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, and similar skills;

(iii) Management-related employment training and counseling including job search assistance, job development assistance, job placement assistance, and follow up assistance;

(iv) Supportive services including: child care services; educational services, remedial education, literacy training, ESL instruction, assistance in attaining a GED; vocational training including computer training; health care outreach and referral services; meal services for the elderly or persons with disabilities; personal assistance to maintain hygiene/appearance for the elderly or persons with disabilities; housekeeping assistance for the elderly or persons with disabilities; transportation services; congregate services for the elderly or persons with disabilities; and case management;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition, safety and substance abuse;

(vii) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, and goal planning. The workshops could be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire, and Big Brother/Big Sisters;

(viii) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing agency staff, resident management corporations and resident councils on youth initiatives and program activities;

(ix) Physical improvements to facilities at public housing developments in order to provide space for self-sufficiency activities for residents, i.e. to provide cosmetic improvements and repairs to space to conduct community activities; or to expand existing community space for proposed ROSS activities. Physical

improvements may not exceed 50% of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments;

(*1*) Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements.

(*2*) The renovation, conversion, or combination of vacant dwelling units in a PHA development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvement.

(*3*) The renovation of existing common areas in a PHA development to accommodate the provision of supportive services.

(*4*) The renovation or repair of facilities located near the premises of one or more PHA developments to accommodate the provision of supportive services.

(*5*) Each applicant must submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities.

(*6*) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 2 years following the completion of renovation, conversion, or repair activities funded under this NOFA.

(*7*) If renovation, conversion, or repair is done off-site, the PHA must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation.

(6) *Ineligible Resident Management and Business Development Activities and Costs*

Ineligible activities and costs include the following:

(a) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel performed in connection with implementing the Work Plan. (See Travel Notice for more specific guidance.)

(b) Purchase or rental of land.

(c) Activities not directly related to the welfare-to-work initiatives (e.g., lead-based paint testing and abatement and operating capital for economic development activities).

(d) Purchase of any vehicle (car, van, bus, etc.).

(e) Payment of salaries for routine project operations, such as security and maintenance, or for applicant staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the Resident Management and Business Development grant activities or coordinate on-site social services.

(f) Payment of fees for lobbying services.

(g) Any expenditures that are fraudulent, wasteful or otherwise incurred contrary to HUD or OMB directives.

(h) Any cost otherwise eligible under this program section of this NOFA for which funds are being provided from any other source.

(i) Entertainment equipment such as televisions, radios, stereos, and VCRs. An exception to this item may be granted by the HUD Field Office or AONAP or if funding is being utilized specifically for the purposes of establishing a business directly related to radio, television or film or some other form of technical communication, and equipment is being utilized for training of residents or RAs. All such exceptions must be authorized in writing by the HUD Field Office or AONAP before purchases may be made.

(j) Any activity or cost determined by HUD on a case-by-case good cause basis to be ineligible.

(7) *Application Submission Requirements*

In addition to addressing the application submission requirements listed in section IX., below, of this NOFA, Resident Management and Business Development grant applications must include a description of how they will carry out and fund the following activities and costs:

(a) *Training.* on HUD regulations and policies governing the operation of low-income public housing including contracting/procurement regulations; financial management; capacity building to develop the necessary skills to assume management responsibilities at the project and property management; and training in accessing other funding sources.

(b) *Hiring trainers or other experts.* Resident grantees must ensure that all training is provided by a qualified public housing or management specialist (Consultant/Trainer), HUD Headquarters, AONAP or Field staff or the local PHA. To ensure the successful implementation of the grant Work Plan activities, the applicants are required to determine the need to contract for outside consulting/training services. The applicant and the PHA must jointly select and approve the consultant/trainer. Each applicant should make maximum use of its PHA, non profit, or other Federal, State, Tribal or local government resources for technical assistance and training needs. The amount allowed for hiring an individual consultant for this purpose shall not exceed 30% of the total grant award or $30,000, whichever is less. The amount available for all consultants and contracts shall not exceed 50% of the grant or $50,000 whichever is less. HUD Field Offices and AONAPs will monitor this process to ensure compliance with program and OMB requirements, and particularly the requirement for competitive bidding.

(c) *Stipends.* Trainees and program participants of an RA, CWRO, or Tribe/TDHE may only receive stipends for participating in or receiving training under RM to cover the reasonable costs related to participation in training and other activities in the program, subject to the availability of funds. The stipends should be used for additional costs incurred during the training programs, such as child care and transportation costs. The cost of stipends may not exceed $200 per month per trainee without written HUD Field Office or AONAP authorization.

(d) Reimbursement of reasonable expenses incurred by Officers and Board members in the performance of their fiduciary duties and/or training related to the performance of their official duties.

(e) Travel directly related to the successful completion of the required Work Plan. All grantees must adhere to the travel policy established by HUD Notice 96–18. The policy sets travel costs at a maximum amount of $5,000 per RA without special HUD approval.

(f) Child care expenses for individual staff, board members, or residents in cases where those who need child care are involved in training-related activities associated with grant activities.

(g) Costs incurred by a RA in applying for 501(c) tax exempt status with Internal Revenue Service.

(h) *Administrative costs.* These costs are necessary for the implementation of grant activities. Administrative costs are not to exceed 20% of the grant. Appropriate administrative costs include, but are not limited to, the following reasonable costs or activities:

(i) *Space and equipment.* Maintenance, utility costs, postage, building lease/rental costs, purchase or lease of telephone, computer, printing, copying, and sundry non-dwelling equipment (such as office supplies, software, and furniture). A grantee must justify the need for this equipment or space based on services being delivered in relationship to implementing its approved grant activities.

(ii) *Grant contract and financial management.* If a grantee is unable to obtain the services of a Contract Administrator or accountant without charge, the cost for a Contract Administrator and or accountant is eligible. The grantee is required to maintain documentation on file showing what efforts it made to obtain the services of a Contract Administrator cost-free.

(iii) *Technical assistance* regarding any other service and/or resource, including case management, that are proposed by applicants and approved by HUD.

(iv) Rental or lease of a car, van, or bus by resident grantees to attend training;

(8) *Threshold Requirements*

(a) *Focus on Residents Affected by Welfare Reform.* The application must contain written evidence provided by the PHA to the applicant, or by Tribe or TDHE that at least 51 percent of the public or Tribal housing residents (including Section 8 tenants as applicable) to be included in the proposed program are affected by the welfare reform legislation, including TANF recipients and, if affected, legal immigrants and SSI recipients. Elderly or disabled residents not otherwise affected by welfare reform may be included towards meeting the 51 percent requirement if, under the grant, they will provide services such as child care or mentoring to persons affected by welfare reform.

(b) *Partnership between the Resident Association and the PHA or the Tribal RO or RMC and the Tribe/TDHE.*

(1) The application must contain a signed Memorandum of Understanding (MOU) between the RA and the PHA or the Tribe/TDHE and the Tribal RO or RMC which describes the specific roles, responsibilities and activities to be undertaken between the two entities.

(2) The MOU, at a minimum, must identify the principal parties (i.e. the name of the PHA and RA or the Tribe/TDHE and the Tribal RO or RMC), the terms of the agreement (expectations or terms for each party), and indicate that the agreement pertains to the support of the grant application. This document is the basis for foundation of the relationship between the RA and PHA or the Tribe/TDHE and the Tribal RO or RMC. It must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the RA and PHA or the Tribe/TDHE and the Tribal RO or RMC upon submission of the application. A sample MOU will be provided in the application kit.

(c) *Accessible Community Facility.* The applicant must provide evidence (e.g. through an executed use agreement and/or in the MOU with the PHA) that a majority of the proposed activities will be administered at community facilities within easy access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport) of the property or properties represented by the applicant. The community facility must also meet the structural accessibility requirements of section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

(d) *Match Requirement.*

(1) The applicant must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, EDSS, TOP or SC funds); funds from any State or local government sources; and funds from private contributions.

(2) The application must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. ''Firmly committed'' means there must be a written agreement to provide the resources and services, signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(3) The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or activity is located, as appropriate.

(e) *Contract Administrator.* For applicants other than Tribes/TDHEs, unless HUD or an Independent Public Accountant has determined that the applicant's financial management system and procurement procedures fully comply with 24 CFR part 84, the application must contain evidence that the applicant will use the services of a Contract Administrator in administering the grant. Troubled PHAs are not eligible to be Contract Administrators. In cases where the Contract Administrator is the PHA, the contract administration responsibilities can be incorporated into the MOU discussed above.

(f) *Applicant Non-Profit Status.* Applications that are RAs/RCs/RMCs/CWROs must include evidence that the applicant is registered with the State as a nonprofit corporation at the time of application submission. CWROs only must have 501(c) status with the United States Internal Revenue Service at the time of application submission.

(g) *Certification of Elections.* Resident Organization applicants must submit certification of the RA board election, signed by the local PHA and/or an independent third-party monitor and notarized.

(h) *Compliance with Current Programs.* The applicant must provide a valid certification on the format provided in the application kit that it is not the subject of unresolved HUD Office of Inspector General findings and that it and the contract administrator are not in default at the time of application submission with respect to any previous HUD-funded grant programs the applicant or contract administrator has received.

(i) *List of RAs Receiving Support.* CWRO applications must list in their application the name of the RAs that will receive services and must submit letters of support from each RA identified in the application.

(9) *Application Selection Process*

Applicants for Resident Management and Business Development grants are required to address application submission requirements, but are not

required to address selection factors. Eligibility will be determined by applications that meet the threshold requirements of sections IV.(A)(8) and VII. of this NOFA. HUD will accept for funding the first five eligible applications from each of the ten federal regions and from ONAP National Program Office in Denver (ONAP) on a first-come, first-serve basis for 60 days after this NOFA is published. Any funds remaining after making awards to the first five eligible applications from each region and ONAP will be awarded to the next eligible application from each region or ONAP, then the next, and so forth until funds are exhausted. If sufficient funds are not available in any round to fund an eligible application from each region, the eligible applications will then be funded in the order in which they were received regardless of region. If sufficient funds are not available in any round to fund an eligible application from ONAP, or if funds remain available after funding every eligible ONAP application, the remaining funds are transferable to other funding categories in this NOFA in the following order: first, to qualifying applications from Tribes/TDHEs for Resident Service Delivery Model grants under section V. of this NOFA; second to qualifying applications from Tribes/TDHEs for Resident Capacity Building and/or Conflict Resolution grants under section IV.(B) of this NOFA; third, to qualifying applications for Resident Management and Business Development grants under this section IV.(A) from applicants that are not Tribes/TDHEs. In addition, if all funds are not awarded in this funding category to eligible regional applications received within 60 days after this NOFA is published, funds are transferable to other non-Tribe/TDHE funding categories in this NOFA in the following order: first, service coordinators under section VI. of this NOFA; second, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, Resident Service Delivery Models under section V. of this NOFA. Where physical development activities are proposed, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to award. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

(10) *Grant Term*

The grant term for Resident Management and Business Development grants is thirty-six months from the execution date of the grant agreement.

(B) Capacity Building and/or Conflict Resolution

(1) *Program description*

These grants are available for two types of awards:

(a) *Conflict Resolution Grants* (CR) are available to secure the services of professional mediators to resolve conflicts involving public or Tribal housing residents and/or Site-Based Resident Associations or Tribal ROs or RMCs. For Conflict Resolution Grants, a skilled mediator or partner, under the auspices of an applicant, will bridge impasses between residents and/or factions within specific developments, among active participants of a Site-Based Resident Association (RA) or Tribal ROs or RMCs, or between an RA or Tribal RO or RMC and its partners, especially local Housing Agencies. The scope of conflict resolution activities may include support for multicultural cooperation and communication. The applicant must apply in partnership with a recognized professional mediation organization. All mediators must have entered into at least one referral agreement with judicial, law enforcement or social services agencies to mediate for public housing residents served by the agency. After awarding the grants, HUD would refer cases requiring mediation to the grantee. Also conflicting parties, on their own initiative, could make requests for mediation services directly to the grantee. While mediating for residents and their partners, the professional mediators would also train grantee staff in mediation principles and skills for mediation in the future.

(b) *Capacity Building Grants* (CB) are available to provide technical assistance and training activities to establish and strengthen organizational capacity for site-based resident associations or Tribal ROs or RMCs that do not have the capacity to administer welfare-to-work and other programs, work with PHAs, Tribes or TDHEs, or conduct management activities. Capacity Building Grants will be targeted to help establish new site-based resident organizations or enhance the capacity of existing organizations to assist residents, participate in Housing Agency decision making, manage all or a portion of their housing development, and develop skills and expertise needed to administer grants.

(2) *Amount Allocated for Capacity Building and/or Conflict Resolution*

(a) $5 million is available for CB/CR awards, of which $400,000 is for applications from Indian Tribes or TDHEs.

(b) The maximum grant award will be $15,000 per RA represented, up to the following maximums: $105,000 for City-Wide Resident Organizations (CWROs), Indian Tribes, or TDHEs and $240,000 per applicant for all other applicants in these funding categories. An applicant that is not a CWRO, an Indian Tribe, or a TDHE is required to serve a minimum of 10 RAs.

(3) *Eligible applicants*

(a) Intermediary Resident Organizations (IROs) on behalf of public housing residents, which include Public Housing Site-Based Resident Councils; Resident Management Corporations; and Tribes/TDHEs on behalf of tribal housing residents, Tribal ROs and Tribal RMCs may apply for Capacity Building and/or Conflict Resolution grants. IROs include National Resident Organizations, Statewide Resident Organizations, Regional Resident Organizations, City-Wide Resident Organizations, and Jurisdiction-Wide Resident Organizations.

(b) Non-profits that operate as associations and/or networks that administer programs that benefit public and Tribal housing resident organizations are also eligible for this funding category.

(c) An applicant that is not a CWRO must serve a minimum of 10 RAs.

(d) Previous TOP grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of this NOFA.

(4) *Eligible Activities*

(a) *Conflict resolution*. Conflict resolution grant activities may include, but are not limited to:

(i) Efforts to address conflicts related to gang violence;

(ii) Establishing violence-free zones to enhance the quality of living environment for public housing residents;

(iii) Training programs on mediation and communication skills;

(iv) Training programs on dispute resolution and reconciliation, including training addressing racial, ethnic and other forms of diversity;

(v) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, goal planning, health, and nutrition. The workshops may be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc.

(vi) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of youth, improving youth initiatives that are currently active, and training youth, housing agency staff, resident management corporations and resident councils on youth initiatives and program activities.

(b) *Capacity Building.* Eligible activities for CB grants may include, but are not limited to:

(i) Training Board members in community organizing, Board development, and leadership training;

(ii) Determining the feasibility of and training existing resident groups for resident management or for a specific resident management project;

(iii) Assisting in the creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter;

(iv) Developing the management capabilities of existing resident organizations;

(v) Determining the feasibility of homeownership by residents, including assessing the feasibility of other housing (including HUD-owned or held single or multi-family) affordable for purchase by residents.

(5) *Ineligible Activities*

Ineligible activities are the same as those listed in section IV.(A)(6) of this NOFA, above. In addition, physical development activities are not eligible for funding under CB or CR grants.

(6) *Application Submission Requirements*

In addition to addressing the application submission requirements listed in section IX., below, of this NOFA, applicants for the CB and CR grants must provide a narrative description of proposed activities that addresses the following information: a description of the geographic boundaries of the RAs or Tribal ROs or RMCs included in the application; a description of the public or Tribal housing community; a detailed description of the issues or problems involved with each RA or Tribal RO or RMC to be served by the grant; and the resources that are currently being devoted to the problem or issue under consideration.

(7) *Threshold Requirements*

(a) *Written Agreement with Mediator.* Conflict Resolution applicants only must have a written agreement with a professional mediator or mediation organization (mediator/partner) outlining the roles and responsibilities of each party, as well as any compensation to the mediator/partner (which must be reasonable and based on the work to be performed) defined. The written agreement must specify, consistent with the work plan, that the mediator/partner will train grantee staff and/or volunteers such that the grantee will be capable of providing mediation assistance independently by the end of the grant term;

(b) *Mediation Experience/Referral Agreement.* Conflict Resolution applicants only must provide evidence that their mediator/partner that are PHAs have at least three years of experience in providing mediation services and at least two years of experience in mediation training; and include one referral agreement with a judicial, law enforcement or social service agency such as the court system or Welfare Department for mediation referral of public housing residents.

(c) *Applicant Non-Profit Status.* Both CB and CR applications that are not Tribes/TDHEs must provide evidence that the applicant is registered with the State as a nonprofit corporation and has 501(c) status with the United States Internal Revenue Service at the time of application submission.

(d) *Compliance with Current Programs.* Both CB and CR applicants must provide certification on the format provided in the application kit that the applicant and the mediation partner are not in default at the time of application submission with respect to any previous HUD funded grant programs the applicant received and that there are no unresolved Office of Inspector General findings against the applicant or mediation partner.

(e) *Match Requirement.*

(i) Both CB and CR applicants must supplement grant funds with an in-kind and/or cash match of not less that 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, EDSS, TOP, or SC funds); funds from any State or local government sources; and funds from private contributions.

(ii) Both CB and CR applications must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. ''Firmly committed'' means there must be a written agreement to provide the resources and services, signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(iii) The following are guidelines for valuing certain types of in-kind contributions:

(*1*) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located.

(*2*) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or activity is located, as appropriate.

(f) *List of RAs Receiving Support.* In both CB and CR applications eligible applicants must list in their application the name of the RAs or Tribal ROs or RMCs that will receive training, technical assistance and/or coordinated supportive services and must submit letters of support from each entity identified in the application.

(8) *Application Selection Process*

Applicants for Conflict Resolution or Capacity Building grants are required to address application submission requirements but are not required to address selection factors. Applicants are required to include letters of support from the PHA or Tribe on behalf of RAs or Tribal ROs and RMCs to be served (see section IV.(B)(7)(f), above, of this NOFA). Eligibility will be determined by applications that meet the threshold requirements of sections IV.(B)(7) and VII. of this NOFA. HUD will accept for funding the first two eligible applications from each of the ten federal regions and from ONAP National Program Office in Denver (ONAP) on a first-come, first-serve basis for 60 days after this NOFA is published. Any funds remaining after making awards to the first two eligible applications from each region or ONAP will be awarded to the next eligible application from each region or ONAP, then the next, and so forth until funds are exhausted. If sufficient funds are not available in any round to fund an eligible application from each region, the eligible

applications will then be funded in the order in which they were received regardless of region. If sufficient funds are not available in any round to fund an eligible application from ONAP, or if funds remain available after funding every eligible ONAP application, the remaining funds are transferable to other funding categories in this NOFA in the following order: first, to qualifying applications from Tribes/TDHEs for Resident Service Delivery Model grants under section V. of this NOFA; second to qualifying applications from Tribes/TDHEs for Resident Management and Business Development grants under section IV.(A) of this NOFA; third, to qualifying applications for Resident Capacity Building and/or Conflict Resolution grants under this section IV.(B) from applicants that are not Tribes/TDHEs. In addition, if all funds are not awarded in this funding category to eligible regional applications received within 60 days after this NOFA is published, funds are transferable to other non-Tribe/TDHE funding categories in this NOFA in the following order: first, service coordinators under section VI. of this NOFA; second, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, Resident Service Delivery Models under section V. of this NOFA.

(9) *Grant Term*

The grant term for both Capacity Building and Conflict Resolution grants is thirty-six months from the execution date of the grant agreement.

V. Resident Service Delivery Models (RSDM)

(A) Program Description

(1) *Resident Service Delivery Models—Families*

These grants provide services to assist eligible residents to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs. Grants provide support for program activities essential to facilitate economic uplift and provide access to the skills and resources needed for employment, job development and business development.

(2) *Resident Service Delivery Models—Elderly/Disabled*

This grant category provides supportive services for elderly residents and persons with disabilities.

(B) Amount Allocated

(1) *Amount Allocated for Resident Service Delivery Models*

For RSDM, $40.6 million is available for eligible applicants. Of this amount $2 million is available for Tribes/TDHEs.

(2) *Maximum Grant Award*

(a) For PHAs and Tribes/TDHEs, the maximum grant application award will be based on the number of occupied units for family or the elderly and persons with disabilities, as applicable. For the RSDM category, PHAs must use the number of occupied units to determine the maximum grant amount in accordance with the categories listed below for family:

(i) For PHAs and Tribes/TDHEs with 1 to 780 occupied family units, the maximum grant award is $75,000.

(ii) For PHAs and Tribes/TDHEs with 781 to 7,300 occupied family units, the maximum grant award is $250,000.

(iii) For PHAs and Tribes/TDHEs with 7,301 or more occupied family units, the maximum grant award is $500,000.

(b) For Elderly and Disabled RSDM grants, PHAs and Tribes/TDHEs may apply for the below listed maximums:

(i) For 1 to 217 units occupied by elderly residents or persons with disabilities, the maximum grant award is $27,125.

(ii) For 218 to 1,155 units occupied by elderly residents or persons with disabilities, the maximum grant award is $100,000.

(iii) For 1,156 or more units occupied by elderly residents or persons with disabilities, the maximum grant award is $150,000.

(c) The maximum grant award for RAs is $75,000.

(d) Non profit entities supported by residents or RAs are limited to $75,000 for each RA. Non profit entities supported by residents may be awarded no more than three awards for different RAs.

(e) Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1998 as defined in 24 CFR 1000.316. Tribes who have not previously received funds from the Department under the 1937 Act should count housing units under management that are owned and operated by the Tribe and are identified in their housing inventory as of September 30, 1997.

(3) If all funds are not awarded in one funding category, funds are transferable to the other funding categories in this NOFA.

(C) Eligible Applicants

(1) *Family*

This funding category provides grants to PHAs, Indian Tribes and TDHEs on behalf of public and Tribal housing residents, or directly to resident management corporations, resident councils, or resident organizations, including nonprofit entities supported by residents, to enable them to establish and implement comprehensive programs that assist residents in becoming self-sufficient and/or enable independent living and aging in place.

(2) *Elderly and Disabled*

PHAs, Indian Tribes and TDHEs are eligible applicants in providing supportive services for the elderly and disabled.

(3) *Previous Grantees*

Previous EDSS, TOP, or Service Coordinator grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of this NOFA.

(4) *Joint Applications*

Two or more applicants may join together to submit a joint application for proposed grant activities. Joint applications must designate a lead applicant. All parties in a joint application (lead or non-lead) are considered to be applying for ROSS and are therefore subject to the limit of one ROSS application per applicant, with the exception of those Service Coordinator applicants that may also apply in one additional ROSS category. Funding for joint applications may not exceed the stated maximum for this funding category.

(D) Eligible Participants

At least 75 percent of the persons participating and receiving benefits from these activities must be residents of conventional public housing or Tribal housing. For applications that are not from a Tribe or TDHE, any other persons (up to 25 percent per grantee) participating or receiving benefits from these programs must be recipients of Section 8 assistance.

(E) Eligible Activities

Funds may be used for the activities described below, according to whether the application is for the family category, or elderly and disabled category.

(1) *Family*

(a) *Program Coordinator.* Applicants are encouraged to include a Program Coordinator for proposed RSDM

activities for the entire term of the grant. A Program Coordinator is a person who is responsible for coordinating various proposed activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

(b) *Physical improvements* to provide space for self-sufficiency activities for residents, i.e. to provide cosmetic and repairs for space to conduct community activities; or to expand existing community space for proposed ROSS activities. Physical improvements may not exceed 50% of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments.

(i) Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements.

(ii) The renovation, conversion, or combination of vacant dwelling units in a housing development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvement.

(iii) The renovation of existing common areas in a housing development to accommodate the provision of supportive services.

(iv) The renovation or repair of facilities located near the premises of one or more housing developments to accommodate the provision of supportive services.

(v) Each applicant should submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities.

(vi) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 2 years following the completion of renovation, conversion, or repair activities funded under this NOFA.

(vii) If renovation, conversion, or repair is done off-site, the applicant must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation or other appropriate documentation.

(c) *Entrepreneurship training* (literacy training, computer skills training, business development planning).

(d) *Entrepreneurship development* (entrepreneurship training curriculum, entrepreneurship courses).

(e) *Micro/Loan fund*. Developing a strategy for establishing a revolving micro/loan fund and/or capitalizing a loan fund, including licensing, bonding, and insurance needed to operate a business.

(f) *Developing credit unions*. Developing a strategy to establish and/or create onsite credit union(s) to provide financial and economic development initiatives to PHA residents. (RSDM grant funds cannot be used to capitalize a credit union.) The credit union could support the normal financial management needs of the community (i.e., check cashing, savings, consumer loans, micro-businesses money management, home buyer counseling educational loans, and other revolving loans).

(g) *Employment training and counseling* (e.g., job training (such as apprenticeship programs), preparation and counseling, job search assistance, job development and placement, and continued follow-up assistance).

(h) *Employer linkage and job placement*.

(i) *Family only—supportive services activities*. The provision of services to assist eligible residents to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs. Eligible supportive services may include, but are not limited to:

(i) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities.

(ii) Computer-based educational opportunities, skills training, and entrepreneurial activities.

(iii) Homeownership training and counseling, development of feasibility studies and preparation of homeownership plans/proposals.

(iv) Education including but not limited to: remedial education; computer skills training; career counseling; literacy training; assistance in the attainment of certificates of high school equivalency; two-year college tuition assistance; trade school assistance; youth leadership skills and related activities (activities may include peer leadership roles training for youth counselors, peer pressure reversal, life skills, goal planning). Academic support shall not be limited to TANF recipients.

(v) Youth mentoring of a type that mobilizes a potential pool of role models to serve as mentors to public or Tribal housing youth. Mentor activities may include after-school tutoring, help with problem resolution issues, illegal drugs avoidance, job counseling, or mental health counseling.

(vi) Transportation costs, as necessary to enable any participating family member to receive available services to commute to his or her training or supportive services activities or place of employment.

(vii) Personal well-being (e.g., family/parental development counseling, parenting skills training for adult and teenage parents, self-development counseling, support groups/counseling for victims of domestic violence, and/or families with a mentally ill member, etc.).

(viii) Supportive health care services (e.g., outreach and referral services to substance and alcohol abuse treatment and counseling, mental health services, wellness programs).

(ix) Contracting for case management services contracts or employment of case managers, either of which must ensure confidentiality about resident's disabilities.

(x) Administrative costs not to exceed 20% of the grant amount.

(xi) *Stipends*. No more than $200 per participant per month of the grant award may be used for stipends for active trainees and program participants to cover the reasonable costs related to participation in training and other activities.

(2) *Elderly and Disabled—Supportive Services Activities*

May include, but are not limited to:

(a) Meal service adequate to meet nutritional need;

(b) Assistance with daily activities;

(c) Housekeeping aid;

(d) Transportation services;

(e) Wellness programs, preventive health education, referral to community resources;

(f) Personal emergency response; and

(g) Congregate services—includes supportive services that are provided in a congregate setting at a conventional public or Tribal housing development.

(F) Ineligible Activities

Activities for which costs are ineligible for funding under the RSDM funding category include:

(1) Payment of wages and/or salaries to participants receiving supportive services and/or training programs, except that grant funds under family

RSDM may be used to hire a resident(s) as a Program Coordinator or to provide training program activities.

(2) Purchase or rental of land.

(3) New construction, materials, and costs.

(4) Purchase of vehicles.

(G) Threshold Requirements

(1) *Elderly Housing Development Certification*

(For Elderly RSDM Applicants Only) A Certification that at least 25% of the residents of the development(s) proposed for grant activities are elderly and/or non elderly people with disabilities at the time of application.

(2) *Focus on Residents Affected by Welfare Reform (For Family RSDM Only)*

The RSDM application must demonstrate evidence from the PHA, Tribe or TDHE that at least 51% or more of the public or Tribal housing residents (including Section 8 tenants as applicable) to be included in the proposed program are affected by the welfare reform legislation, including Temporary Assistance for Needy Families (TANF) recipients, legal immigrants, and disabled SSI recipients.

(3) *Accessible Community Facility*

The application must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA, Tribe or TDHE that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport), of the property represented by the PHA, Tribe or TDHE. The community facilities must also meet the structural accessibility requirements of Section 504 of the rehabilitation Act and the Americans With Disabilities Act.

(4) Match Requirement

(a) The applicant must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, TOP, EDSS, or SC funds); funds from any State or local government sources; and funds from private contributions.

(b) The application must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. ''Firmly committed'' means there must be a written agreement to provide the resources and services signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(c) The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services Shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the RSDM activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or RSDM activity is located, as appropriate.

(5) *Compliance With Current Programs*

The applicant must provide certification in the format provided in the application kit that it is not in default at the time of application submission with respect to grants for the following programs: the Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; the Youth Apprenticeship Program; the Apprenticeship Demonstration in the Construction Trades Program; the Urban Youth Corps Program; the HOPE 1 Program; the Public Housing Service Coordinator Program; the Public Housing Drug Elimination Program; the Youth Sports Program; the Tenant Opportunities Program; and the Economic Development and Supportive Services Program.

(6) *Contract Administrator*

For applicants other than Tribes/TDHEs, unless HUD or an Independent Public Accountant has determined that the applicant's financial management system and procurement procedures fully comply with 24 CFR part 84, the application must contain evidence that the applicant will use the services of a Contract Administrator in administering the grant. Applicants that are troubled PHAs are required to provide evidence that a Contract Administrator has been retained for the term of the grant.

(a) A Contract Administrator, if retained, must oversee the financial activities and assist with the entire implementation of the grant. A signed executed agreement must be included in the application. This agreement may be contingent upon the applicant receiving a grant award.

(b) The Contract Administrator may be: Local Housing Agencies (except for troubled PHAs); community-based organizations such as Community Development Corporations (CDC), churches; non-profits; State/Regional associations and organizations. Troubled PHAs are not eligible to be Contract Administrators.

(c) If a grantee is unable to obtain the services of a Contract Administrator or accountant without charge, the cost for a Contract Administrator and or accountant is eligible. The grantee is required to maintain documentation on file showing what efforts it made to obtain the services of a Contract Administrator cost-free.

(7) Applicant Non-Profit Status

Both RA and non-profit applicants only must submit evidence that the applicant is registered with the State as a nonprofit corporation at the time of application submission. Non-profits only must have 501(c) status with the United States Internal Revenue Service at the time of application submission.

(8) Certification of Elections

Resident Organization applicants only must submit certification of the RA board election as required by HUD, signed by the local PHA and/or an independent third-party monitor and notarized.

(H) Application Selection Process

All applications are due no later than 90 days from the publication date of this NOFA. Three types of reviews will be conducted: a screening to determine if the application submission is complete and on time; a threshold review to determine applicant eligibility; and a technical review to rate the applications based on the rating factors in section V.(I), below, of this NOFA. A minimum score of 55 is required to be considered for funding. If the applicant is not a PHA, where physical development activities are proposed, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to award. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

HUD will conduct the selection process as follows:

(1) *For Applicants Other Than Tribes/TDHEs*

HUD will first select the highest ranked application from each of the ten federal regions for funding. After this ''round,'' HUD will select the second highest ranked application in each of the ten federal regions for funding (the second round). HUD will continue this process with the third, fourth, and so on, highest ranked applications in each federal region until the last complete round is selected for funding. If available funds exist to fund some but not all eligible applications in the next round, HUD will make awards to those remaining applications in rank order regardless of region and will fully fund as many as possible with remaining funds. In addition, if all funds are not awarded in this funding category, funds are transferable to other funding categories in this NOFA in the following order: first, service coordinators under section VI. of this NOFA; second, Resident Management and Business Development under section IV.(A) of this NOFA; third, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA. The selection process is designed to achieve both geographic diversity and a more equitable distribution of grant awards throughout the country.

(2) *For Tribes/TDHEs*

After rating and ranking, HUD will fund Tribes/TDHEs in rank order until all funds allocated for Tribes/TDHEs have been awarded to the extent that there are eligible applications. Any remaining funds will be transferable to other funding categories in this NOFA in the following order: first, to qualifying applications from Tribes/TDHEs for Resident Management and Business Development grants under section IV.(A) of this NOFA; second to qualifying applications from Tribes/TDHEs for Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, to qualifying applications for Resident Service Delivery Model grants under this section V. from applicants that are not Tribes/TDHEs.

(I) Factors for Award Used to Evaluate and Rate RSDM Applications

The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 100. In addition, this NOFA also provides for the award of two bonus points for eligible activities/projects that are proposed to be located in federally designated Empowerment Zones (EZs), Enterprise Communities (ECs), or Urban Enhanced Enterprise Communities (EECs). The application kit contains a certification which must be completed for the applicant to be considered for EZ/EC bonus points and a listing of federally designated EZs, ECs, or Enhanced EECs.

An RSDM application must receive a total of 55 points out of 100 to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *Proposed Program Staffing* (7 Points)

(a) *Experience*. (4 Points): The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, sub-recipients and partners in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant to undertake eligible program activities.

(b) *Sufficiency*. (3 Points): The applicant, its sub-recipients, and partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate sufficiency, the applicant must submit the proposed number of staff years to be allocated to the project by employees and experts, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management* (7 Points)

(a) *Program Administration*. (4 Points): The soundness of the proposed management of the proposed RSDM program. In order to receive a high score, an applicant must provide a comprehensive description of the project management structure. The narrative must provide a description of how any co-applicants, sub-grantees, and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of the proposed program.

(b) *Fiscal Management*. (3 Points): The soundness of the applicant's proposed fiscal management. In order to receive a high score an applicant must provide a comprehensive description of the fiscal management structure, including, but not limited to, budgeting, fiscal controls, and accounting. The application must identify the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record* (6 Points): In order to receive a high score, the applicant must demonstrate its (or the proposed Administrator's) program compliance and successful implementation of any resident self-sufficiency, security or independence oriented grants (including those listed below) awarded to the applicant or overseen by the Administrator. Applicants or Administrators with no prior experience in operating programs that foster resident self-sufficiency, security or independence will receive a score of 0 on this factor. The applicant's past experience may include, but is not limited to, administering the following grants: the Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; the Youth Apprenticeship Program; the Apprenticeship Demonstration in the Construction Trades Program; the Urban Youth Corps Program; the HOPE I Program; the Public Housing Service Coordinator Program; the Public Housing Drug Elimination Program; Tenant Opportunities Program; Economic Development and Supportive Services; and the Youth Sports Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. Applicants will be evaluated on the extent to which they document a critical level of need in the development or the proposed activities in the area where activities will be carried out. In responding to this factor, applicants will be evaluated on:

(1) *A Needs Assessment Document* (18 Points): HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document.

(a) In order to obtain maximum points for Family RSDM applications, this

document must contain statistical data which provides:

(i) A thorough socioeconomic profile of the eligible residents to be served by the grant, in relationship to PHA-wide and national public and assisted housing data on residents who are on TANF, SSI benefits, or other fixed income arrangements; in job training, entrepreneurship, or community service programs; and employed.

(ii) Specific information on training, contracting, and employment through the PHA or Tribe.

(iii) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use;

(iv) A description of the goals, objectives, and program strategies that will result in successful transition of residents from welfare-to-work.

(b) In order to obtain maximum points for Elderly and Persons with Disabilities RSDM applications, the needs assessment document should contain statistical data that provide:

(i) The numbers of residents needing assistance for activities of daily living.

(ii) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use.

(iii) A description of the goals, objectives, and program strategies that will result in increased independence for proposed program participants.

(2) *Level of Priority in Consolidated Plan*. (2 Points): Documentation of the level of priority the locality's, or in the case of small cities, the State's, Consolidated Plan has placed on addressing the needs. Applicants may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing Choice (AI) to further fair housing. Applicants that address needs that are in the community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, will receive a greater number of points than applicants who do not relate their proposed program to the approved Consolidated Plan or AI or court action. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which the applicant can realistically accomplish the goals of the proposed RSDM program; the soundness of the applicant's plan to evaluate the success of its proposed RSDM program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) *Viability and comprehensiveness of the strategies to address the needs of residents* (21 Points): The score under this subfactor will be based on the viability and comprehensiveness of strategies to address the needs of residents. HUD will award up to 19 points based on the following:

(a) *Services* (18 Points for Family RSDM applicants and 21 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in the Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant) The score under this subfactor will be based on the following:

(i) For Family RSDM applications, the extent to which an applicant's plan provides services that specifically address the successful transition from welfare to work of non-elderly families. To receive a high score, the applicant's plan should include case management/counseling, job training/development/placement (and/or business training/development/startup), child care, and transportation services. Also, in order to receive maximum points, the goals and objectives of the proposed plan must represent significant achievements related to welfare-to-work and other self-sufficiency/independence goals. Specifically for those residents affected by welfare reform, the number of residents employed or resident businesses started are preferable to the number of residents receiving training.

(ii) For Elderly and Persons with Disabilities RSDM applications, services in the applicant's plan should include case management, health care, congregate services and transportation. To obtain maximum points, the application must describe the goals, objectives, and program strategies that will result in increased independence for proposed program participants; the services must be located in a community facility; and services must be available on a 12 hour basis or as needed by the eligible residents.

(b) *Resident Contracting and Employment* (3 Points): The score in this factor will be based on the extent to which residents will achieve self-sufficiency through the applicant's contracts with resident-owned businesses and through resident employment. A high score will be awarded where there is documentation (a letter or resolution from the applicant's governing body) describing the applicant's commitment to hire or contract with at least 15% of residents and a narrative describing the number of resident jobs or contracts involved, as well as the training processes related to the comprehensive plan of your application. Elderly and Persons with Disabilities RSDM applications will not be scored on the criterion in this subcategory.

(2) *Budget Appropriateness/Efficient Use of Grant* (5 Points): The score in this factor will be based on the following:

(a) *Detailed Budget Break-Out*. The extent to which the application includes a detailed budget break-out for each budget category in the SF–424A.

(b) *Reasonable Administrative Costs*. The extent to which the application includes administrative costs at or below the 20% administrative cost ceiling.

(c) *Budget Efficiency*. The extent to which the application requests funds commensurate with the level of effort necessary to accomplish the goals and objectives, and the extent to which the requested funding is reasonable in relationship to the anticipated results.

(3) *Reasonableness of the Timetable* (2 Points for Family RSDM applicants and 4 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant):

The score in this factor will be based on the speed of response at which the applicant can accomplish the goals of the proposed RSDM program. To receive a high score, the applicant must demonstrate that it will make substantial program implementation progress within the first six months after grant execution, including putting staff in place, finalizing partnership arrangements, completing the development of requests for proposals, and achieving other milestones that are

prerequisites for implementation of the program. In addition, the applicant must demonstrate that the proposed timetable for all components of the proposed program is reasonable considering the size of the grant and its activities and that it can accomplish its objectives within the 24-month time limit.

(4) *Program Assessment.* (3 Points for Family RSDM and Elderly and Persons with Disabilities RSDM): The score in this factor will be based on the soundness of the applicant's plan to evaluate the success of its proposed RSDM program both at the completion of the program and during program implementation. At a minimum, the applicant must track the goals and objectives of the proposed work plan program, which must include, if applicable, a plan for monitoring the applicant's Contract Administrator. HUD will rate more favorably applicants who can track specific measurable achievements for the use of program funds, such as number of residents employed, salary scales of jobs obtained, persons removed from welfare roles 12 months or longer, number of elderly or persons with disabilities residents receiving supportive services, and number of persons receiving certificates for successful completion of training in careers such as computer technology.

(5) *Resident and Other Partnerships* (9 Points for Family RSDM applicants and 7 Points for Elderly and Persons with Disabilities RSDM applicants)

(a) *Resident Involvement in RSDM Activities* (3 Points for Family RSDM applicants and 4 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant): The score in this factor will be based on the extent of resident involvement in developing the proposed RSDM program as well as the extent of proposed resident involvement in implementing the proposed RSDM program. In order to receive a high score on this factor, the applicant must describe the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. For applicants to receive the maximum number of points, a Memorandum of Understanding or other written agreement with the PHA, Tribe or TDHE and the Resident Association involved, as appropriate, must be included.

(b) *Other Partnerships* (3 Points): The score in this factor will be based on the successful integration of partners into implementation of the proposed RSDM program. In order to receive a high score, an applicant must provide a signed Memorandum of Understanding (MOU) or other equivalent signed documentation that delineates the roles and responsibilities of each of the parties in the program and the benefits they will receive. In assessing this subfactor, HUD will examine a number of aspects of the proposed partnership, including:

(i) The division of responsibilities/management structure of the proposed partnership relative to the expertise and resources of the partners;

(ii) The extent to which the partnership as a whole addresses a broader level of unmet resident needs; and

(iii) The extent to which the addition of the partners provides the ability to meet needs that the applicant could not meet without the partner(s).

(c) *Overall Relationship/Coordination* (3 Points for Family RSDM only): For Family RSDM applicants, the score in this factor will be based on the extent of coordination between the applicant's proposed RSDM program and any existing or proposed programs within the applicant's jurisdiction. In order to receive a high score, the application must contain an MOU that describes collaboration between the applicant and residents on all of the specific components related to the work plan of the proposed RSDM program. To receive points, at a minimum, there must be a narrative description of this collaboration. Elderly and Persons with Disabilities RSDM applications will not be scored on this criterion.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. The budget, the work plan, and commitments for additional resources and services, other than the grant, must show that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25% of the RSDM grant amount proposed in this application. ''Firmly committed'' means there must be an written agreement with the provider of resources, signed by an official legally able to make commitments on behalf of the organization. The signed, written agreement may be contingent upon an applicant receiving a grant award. Other resources and services may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (not including RSDM funds); funds from any State or local government sources; and funds from private contributions. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement with the provider of resources signed by an official legally able to make commitments on behalf of the organization. This agreement may be contingent upon an applicant receiving a grant award. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider the extent to which the application addresses:

(1) *Coordination with the Consolidated Plan* (2 Points for Family RSDM applicants and 6 points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded for Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant.) Demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities,

needs, goals or objectives in those documents; or substantially furthers fair housing choice in the community.

(2) *For Family RSDM Applications, Coordination with the State or Tribal Welfare Plan* (4 Points): Provides evidence that the proposed RSDM program has been coordinated with and supports the PHA's, Tribe's/TDHE's efforts to increase resident self-sufficiency and is coordinated and consistent with the State, Tribal or local Welfare Plan.

(3) *Coordination with Other Activities* (4 Points): Demonstrates that the applicant, in carrying out program activities, will develop linkages with: other HUD-funded program activities proposed or on-going in the community; or other State, Tribal, Federal or locally funded activities proposed or on-going in the community which, taken as a whole, support and sustain a comprehensive system to address the needs.

(J) Grant Term

The grant term for Resident Service Delivery Models grants is thirty-six months from the execution date of the grant agreement.

VI. Service Coordinators for Elderly and Persons With Disabilities

(A) *Program Description*

The Service Coordinator program for the elderly and persons with disabilities provides funding for the employment and support of service coordinators in public housing developments designated for the elderly and persons with disabilities. These elderly and disabled service coordinators help residents obtain supportive services that are needed to enable independent living and aging in place.

(B) Amounts Allocated

A total of $15 million is available for awards to qualified applicants for service coordinators to serve the elderly and persons with disabilities. These funds may only be used as follows:

(1) Renewal of existing Service Coordinator (SC) grants from prior years. This limitation is imposed in order to further the achievement of the Congressional intent conferred with the passage of the FY 1998 EDSS appropriation to renew all service coordinator and congregate services grants expiring in fiscal year 1998. No applications for new Service Coordinator grants will be accepted under this funding category.

(2) For the Elderly and Persons with Disabilities SC category, award amounts cannot be higher than the applicant's highest funding and staffing level for any one-year period that was approved for their last funded Service Coordinator Grant. An increase of up to 2 percent over this amount will be allowed if supported by a narrative justification.

(C) Eligible Applicants

(1) This funding category provides grants to PHAs with developments designated for the elderly and persons with disabilities.

(2) A PHA may not apply for elderly and disabled service coordinator funding if it has an expiring elderly Service Coordinator or EDSS grants that has spent less than 75% of the prior grant by the publication date of this NOFA.

(3) *Joint Applications*. Two or more PHAs may join together to share a service coordinator and so submit joint applications. Joint applications must designate a lead applicant. Funding for a joint application may not exceed the stated maximum for this funding category.

(D) Eligible Developments

To be eligible, a development must have elderly residents and/or non-elderly resident with disabilities who together total at least 25 percent of the building's residents.

(E) Eligible Activities

Under this funding category, funds may be used for the following activities:

(1) *Service coordinator*

Grant funds from this category may be used to pay for the salary, fringe benefits, and related administrative costs for employing a service coordinator. A service coordinator is a social service staff person hired or contracted by the PHA. The coordinator is responsible for assuring that elderly residents, especially those who are frail or at risk, and those non-elderly residents with disabilities are linked to the supportive services they need to continue living independently in that development. The service coordinator, however, may not require any elderly person or person with disabilities to accept the supportive services. For the purposes of this program, a service coordinator is any person who is responsible for one or more of the following functions:

(a) Working with community service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(b) Establishing a system to monitor and evaluate the delivery, impact, effectiveness and outcomes of supportive services under this program;

(c) Coordinating this program with other independent living or self-sufficiency, education and employment programs;

(d) Performing other duties and functions to assist residents to remain independent, and to prevent unnecessary institutionalization; and

(e) Mobilizing other national and local public/private resources and partnerships.

(2) Administrative Costs

May include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities. Administrative costs must not exceed 20% of the total grant costs.

(F) Ineligible Costs

(1) Applicants may not use these monies to replace current funding from other sources for a Service Coordinator or for some other staff person who performs service coordinator functions.

(2) The cost of application preparation is not eligible.

(G) Application Submission Requirements

(1) Each application must be submitted in one original and two copies. Applications may not be sent by facsimile (FAX).

(2) *Required Certifications, Assurances and other Forms.* All applications for funding under this funding category must contain the following documents and information:

(a) Transmittal letter and request using the designated format;

(b) Grant Certifications;

(c) Evidence of comparable salaries in local area;

(d) Applicant checklist;

(e) For PHAs with expiring elderly or disabled Service Coordinator or Elderly or Disabled EDSS grants, evidence of grant expenditures that total at least 75% of grant funds by the publication date of this NOFA.

(f) Lead Agency letter format (if appropriate);

(g) Certification of Non-Duplication of Funding Request;

(h) Each applicant must submit signed copies of the following forms, assurances, and certifications:

(i) Standard Form (SF) 424, Standard Form for Application for Federal Assistance;

(j) Standard Form (SF) 424–B, Assurances for Non-Construction Programs.

(k) Drug-Free Workplace Certification (HUD–50070);

(l) Certification and Disclosure Form Regarding Lobbying Activities (SF–LLL); and

(m) Applicant/Recipient Disclosure Update Report (HUD–2880).

(H) Threshold Requirements

(1) Elderly and/or Disabled Housing Development Certification

A Certification that at least 25% of the residents of the development(s) proposed for grant activities are elderly and/or non-elderly people with disabilities at the time of application.

(2) Accessible Community Facility

The application must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport), of the property represented by the PHA. The community facilities must also meet the structural accessibility requirements of Section 504 of the Rehabilitation Act and the Americans With Disabilities Act.

(3) Match Requirement

(a) The applicant must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, EDSS, TOP, SC funds); funds from any State or local government sources; and funds from private contributions.

(b) The application must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. ''Firmly committed'' means there must be a written agreement to provide the resources and services signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(c) The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one year old taken from the community where the item or activity is located, as appropriate.

(4) Compliance With Current Programs

The applicant must provide certification in the format provided in the application kit that it is not in default at the time of application submission with respect to grants for the following programs: the Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; the Youth Apprenticeship Program; the Apprenticeship Demonstration in the Construction Trades Program; the Urban Youth Corps Program; the HOPE 1 Program; the Public Housing Service Coordinator Program; the Public Housing Drug Elimination Program; the Youth Sports Program; the Tenant Opportunities Program; and the Economic Development and Supportive Services Program.

(I) Application Selection Process

Applicants for Elderly or Persons with Disabilities Service Coordinator grants are required to address application submission requirements, but are not required to address selection factors. To be eligible for funding, an application must meet the threshold requirements of sections VI.(H) and VII. of this NOFA, and submit all information required under this NOFA. HUD will accept eligible applications for funding on a first-come, first-serve basis for up to 30 days from the publication date of this NOFA or until funds are exhausted. If all funds are not awarded in this funding category to eligible applications, funds are transferable first to the Technical Assistance/Training Support for Resident Organizations category, and then to other funding categories in this NOFA in the following order: first, Resident Management and Business Development under section IV.(A) of this NOFA; second, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, Resident Service Delivery Models under section V. of this NOFA.

(J) *Grant Term*

The grant term for Elderly or Persons with Disabilities Service Coordinator grants is twelve months from the execution date of the grant agreement.

VII. General Threshold Requirements

(A) Compliance With Fair Housing and Civil Rights Laws

All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a).

If you, the applicant—

(1) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI, Section 504, or Section 109,—

HUD will not rank and rate your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in the individual program NOFA. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(B) Additional Nondiscrimination Requirements

The applicant and any subrecipients, must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(C) Affirmatively Furthering Fair Housing

The applicant must include in the application or work plan the specific steps that the applicant will take to:

(1) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, the applicant has a duty to carry out the specific activities provided in your responses to the NOFA rating factors that address affirmatively furthering fair housing.

(D) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

The ROSS Program requires recipients of assistance to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons in Connection with assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons.

(E) Relocation

Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing government-wide regulation at 49 CFR part 24.

The relocation requirements of the URA and the government-wide regulations cover any person who moves permanently from real property or moves personal property from real property directly because of rehabilitation or demolition for an activity undertaken with HUD assistance.

(F) Forms, Certifications and Assurances

The applicant is required to submit signed copies of the standard forms, certifications, and assurances listed in this NOFA. As part of HUD's continuing efforts to improve the NOFA process, several of the required standard forms have been simplified this year. The standard forms, certifications, and assurances are as follows:

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information—Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL).

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients applying for funds under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) also must certify to compliance with section 109 of the Housing and Community Development Act.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(G) OMB Circulars

For the ROSS Program, the policies, guidance, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations), 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State and Local governments) may apply to the award, acceptance and use of assistance and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1999 HUD Appropriations Act, other Federal statutes. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(H) Conflicts of Interest

If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under this NOFA, you are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for this NOFA, you may not serve on a selection panel and you may not serve as a technical advisor to HUD for this NOFA. All individuals involved in rating and ranking this NOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethic Law Division the following information if applicable: the selection or non-selection of any applicant under this NOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to participating in any matter regarding this NOFA. If you have questions regarding these provisions or if you have questions concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815 and ask to speak to one of HUD's attorneys in this division.

VIII. Program Requirements

Grantees must meet the following program requirements:

(A) Compliance With Civil Rights Requirements

In addition to compliance with the civil rights requirements at 24 CFR 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*; the Equal Pay Act, 29 U.S.C. 206(d); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, and Titles I and V of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* Tribes/TDHEs must comply with the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 24 U.S.C. 1001–1303); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(B) Adhere to the Grant Agreement

After an application has been approved, HUD and the applicant shall enter into a grant agreement (Form 1044 and attachments) incorporating the

entire application except as modified by HUD and setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism (which except under extraordinary conditions will operate under HUD's Line of Credit Control System (LOCCS) and special conditions, including requiring adherence to the appropriate OMB circulars and other government wide requirements and specifying sanctions for violation of the agreement. The grant agreement will include additional information regarding Insurance/Indemnification, Freedom of Information Act, grant staff personnel, exclusion period, earning and benefits, reports, close-outs, and treatment of income.

(C)

Within twelve months of HUD grant approval, successful applicants who are site-based RAs must have applied for 501(c) status from the United States Internal Revenue Service.

(D) Risk Management

Grantees and subgrantees are required to implement, administer and monitor programs so as to minimize the risk of fraud, waste, abuse, and liability for losses from adversarial legal action.

(E) ROSS Evaluation and Assessment

All applicants selected for award must be willing to participate in the evaluation and assessment that HUD intends to conduct for the ROSS Program. At grant award HUD will provide additional information on the evaluation and assessment for applicants who receive awards.

(F) Applicant Internet Access

Prior to the initial draw down, all grantees shall have secured online access to the Internet as a means to communicate with HUD on grant matters.

(G) Definitions

City-Wide Resident Organization consists of members from Resident Councils, Resident Management Corporations, and Resident Organizations who reside in housing developments that are owned and operated by the same PHA within a city.

Community Facility means a non-dwelling structure that provides space for multiple supportive services for the benefit of public housing residents (as well as others eligible for the services provided) that may include but are not limited to:

(1) Child care;

(2) After-school activities for youth;

(3) Job training;

(4) Campus of Learner activities; and

(7) English as a Second Language (ESL) classes.

Contract Administrator means an overall administrator and/or a financial management agent that oversees the financial aspects of a grant and assists in the entire implementation of the grant. Examples of qualified organizations that can serve as a Contract Administrator are:

(1) Local housing agencies; and

(2) Community based organizations such as Community Development Corporations (CDCs), community churches, and State/Regional Associations/Organizations.

Development has the same meaning as the term ''Project'' below.

Firmly Committed means there must be a written agreement to provide the resources. This written agreement may be contingent upon an applicant receiving an award.

Elderly person means a person who is at least 62 years of age.

Jurisdiction-Wide Resident Organization means an incorporated nonprofit organization or association that meets the following requirements:

(1) Most of its activities are conducted within the jurisdiction of a single housing agency;

(2) There are no incorporated Resident Councils or Resident Management Corporations within the jurisdiction of the single housing agency;

(3) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(4) Public housing residents representing unincorporated Resident Councils within the jurisdiction of the single housing agency must comprise the majority of the board of directors.

Intermediary Resident Organizations means Jurisdiction-Wide Resident Organizations, City-Wide Resident Organizations, State-Wide Resident Organizations, Regional Resident Organizations, and National Resident Organizations.

National Resident Organization (NRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Person with disabilities means an adult person who:

(1) Has a condition defined as a disability in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

(3) Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which:

(a) Is expected to be of long-continued and indefinite duration;

(b) Substantially impedes his or her ability to live independently; and

(c) Is of such a nature that such ability could be improved by more suitable housing conditions.

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, solely on the basis of any drug or alcohol dependence.

The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in Section 504 of the rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

Program Coordinator is a person who is responsible for coordinating various proposed RSDM activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

Project is the same as ''low-income housing project'' as defined in section 3(b)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act).

Resident Association (RA) means any or all of the forms of resident organizations as they are defined elsewhere in this Definitions section and includes Resident Councils (RC), Resident Management Corporations (RMC), Regional Resident Organizations (RRO), Statewide Resident Organizations (SRO), Jurisdiction-Wide Resident Organizations, and National Resident Organizations (NRO).

Resident Council (RC) means (as provided in 24 CFR 964.115) an incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to

receive official recognition from the PHA/HUD, and be eligible to receive funds for RC activities and stipends for officers for their related costs for volunteer work in public housing. (Although 24 CFR part 964 defines an RC as an incorporated or unincorporated nonprofit organization, HUD requires RC applicants for ROSS grants to be registered with the State at the time of application submission):

(1) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the public housing residents. The elections must be held on a regular basis, but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the percentage of voting membership (''threshold'') which must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(2) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appear on a lease for the unit in the public housing that the resident council represents.

(3) It may represent residents residing in:

(a) Scattered site buildings in areas of contiguous row houses;

(b) One or more contiguous buildings;

(c) A development; or

(d) A combination of the buildings or developments described above.

Regional Resident Organization (RRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is regional (i.e., not limited by HUD Areas);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Resident Management Corporation (RMC) (See 24 CFR 964.7, 964.120) means an entity that consists of residents residing in public housing and must have each of the following characteristics in order to receive official recognition by the PHA and HUD:

(1) It shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) It may be established by more than one RC, so long as each such council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) Its by-laws shall require the Board of Directors to include resident representatives of each RC involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired;

(5) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appear on the lease of a unit in public housing represented by the RMC;

(6) Where an RC already exists for the development, or a portion of the development, the RMC shall be approved by the RC board and a majority of the residents. If there is no RC, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) It may serve as both the RMC and the RC, so long as the corporation meets the requirements of this part for an RC.

Secretary means the Secretary of Housing and Urban Development.

Site-Based Resident Associations means Resident Councils and Resident Management Corporations.

Statewide Resident Organization (SRO) means a Site-Based incorporated nonprofit organization or association for public housing that meets the following requirements:

(1) It is Statewide;

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the State must comprise the majority of the board of directors.

Tribal housing means housing assisted under the Indian Housing Block Grant Program at 24 CFR part 1000.

(H) Environmental Requirements

It is anticipated that most activities under this NOFA will be categorically excluded under 24 CFR 50.19(b)(3), (b)(9), (b)(12), or (b)(14). An applicant proposing physical development activities is prohibited from rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) If the grantee is not a PHA, HUD has completed an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

(2) If the grantee is a PHA, HUD has approved the grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review under 24 CFR part 58, where required, or if HUD has determined in accordance with § 58.11 to perform the environmental review itself under part 50, HUD has completed the environmental review.

IX. Application Submission Requirements

The applicant must submit the following, which are further described in the application kit.

(A) Needs Assessment Report which includes statistical or survey information on the needs of the recipient population; please use the appropriate format provided in the application kit.

(B) A three-year work plan for implementing grant activities which includes reasonably achievable, quantifiable goals, budget, timetable and strategies, including any innovative approaches. In addition to a narrative, please use the formats provided in the application kits to chart the following:

(1) Activity plan summary;

(2) Activity breakout;

(3) Budget breakout;

(4) Summary budget;

(5) Program resources; and

(6) Program staffing;

(C) Information on the applicant and/or administrator track record with comparable initiatives. Please provide the chart and/or certification format provided in the application kit;

(D) Certifications and assurances referenced in this program. Applicants who are IROs or non profits operating association and/or networks operating programs that benefit public housing resident organizations must also submit a list of site-based resident associations they intend to be assisted.

(E) Memorandum of Understanding/Agreement; commitment letters; and other required documentation of partnerships.

X. Correction to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies.

Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested.

Applicants must submit clarifications or corrections of technical deficiencies in accordance with information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

XI. Findings and Certifications

(A) *Paperwork Reduction Act Statement*

The information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0211. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. This finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(C) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits applicants to help eligible families make the transition from welfare to work, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the NOFA is not subject to review under the Order.

(D) Prohibition Against Lobbying Activities

You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form-LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

(E) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and Public Access Requirements*

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding*

HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) *Section 103 HUD Reform Act*

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive

advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(G) *Catalog of Federal Domestic Assistance Numbers*

The Catalog of Federal Domestic Assistance number for this program is 14.870.

XIII. Authority.

The Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriation Act of 1999 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), and the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997).

Dated: July 27, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–20429 Filed 8–4–99; 2:21 pm]

BILLING CODE 4210–33–P

federal register

Tuesday
August 10, 1999

Part VI

Department of Labor

Employment and Training Administration

Bureau of Apprenticeship and Training; Policy for Releasing Identities of Program Sponsors; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Bureau of Apprenticeship and Training; Policy for Releasing Identities of Program Sponsors

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Adoption of Procedure.

SUMMARY: The Bureau hereby adopts a policy for releasing identities of apprenticeship program sponsors registered and recognized by BAT. On December 5, 1997, the Bureau of Apprenticeship and Training (BAT) noticed in the **Federal Register** a proposed policy and procedure for releasing identities of program sponsors registered by the Bureau, (62 FR 64452). The Bureau invited interested persons to submit written comments before February 3, 1998 concerning the proposal. A few responses were received as discussed herein.

EFFECTIVE DATE: This procedure is effective on August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Marion M. Winters, FOIA Coordinator for BAT, Telephone: (202) 219–5921 (Ext. 107) (this is not a toll free number). FAX: (202) 219–5011.

SUPPLEMENTARY INFORMATION:

Background

The BAT administers and promotes the nation's apprenticeship and training programs. Individuals join an apprenticeship program to learn the skills the program has to offer as well as to obtain employment. Apprenticeship is a relationship between the program sponsor and the apprentice during which the employee, or apprentice, learns a trade. The training lasts a specified length of time. An apprenticeship covers all aspects of the trade and includes both on-the-job training and related instruction.

Apprenticeship programs are sponsored and operated on a voluntary basis by employers, employee associations, or partnerships between employers and labor unions. The sponsor of an apprenticeship program plans, administers and pays for the program. When an apprentice is accepted into a program, the apprentice and the sponsor sign an apprenticeship agreement. The apprentice agrees to perform the work faithfully and complete the related study, and the sponsor agrees to make every effort to keep the apprentice employed and to comply with the standards established for the program. An apprenticeship program must meet certain requirements set down by BAT.

BAT regulations require that apprenticeship programs be registered with BAT or a federally approved State Apprenticeship Council. Registered programs must meet federally-approved standards related to job duties, related instruction, wages, and safety and health conditions. Apprentices who successfully complete registered programs receive certificates of completion from the U.S. Department of Labor or a federally-approved State Apprenticeship Agency.

In the past, when BAT received FOIA requests for information concerning registered apprenticeship programs, it would notify the appropriate sponsor and seek their views regarding the effect that disclosure of the relevant data would have on its competitive business position. This procedure was followed because of BAT's understanding or perhaps misinterpretation, of Executive Order 12600 (29 CFR part 70 *et seq*: 29 CFR 70.26).

Executive Order 12600, issued May 30, 1989, requires Federal Agencies to notify a submitter of commercial information if its potential release could be considered sensitive or harmful to its business interests. In an effort to comply with Executive Order 12600, BAT sought views of each sponsor on whether the disclosure of the existence of a registered apprenticeship program could be harmful to its proprietary interest.

BAT does not believe the relevant information is proprietary to the sponsors. This information belongs to the government as well as to the sponsors and apprentices. It has been BAT's experience that when it has contacted sponsors and sought their comments on any commercial harm they would experience that when it has contacted sponsors and sought their comments on any commercial harm they would experience by the publication of the fact that a registered program exists, the vast majority offered no objections. There is little basis, if any, for supporting a claim of negative proprietary impact on sponsors by identifying their participation as an apprenticeship program sponsor. It is BAT's understanding that in an overwhelming number (if not in all) State Apprenticeship Council (SAC) States the fact of the existence of apprenticeship programs is released to the public.

Discussion of Comments

The BAT received six letters commenting on the proposed procedure that was published in the **Federal Register** Notice of December 5, 1997.

The comment from the Plasterers & Cement Masons Job Corps Training Program of Washington, DC, was very supportive of the proposal in that it could serve as a stimulus for attracting potential apprentices to enter the Building and Construction Trades.

The Independent Electrical Contractors, Inc. (IEC) of Alexandria, Virginia, endorsed the proposed policy. They thought the general availability of this information would stimulate the establishment of more apprenticeship programs and also encourage students to investigate apprenticeships as a reliable alternative to college or vocational training options.

However, the Independent Electrical Contractors cautioned against releasing detailed personal information regarding these programs, such as the identities of apprentices enrolled therein. They considered such information as being proprietary. Identification as well as characteristics of apprentices and/or trainees are protected as personal information subject to the Privacy Act.

BAT Response

BAT does not contemplate releasing personal information on any apprentice or trainee; nor is this a matter sheltered as proprietary.

The National Association of State and Territorial Apprenticeship Directors (NASTAD) supports releasing the name and address of sponsoring organizations, but not the name and phone number of contact persons. BAT acknowledges that the latter information is subject to frequent change, and is not maintained in many of the SAC States.

BAT Response

In any event, under the BAT FOIA policy, the identity of a sponsor and a mailing address will be provided.

The Vermont Department of Employment and Training in Montpelier, Vermont, had no problem with releasing the names and addresses of registered apprenticeship program sponsors to anyone on request. They believe that such information would benefit the apprenticeship training program by providing job and career counselors with a list of participating registered apprenticeship program sponsors for client referral.

The Wyoming Electrical Joint Apprenticeship and Training Committee of Casper, Wyoming (WJATC) commented that information on such programs would be vital for persons interested in apprenticeship. The WJATC pointed out that many apprenticeships are available but that

not all programs are registered. Further, the WJATC stated that making information on sponsors more readily available would enable the public to find the best apprenticeship programs and what they have to offer.

The Associated Builders and Contractors, Inc. (ABC) commented that it does not oppose the release of identifying information on apprenticeship program sponsors. The ABC provides for the registration of all apprenticeship programs with their 81 geographically distinct chapters.

ABC did oppose any release of information that would enable individual employers within an ABC chapter to be identified.

BAT's Response

As discussed above, the BAT FOIA policy provides for the release of information regarding sponsors, not information about individual employers.

Adoption of Procedure

Accordingly, BAT hereby adopts a FOIA policy for releasing identities of apprenticeship program sponsors registered and recognized by the BAT.

In response to requests for program sponsor identification, the official name of the organization along with street address, city, and State will be disclosed.

All newly registered apprenticeship program sponsors will be provided with a copy of this **Federal Register** Notice.

Signed at Washington, DC, this 3rd day of August, 1999.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training Employment and Training Administration.

[FR Doc. 99–20407 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–30–P

federal register

Tuesday
August 10, 1999

Part VII

Securities and Exchange Commission

17 CFR Part 275

Political Contributions by Certain Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–1812; File No. S7–19–99]

RIN 3235–AH72

Political Contributions by Certain Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment a new rule under the Investment Advisers Act of 1940 that would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or any of its partners, executive officers or solicitors make a contribution to certain elected officials or candidates. The Commission also is proposing rule amendments that would require a registered adviser that has government clients to maintain certain records of the political contributions made by the adviser or any of its partners, executive officers or solicitors. The new rule and rule amendments would address ''pay to play'' practices in the investment adviser industry.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–19–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Attorney, <GoldsteinK@sec.gov>, or Jeffrey O. Himstreet, Attorney, <HimstreetJ@sec.gov>, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 206(4)-5 (17 CFR 275.206(4)-5) and proposed amendments to rule 204–2 (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (''Advisers Act'' or ''Act'').

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Executive Summary

Public pension plan assets are held, administered and managed by elected officials for the benefit of citizens, retirees, and other beneficiaries. Elected officials who allow political contributions to play a role in the management of these assets violate the public trust by rewarding those who make political contributions. Moreover, they undermine the fairness of the process by which public contracts are awarded. Similarly, investment advisers that seek to influence the award of advisory contracts by public entities, by making or soliciting political contributions to those officials who are in a position to influence the awards, compromise their fiduciary obligations to the plans. These practices—known as ''pay to play''—distort the process by which investment advisers are selected and can harm plans, which may, consequently, receive inferior advisory services and/or pay higher fees. As a result, the millions of retirees and other beneficiaries who rely on these plans can be harmed.

We believe that advisers' participation in pay to play is inconsistent with the high standards of ethical conduct required of them under the Investment Advisers Act. We are therefore proposing a new rule designed to eliminate an adviser's ability to participate. Proposed rule 206(4)–5 would prohibit an adviser from providing advisory services for compensation to a government client for two years after the adviser, or any of its partners, executive officers or solicitors, make a contribution to state treasurers or comptrollers or other elected officials who can influence the selection of the adviser. The prohibition also would apply to contributions to candidates for these positions, but would not result from contributions of $250 or less to elected officials or candidates for whom the person making the contribution can vote.

Proposed rule 206(4)–5 also would prohibit an adviser from providing or seeking to provide advisory services for compensation to a government client while the adviser, or any of its partners, executive officers or solicitors, solicit contributions for an elected official or candidate. Finally, we are proposing rule amendments that would require an adviser registered with us that has government clients to make and keep certain records regarding the political contributions and solicitation activities of the adviser, its partners, executive officers and solicitors.

I. Background

Persons seeking to do business with the governments of some states and municipalities are increasingly being expected to make political contributions to elected officials or candidates.[1] In some cases, businesses that submit bids for public contracts make political contributions to elected officials, hoping to influence the selection process. In other cases, political contributions are solicited from businesses, or it is simply understood that only contributors will be considered for selection. Contributions do not typically guarantee an award of business to the contributor, but the failure to contribute will guarantee that another is selected. Hence the term ''pay to play.''

Pay to play practices can be viewed as imposing a hidden tax on persons seeking to do business with governments. They increase the cost of government services, which is likely to reflect the cost of the political contribution, and may diminish the quality of services, as officials may award contracts to less qualified advisory firms. Pay to play practices are unfair to businesses, particularly smaller businesses, that cannot afford the required contributions. Pay to play practices call into question the integrity

[1] *See generally* Alexander Heard, The Costs of Democracy 142–145 (1960); Peter M. Manikas, *Campaign Finance, Public Contracts and Equal Protection*, 59 Chi.-Kent L. Rev. 817 (1983). Pay to play practices have been found relating to a variety of government contracts outside of the financial markets. *See, e.g.*, O'Hare Truck Service, Inc. v. City of Northlake, 518 U.S. 712 (1996) (independent towing service contractor).

of public officials and the fairness of the government contracting process.

Pay to play practices have been a significant problem in the municipal securities market.[2] Securities firms seeking to underwrite municipal securities offerings have made political contributions and other payments to officials who are in a position to influence the award of underwriting contracts. After studying pay to play practices, the Commission staff concluded that they harm the municipal securities markets by increasing underwriting costs, undermining the integrity of municipal securities underwritings and damaging investor confidence.[3] We came to the same conclusion in 1994 when we approved Municipal Securities Rulemaking Board (''MSRB'') rule G–37 to end broker-dealer participation in pay to play practices.[4]

Rule G–37 prohibits broker-dealers from engaging in municipal securities business with a government issuer for two years after making a political contribution to an elected official of the issuer who can influence the selection of the broker-dealer.[5] The prohibition applies to contributions made by the firm or any of its ''municipal finance professionals,'' including certain executive officers.[6] A municipal finance professional, however, may make a contribution to a candidate of up to $250 per election without triggering the prohibition if he or she can vote for the candidate.[7] Rule G–37 also prohibits a broker-dealer from providing or seeking to provide underwriting services to a government, if the broker-dealer or any of its municipal finance professionals solicits or coordinates contributions for a candidate or elected official of the government.[8] The MSRB requires broker-dealers to file quarterly reports disclosing the political contributions made by the firm, its executive officers and municipal finance professionals,[9] and to keep accurate records of those contributions.[10]

Since the adoption of rule G–37, the Commission has become concerned about other pay to play practices that are not addressed by that rule; practices which involve public pension plans and other funds. We have received reports that the selection of investment advisers, which we regulate under the Advisers Act, may be influenced by political contributions,[11] and as a result, the quality of management services provided to funds may be affected.[12] We have become particularly concerned about the possibility that the adoption of rule G–37 has resulted in a shift of pay to play practices to this area as political contributions by broker-dealers are curtailed.[13] We therefore have examined the role of investment advisers in the management of public pension funds and other assets, the role of pay to play in their selection, and the implications of pay to play practices on the fiduciary obligations of investment advisers under the federal securities laws.

Investment advisers provide a wide variety of advisory services to state and local governments.[14] Advisers manage public monies that fund pension plans and a number of other important public programs, including transportation, children's programs, arts programs, environmental reclamation, and financial aid for education. In addition, advisers provide risk management,[15] asset allocation,[16] financial planning[17]

[2] *See Murky Depths (Municipal Finance),* Economist, Nov. 4, 1995, at 83 (''America's municipal bond market is more rife with corruption than even its fiercest critics have claimed''); Terence P. Para, *The Big Sleaze in Muni Bonds,* Fortune, Aug. 7, 1995, at 113; Leah Nathans Spiro et al., *The Trouble with Munis,* Bus. Wk., Sept. 6, 1993, at 44. *See also* Lazard Freres & Co., Securities Exchange Act Release No. 39388 (Dec. 3, 1997) (enforcement action brought against municipal securities dealer for undisclosed contributions made by a former partner and officer through a consultant to obtain municipal securities underwriting business); *SEC* v. *Rudi,* Litigation Release No. 14421 (Feb. 23, 1995) (complaint alleged that financial advisor received ''kickbacks,'' the amount of which were to be reduced by campaign contributions).

[3] *See* Division of Market Regulation, U.S. Securities and Exchange Commission, Staff Report on the Municipal Securities Markets 9–11 (1993).

[4] *See* In the Matter of Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business and Notice of Filing and Order Approving on an Accelerated Basis Amendment No. 1 Relating to the Effective Date and Contribution Date of the Proposed Rule, Securities Exchange Act Release No. 33868, at sections V.A.1 and 2 (Apr. 7, 1994) (59 FR 17621 (Apr. 13, 1994)) (''Rule G–37 Adopting Release'') (rule G–37 was adopted ''to establish industry-wide restrictions and requirements aimed at preventing fraudulent and manipulative practices''). In approving rule G–37, we also concluded that pay to play practices may harm the municipal markets by fostering a selection process that excludes those firms that do not make contributions, cause less qualified underwriters to be retained, and undermine equitable practices in the municipal securities industry. *Id.* at section V. In 1996, we approved MSRB rule G–38 to prevent persons from circumventing rule G–37 through the use of consultants. *See* Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants, Securities Exchange Act Release No. 36727 (Jan. 17, 1996) (61 FR 1955 (Jan. 24, 1996)).

[5] MSRB rule G–37(b). The prohibition also applies to successful and unsuccessful candidates for an office that can influence the selection of the broker-dealer. MSRB rule G–37(g)(vi). Shortly after rule G–37 became effective, a municipal securities dealer challenged it as an infringement on the constitutional rights of municipal securities professionals. A federal appeals court upheld the constitutionality of rule G–37, finding that the rule served a compelling government interest in preventing fraudulent and manipulative acts. *Blount* v. *SEC,* 61 F.3d 938 (D.C. Cir. 1995), *cert. denied,* 517 U.S. 1119 (1996).

[6] MSRB rule G–37(b). A ''municipal finance professional'' generally is an associated person of a broker-dealer firm who is ''primarily engaged'' in municipal securities activities, solicits municipal securities business on behalf of a broker-dealer, or a person who supervises associated persons primarily engaged in municipal securities activities ''up through and including'' the chief executive officer of the firm (or person performing similar functions). MSRB rule G–37(g)(iv).

[7] MSRB rule G–37(b).

[8] MSRB rule G–37(c).

[9] MSRB rule G–37(e). Firms are required to make quarterly filings with the MSRB on Forms G–37 and G–38. *Id.* These filings are made available to the public through its website, at <http://www.msrb.org> (visited July 22, 1999).

[10] MSRB rule G–8(a)(xvi); Rule G–37 Adopting Release, *supra* note 4, at section III.B.2.

[11] Letter from Thomas Flanigan (former executive director of the California State Teachers' Retirement System) to Arthur Levitt, Chairman, SEC (June 7, 1997), available in File No. S7–19–99 (''(pay to play) potentially places the credibility of many investment operations, either through direct or indirect pressure, in jeopardy''). There also have been numerous press reports of investment advisers engaging in pay to play practices, some of which report an adverse impact on plans. *See infra* note 38.

[12] Anonymous Letter dated Feb. 5, 1999 to Arthur Levitt, Chairman, SEC, available in File No. S7–19–99 (marketer for institutional money manager is ''amazed at how many managers are awarded contracts by public funds due to the money they have donated when there were other more qualified managers available''). *See, e.g.,* Wyatt, Lindsay, *Paring the Politics from a Public Plan,* Pens. Mgmt., Nov. 1995, at 12 (Connecticut treasurer quoted as saying that pay to play ''adversely influenced our treasury''); David A. Vise, *D.C. Pension Plan Mishandled; Too Many Advisers, Poor Financial Results,* Wash. Post, Aug. 15, 1993, at A1.

[13] *See* Eric Bailey, *Firms with State Pacts Are Fertile Donors to Fong,* L.A. Times, May 25, 1998, at A1 ($400,000 decline in contributions from underwriting firms attributed to rule G–37); Bill Krueger, *Money Managers Giving to Boyles,* News & Observer, May 2, 1996, at A1 (noting that rule G–37 ''dried up'' a contribution source for a state treasurer, ''so now he is getting campaign contributions from a group (investment advisers) that is not subject to (rule G–37)''); Gerri Willis, *Filling Carl's War Chest: Comptroller Getting Thousands From State's Money Managers,* Crain's N.Y. Bus., Sept. 16, 1996, at 1 (securities executive observing that ''(b)ecause of the SEC's crackdown on the pay to play nature of the muni bond business, the game has shifted to asset management and brokerage'').

[14] *See* Werner Paul Zorn, *Public Employee Retirement Systems and Benefits, in* Local Government Finance, Concepts and Practices 376 (John E. Peterson and Dennis R. Strachota, eds., 1st ed. 1991) (discussing the services investment advisers provide for public funds).

[15] *See* Robert A. Fippinger, The Securities Law of Public Finance 669 (1997).

[16] *See, e.g.,* Public Employee Retirement Systems, *supra* note 14. *See also* Barry B. Burr, *The New $100 Billion Club, Pens. & Inv., May 4, 1998, at 1.*

[17] *See* Cal. Ed. Code § 22303.5 (1999) (requiring teachers' retirement system to offer retirement planning services to beneficiaries); CalSTRS Financial Education Program <http://www.calstrs.ca.gov/benefit/defined/mbrinfo/

Continued

and cash management services;[18] structure bond offerings;[19] help state and local governments find and evaluate other advisers that manage public funds (''pension consultants'');[20] and provide other types of services.[21]

Most of the public funds managed by investment advisers fund state and municipal pension plans. These pension plans have over $2.3 trillion of assets and represent one-third of all U.S. pension assets.[22] They are among the largest and most active institutional investors in the United States.[23] The management of these funds significantly affects publicly held companies,[24] mutual funds[25] and the securities markets themselves.[26] But most significantly, their management affects the taxpayers,[27] and the millions of state and municipal retirees who rely on the funds for their pensions and other benefits.[28]

Elected officials of state and local governments are involved, directly or indirectly, in the selection of advisers to manage most public pension fund assets. In some jurisdictions, one or more elected officials have sole authority to select advisers.[29] In others, elected officials serve as members[30] or appoint some or all members[31] of a governing board that makes selections.[32] The selection process typically begins with the issuance of a request for proposals (''RFP''). The staff of the governing board of the fund receives the proposals and evaluates the applicants, often with the assistance of a pension consultant. Specific criteria such as past performance, experience, management approach, services and fees are established and used to narrow the list of applicants. Finalists are then interviewed, and the board selects one or more advisers.[33] The board may reject recommendations made by its staff and consultants and, in some instances, boards have selected advisers that were not among the ''finalists.''[34]

The absence of a fully objective bidding process makes it possible for considerations other than merit to intrude into the selection process.[35] The

mctbl.html> (visited July 22, 1999). Other funds are also considering whether to offer financial planning services to their beneficiaries. *See, e.g.,* Steve Hemmerick, *CalPERS Officials Consider 'Comprehensive' Financial Planning for Participants,* Pens. & Inv., Feb. 8, 1998, at 3.

[18] *See* Government Finance Officers Association, an Introduction to External Money Management for Public Cash Managers 5 (1991).

[19] Not all persons who structure bond offerings for state and local governments are investment advisers subject to regulation under the Advisers Act. *See* The Knight Group (pub. avail. Nov. 13, 1991); East Texas Investment Company (pub. avail. Nov. 14, 1975). *But see* In re O'Brien Partners, Inc., Investment Advisers Act Release No. 1772 (Oct. 27, 1998) (financial advisor was subject to the Advisers Act for rendering advice to municipal securities issuers ''concerning their investment of bond proceeds in securities, including (non-government securities), and was compensated for that advice''). Recently, a group of these firms agreed to a self-imposed ban on making political contributions to obtain business. *See Financial Advisers Support SEC's 'Pay-to-Play'* Rules, WALL. ST. J., Mar. 2, 1999, at A8.

[20] In addition to assisting the fund in selecting investment advisers, pension consultants may also provide advice to state and local governments in designing investment objectives, determining available funding media, or recommending specific securities or investments for the fund. Pension consultants are generally investment advisers subject to the Advisers Act. *See* Applicability of Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release. No. 1092 (Oct. 8, 1987) (52 FR 38400, 38401 (Oct. 16, 1987)).

[21] For example, public funds may retain advisers to perform custodial services. *See, e.g.,* Public Employee Retirement Systems, *supra* note 14, at 376–77.

[22] Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the United States, Flows and Outstandings, First Quarter 1999* (June 11, 1999) (at tables L.119 and L.120). Since 1994, total financial assets of public pension funds have grown by almost 45%. *Id.* at table L.120.

[23] According to a recent survey, seven of the ten largest pension funds were sponsored by state and municipal governments (one was the Federal Retirement Thrift Fund). *Top 200 Pension Funds/ Sponsors,* Pens. & Inv., Jan. 25, 1999, at 30.

[24] *See Corporate Governance: Funds Flex Their Muscles,* Pen. & Inv., at 109 (Oct. 19, 1998) (''Public funds discover they have the clout to influence corporate boards they believe are not acting in the shareholders' best interests.'').

[25] *See* Louis Trager, *Run on State Money Market Funds; Orange County Fallout: $1 Billion in Withdrawals,* San Francisco Examiner, Dec. 19, 1994, at B1 (reporting that, shortly after Orange County filed for bankruptcy, investors withdrew $1.03 billion (nearly 7% of the funds' assets) from money market funds that held securities issued by the county). *See also* Richard Marcis et al., *Mutual Fund Shareholder Response to Market Disruptions,* Investment Company Institute Perspective, at 10 (July 1995) (noting that the Orange County bankruptcy caused outflows in both tax-exempt bond funds and money market funds). Public funds are exempt from regulation as mutual funds under the Investment Company Act of 1940. Sections 2(b) and 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(b) and 3(c)(11)).

[26] Federal Reserve reports indicate that, of the $2.3 trillion in non-federal government plans, $1.5 trillion are invested in corporate equities. Flow of Funds Accounts, *supra* note 22 (at table L.120).

[27] *See* Paul Zorn, 1997 Survey of State and Local Government Employee Retirement Systems 61 (1997) (''(t)he investment of plan assets is an issue of immense consequence to plan participants, taxpayers, and to the economy as a whole'' as a low rate of return will require additional funding from the sponsoring government, which ''can place an additional strain on the sponsoring government and may require tax increases'').

[28] The most current census data reports that public pension funds have 13.6 million beneficiaries. 1992 Census of Governments, U.S. Bureau of Census, VOL. 4, No. 6, *Employee-Retirement Systems of State and Local Governments,* at ii, 19 (1995) (available at <http://www.census.gov/prod/2/gov/gc92–4/gc924–6.pdf> (visited July 22, 1999)).

[29] *See* ''What Are the Comptroller's Responsibilities?'' available at <http://www.osc.state.ny.us/divisions/press_office/response.htm> (visited July 22, 1999) (noting that the placement of state and local government retirement systems assets is under the sole custodianship of the New York State Comptroller). *See also* S.C. Code Ann. §§ 9–1–20, 1–11–10 (Law. Co-op. 1998) (five-member board consisting of five elected officials).

[30] *See, e.g.,* Cal. Gov't Code § 20090 (Deering 1999) (state controller, state treasurer); Md. Code Ann., State Pers. & Pens. § 21–104 (Supp. 1998) (state comptroller, treasurer, secretary of budget, superintendent of schools, and secretary of the state police); Miss. Code Ann. § 25–11–15(2) (1998) (state treasurer); N.C. Gen. Stat. § 135–6 (1999) (state treasurer and state superintendent of public instruction); R.I. Gen. Laws § 36–8–4 (Supp. 1998) (state treasurer); Utah Code Ann. § 49–1–202 (Supp. 1998) (state treasurer); W. VA. Code § 5–10D–1 (Supp. 1998) (governor, state treasurer, state auditor, secretary of the department of administration); Wyo. Stat. § 9–3–404 (Supp. 1998) (state treasurer).

[31] *See, e.g.,* Ariz. Rev. Stat. Ann. § 38–713 (1999) (governor appoints all nine members); CAL. Gov't Code20090 (Deering 1999) (governor appoints three of thirteen members); Hawaii Rev. Stat.§ 88–24 (Supp. 1998) (governor appoints three of eight members); IDAHO CODE § 59–1304 (Supp. 1998) (governor appoints all five members); Kan. Stat. Ann. § 74–4905 (Supp. 1997) (governor appoints four of nine members; speaker of the house and president of the senate each appoint one member); Me. Rev. Stat. Ann. tit. 5, § 17102 (Supp. 1997) (governor appoints four of eight members); Nev. Rev. Stat. § 286.120 (1997) (governor appoints all seven members); N.H. Rev. Stat. Ann. § 100–A:14(i) (1998) (governor and council appoint two of thirteen members); VA. Code Ann. § 51.1–124.20 (Michie 1998) (governor appoints five of nine members); W. Va. Code § 5–10D–1 (1998) (governor appoints ten of fourteen members); Wyo. Stat. § 9–3–404 (Supp. 1998) (governor appoints ten of eleven members (the state treasurer is the other member)).

[32] In some cases, state retirement systems have sought to insulate the selection process from the effects of political contributions by delegating the selection of investment advisers to the professional staff of the fund. *See, e.g.,* Missouri State Employees Retirement System, *External Manager Hiring and Termination Policy* (Nov. 13, 1998). *See* discussion *infra* at section II.A.1.

[33] *See* Stephen A. Berkowitz & Louis D. Finney, the Selection and Management of Investment Managers for Public Pension Plans 40–45 (1990) (discussing the RFP, selection criteria, performance measurement, interview process, and elements of a final contract); Public Cash Managers, *supra* note 18, at 12–13 (discussing elements of the RFP and selection process); M. Corrine Larson, an Introduction to Investment Advisers for State and Local Governments 6 (1996) (discussing the process for drafting the RFP, evaluating RFP responses, interviewing candidates, and selecting advisers); Girard Miller et al., Investing Public Funds5 (1998) (discussing selection criteria, and the use of consultants and an investment committee to aid in the selection process).

[34] *See, e.g.,* Josh Kosman, *Manager Access to Trustees Examined, Investment Mgmt. Wkly.,* Aug. 25, 1997, *available in* 1997 WL 15447410; Too Many Advisers, Poor Financial Results, *supra* note 12.

[35] In approving rule G–37, the MSRB observed, and we agreed, that in a competitive and objective bidding process, there is ''less possibility of collusion and political patronage,'' as bidders are able to publicly compete on price and their willingness to accept market risk. Rule G–37 Adopting Release, *supra* note 4, at section II.A. The prohibition contained in rule G–37 thus applies only to contracts that were awarded on a basis other

management of public pension funds is highly lucrative, and there is keen competition among advisers vying for selection.[36] The record suggests strongly that political contributions can play a significant role in the selection of investment advisers.[37] Allegations of pay to play have been reported in at least seventeen states.[38]

Pay to play practices are rarely explicit: participants do not typically let it be publicly known that contributions are made or accepted for the purpose of influencing the selection of an adviser. As one court noted, ''actors in this field are presumably shrewd enough to structure their relations rather indirectly.'' [39] Some elected officials who are responsible for public pension plans have actively solicited contributions from advisers that either provide or seek to provide advisory services to the state or local government.[40] Several have received large amounts of money from advisers and contractors to the pension funds.[41] Some have participated in the selection of investment advisers shortly before, or shortly after, receiving contributions from the adviser.[42]

Recently, the nation's largest public pension fund, the California Public Employees Retirement System (''CalPERS''), sought to end the participation of its trustees in pay to play practices. The CalPERS actions and subsequent litigation [43] provide unusual insights into how pay to play can work in the selection of investment advisers for public funds. According to court documents submitted by CalPERS, elected officials serving as CalPERS trustees solicited campaign contributions from investment advisers and other fund contractors.[44] Each raised a considerable amount of money from advisers that are providing, or are seeking to provide, advisory services to CalPERS.[45] Failure to contribute reduced the interest of the elected official in the adviser's role in managing the fund; [46] contributing a sufficient amount could lead to the official championing the selection of the adviser,[47] which could even result in the fund selecting the adviser over the recommendation of its professional staff and consultants.[48] In order to avoid the perception of a conflict, the elected officials voluntarily would abstain from a vote concerning an adviser that made contributions,[49] but the officials could participate in the discussions that preceded the vote.[50] CalPERS decided to bar contractors and prospective contractors from making political contributions as an effort to end pay to play, which it described as ''an insidious form of corruption'' that ''infects the entire decision-making process.'' [51]

Two states and some funds have come to similar conclusions regarding pay to play. Vermont and Connecticut both have recently enacted statutes prohibiting any person doing business with state funds from making contributions to the treasurer of either

than a ''competitive bid'' (*i.e.*, negotiated offerings). MSRB rule G–37(g)(vii). Contracts awarded on the basis of a competitive bid remain subject to the federal securities laws. *See* In re Stephens, Inc., Securities Act Release No. 7612 (Nov. 23, 1998) (enforcement action brought against consultant who authorized undisclosed payments to two public officials and an outside pension consultant to obtain municipal finance business that was subject to competitive bidding).

[36] A recent investment adviser search by CalPERS, for example, yielded 269 proposals submitted by 189 managers. *See* Steve Hemmerick, *58 Managers Make CalPERS' First Cut,* PENS. & INV., Aug. 18, 1997, at 6.

[37] In most cases, these political contributions are lawful. Thus, we do not suggest that the elected officials, by accepting these contributions, are acting unlawfully. Also, the Commission has not investigated and therefore cannot confirm the validity of the allegations described in the articles cited or referenced in the footnotes that follow. The *Blount* court held that allegations of pay to play were sufficient to support the rulemaking and that ''no smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic.'' 61 F.3d at 945.

[38] The articles and other materials describing allegations of pay to play practices are available in File No. S7–19–99. *See, e.g.*, Janet Aschkenasy, *Pay-to-Play—Scrutiny of Unethical Practices at Public Funds Is Intensifying, But Will Self-Policing Efforts Succeed?,* PLAN SPONSOR, Feb. 1998, at 58–60; Charles Gasparino & Jonathan Axelrod, *Political Money May Sway Business of Public Pensions,* Wall St. J., Mar. 24, 1997, at C1; Matt O'Connor, *Santos Done in by Tape; 'Time to Belly Up' Remark Called Key to Guilty Verdict,* CHI. TRIB., May 4, 1999, at N1.

[39] *Blount,* 61 F.3d at 945.

[40] *See, e.g.*, Scrutiny of Unethical Practices Intensifying, *supra* note 38. Public fund officials also have provided us with first-hand reports of the solicitation activities of elected officials. *See* Letter from Maxie L. Patterson, Executive Director, Houston Firefighters' Relief and Retirement Fund, to Robert Plaze, Associate Director, SEC (Feb. 10, 1999), available in File No. S7–19–99.

[41] *See* Houston Firefighters' Fund Letter, *supra* note 40; Office of Vermont State Treasurer James H. Douglas, *If You Play, You Pay: New Campaign Finance Legislation Prohibits Contracts for Wall Street Firms Contributing to State Treasurer Races, a Provision Pushed by Douglas,* available at <http://www.state.vt.us/treasurer/press/pr970616.htm> (visited July 22, 1999); Scrutiny of Unethical Practices Intensifying, *supra* note 38.

[42] For example, a solicitor for an institutional adviser recently informed us that the solicitor received two invitations from the same elected official in the same week—one to make a presentation to the fund's selection committee, the other to attend a $1,000 fundraising dinner. Anonymous Letter, *supra* note 12. Representatives of the selection committee later requested that the solicitor inform them if a contribution was made ''so they could let the officials know it came from'' the parties making the presentation. Anonymous Letter, *supra* note 12.

[43] An elected official who is a CalPERS fiduciary sued to overturn the CalPERS ban on pay to play practices. A California court invalidated the CalPERS resolutions on procedural grounds. Kathleen Connell for Controller v. CalPERS, No. 98CS01749 (Cal. Sup. Ct. Sept. 18, 1998). *See also* Charles Gasparino, *California Controller's Committee Sues Calpers Over Campaign-Donation Rule,* WALL. ST. J., July 9, 1998, at B7. CalPERS subsequently proposed similar pay to play prohibitions by regulation. California Public Employees' Retirement System, Proposed Regulatory Action, Notice File No. 98–1016–10 (Oct. 30, 1998).

[44] *See* Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate, Kathleen Connell for Controller v. CalPERS, No. 98CS01749, at 20 (Cal. Sup. Ct. Sept. 4, 1998) (stating that ''there was actual evidence of *massive* contributions solicited by (the state controller) from CalPERS contractors and other prospective contractors'') (emphasis in original); *Oversight of Investment Procedures of the Public Employees' Retirement System and State Teachers' Retirement System, Before the Senate Committee on Public Employment and Retirement,* Calif. Leg. 20–21 (Aug. 25, 1997) (testimony of James E. Burton, Chief Executive Officer, CalPERS).

[45] The state controller, for example, raised over $180,000 from 1995 to 1998 from CalPERS contractors. CalPERS Brief, *supra* note 44 (declaration of Thomas W. Hiltachk). The state treasurer, who also is a CalPERS trustee, raised $150,000 from advisers and other CalPERS contractors in a recent U.S. Senate campaign. *See* Firms with State Pacts, *supra* note 13; Paul Jacobs, *Firms Lobby, Woo State Pension Officials, Win Pacts,* L.A. TIMES, Feb. 4, 1998, at A3.

[46] In connection with the litigation, CalPERS submitted a declaration in which an adviser stated that, after refusing to make a political contribution, the elected official's representative contacted the adviser less frequently about investment matters, and displayed a ''higher degree of skepticism'' about the adviser's recommendations. CalPERS Brief, *supra* note 44 (declaration of Leslie Brun, Hamilton Lane Advisors, Inc.). *See also* Paul Jacobs, *Donations to Pension Officials Scrutinized; Politics: Connell, Fong Say They Are not Influenced by Contributions from Firms Doing Business with State Systems,* L.A. Times, Aug. 21, 1997, at A1; Dan Smith, *Connell Accused of Shunning Non-Donor,* Sacramento Bee, Aug. 14, 1998, at A3.

[47] *See* Paul Jacobs, *Firms Lobby, Woo State Pension Officials, Win Pacts,* L.A. TIMES, Feb. 2, 1998, at A1. Elected officials may not only champion the selection of contributors, but also may advocate their retention. *See California Pension Fund Weathers Investment Controversy,* Nat'l Mortgage News, June 24, 1996, at 10.

[48] *See* Steve Hemmerick, *California Funds to Review Voting,* PENS. & INV., Sept. 15, 1997, at 36; Paul Jacobs, *Investment Raises Questions About State Pension Fund Finance,* L.A. TIMES, Sept. 16, 1997, at A1; *cf.* Manager Access to Trustees Examined, *supra* note 34.

[49] *See* Scrutiny of Unethical Practices Intensifying, *supra* note 38.

[50] *See* CalPERS Brief, *supra* note 44, at n. 16 (noting that one trustee who abstained from voting to award contracts to contributors ''has never'' sought recusal from ''participating in the discussions affecting the contributor''); Donations to Pension Officials, *supra* note 46.

[51] CalPERS Brief, *supra* note 44, at 8. CalPERS stated that pay to play negatively affects the decision-making process because ''it appears that decisions are made, not only by considering who gave a contribution, but also by considering who did *not* give a contribution.'' CalPERS Brief, *supra* note 44, at 8 (emphasis in original).

state.[52] The Connecticut Treasurer noted that, before the legislation was enacted, ''investment managers (were) being chosen more for their political connections and campaign contributions than for their performance.'' [53] Some funds have adopted codes of ethics prohibiting trustees from accepting contributions.[54] Some have delegated the selection of investment advisers to professional staff members, aiming to insulate the selection process from considerations of campaign contributions.[55] Not all efforts to address pay to play have been effective,[56] and most jurisdictions and pension plans have not acted effectively to stop pay to play practices.[57]

II. Discussion

The Commission regulates investment advisers under the Investment Advisers Act of 1940. Section 206(1) of the Advisers Act prohibits an investment adviser from ''employ(ing) any device, scheme, or artifice to defraud any client or prospective client.'' [58] Section 206(2) prohibits advisers from engaging in any act, practice or course of business which operates as a fraud on a client or prospective client.[59] The Supreme Court has construed section 206 as establishing a federal fiduciary standard governing the conduct of advisers.[60]

An adviser that participates in pay to play practices undermines the merit-based selection process established by the public pension plan.[61] When an adviser makes political contributions to elected officials for the purpose of influencing the award of an advisory contract, the adviser contributes to the risk that the officials may ''award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity.'' [62] If pay to play is a factor in the selection process, the public pension plan can be harmed in several ways. The most qualified adviser may not be selected, leading to inferior management, diminished returns or even losses.[63] The pension plan may pay higher fees because advisers must recoup the costs of contributions, or because contract negotiations may not occur on an arm's-length basis.[64] Moreover, the absence of arm's-length negotiations may enable advisers to obtain greater ancillary benefits, such as ''soft dollars,'' from the advisory relationship, which may be directed for the benefit of the adviser, at the expense of the pension plan, thereby using a fund asset for its own purposes.

Because pay to play has the potential to harm advisory clients, we believe that it is inconsistent with the high standards of ethical conduct required of fiduciaries under the Advisers Act. We have authority under section 206(4) of the Act to adopt rules ''reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative.'' [65] Congress gave us this authority to prohibit ''specific evils'' that the broad anti-fraud provisions may be incapable of covering.[66] The provision thus permits the Commission to adopt prophylactic rules designed to prevent fraudulent conduct even if not all of the conduct prohibited is fraudulent.[67]

We are proposing new rule 206(4)–5 to prevent advisers from participating in pay to play practices and protect clients from the consequences of pay to play. The rule, and related rule amendments that we are also proposing today, are described below.

A. Rule 206(4)–5

Under proposed rule 206(4)–5, it would be a fraudulent, deceptive, or

[52] *See* CONN. GEN. STAT. § 9–333o (1997); VT. STAT. ANN. tit. 32, § 109 (1997). Efforts to eliminate pay to play are not limited to the securities industry. Bar associations also are considering similar prohibitions to address pay to play practices in the legal profession. *See* American Bar Ass'n, Report and Recommendations of the Task Force on Lawyers' Political Contributions, Part I (July 1998); Special Committee on Government Ethics, Association of the Bar of the City of New York, Campaign Contributions by Lawyers Seeking Government Finance Work (Feb. 1997).

[53] *See* Christopher Burnham, *Reviving a Pension Plan,* AM. City & County, July 1998.

[54] *See, e.g.,* Oregon Investment Council, *Standard of Ethics,* at 1–2 (July 1998); State of New Hampshire, *An Order Enacting a Code of Ethics for Public Officials and Employees of the Executive Branch in the Performance of Their Official Duties,* Executive Order No. 98–1, at 2 (May 19, 1998); Fulton County Employees Retirement System Board, *Ethics Policy,* at 4–5 (Feb. 11, 1998). Other funds require disclosure of political contributions. *See, e.g.,* Cal. Gov. Code § 20152.5 (1999); Texas Permanent School Fund Operating Rules, Chapter 4, Conduct and Public Relations (Mar. 6, 1998).

[55] *See, e.g.,* Missouri Investment Adviser Selection Policy, *supra* note 32.

[56] Some public pension plans, for example, prohibit firms that contract with the plan from making contributions to plan trustees, but the prohibition does not apply to executives of the firm. Similarly, several statutory prohibitions apply only to contributions made to particular officeholders, but not to other elected officials who are plan trustees, appoint plan trustees, or otherwise can influence the selection of an investment adviser. Some codes of ethics can be difficult to enforce when plans are faced with evidence of pay to play. Also, some advisers have found a way to circumvent state and plan limitations and disclosure requirements by making political contributions indirectly, through the use of third parties such as consultants. *See infra* notes 92 to 93, and accompanying text (discussing the use of ''gatekeepers'').

[57] It is possible that many jurisdictions have found it difficult to address pay to play practices due to what the *Blount* court calls a ''collective action problem (that tends) to make the misallocation of resources persist.'' *Blount,* 61 F.3d at 945–46. Elected officials that accept contributions from state contractors may believe they have an advantage over their opponents that forswear the contributions, and firms that do not ''pay'' may fear they will lose government business to those that do. *See id. See generally* Mancur Olson, The Logic of Collective Action; Public Goods and the Theory of Groups 44 (17th ed. 1998) (group members that seek to maximize their individual personal welfare will not act to advance common objectives absent coercion or other incentive). *See also* Donations to Public Officials, *supra* note 46 (fund contractor quoted as saying, ''(i)f you don't contribute, you're subject to the concern that others might make contributions'').

[58] 15 U.S.C. 80b–6(1).

[59] 15 U.S.C. 80b–6(2).

[60] Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979) (citations omitted); SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191–192 (1963).

[61] *See supra* notes 29 to 34 and accompanying text.

[62] *Blount,* 61 F.3d at 944–45.

[63] Paring the Politics, *supra* note 12, at 12 (Connecticut treasurer quoted as saying that pay to play ''adversely influenced our treasury''); Too Many Advisers, Poor Financial Results, *supra* note 12 (municipal fund awarded contract to an adviser that ''had the worst performance numbers of all the candidates interviewed'').

[64] *See State Street Effort Fails in Its Lawsuit On Pennsylvania Pact,* Wall. St. J., May 28, 1998, at B17. Firm executives contributed ''perhaps several thousand dollars'' to the outgoing treasurer's campaign. *Id.*

[65] 15 U.S.C. 80b–6(4).

[66] S. Rep. No. 1760, 86th Cong., 2d Sess. 4, 8 (1960). The Commission has used this authority to adopt four rules addressing abusive advertising practices, custodial arrangements, the use of solicitors and required disclosures regarding the adviser's financial condition and disciplinary history. 17 CFR 275.206(4)–1; 275.206(4)–2; 275.206(4)–3; and 275.206(4)–4.

[67] The Supreme Court, in U.S. v. O'Hagan, 521 U.S. 642 (1997), interpreted nearly identical language in Section 14(e) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78n(e)) as providing the Commission with authority to adopt rules that are ''definitional and prophylactic'' and that may prohibit acts that ''are not themselves fraudulent * * * if the prohibitions are reasonably designed to prevent acts and practices that are fraudulent.'' 521 U.S. 667, 673. The language of both section 206(4) and section 14(e) was taken from section 15(c)(2) of the Exchange Act (15 U.S.C. 78o(c)(2)). *See SEC Legislation, Hearing on S. 1180, S. 1181 and S. 1182, Before the Senate Committee on Banking and Currency, Subcommittee on Securities,* 86th Cong., 2d Sess. 137 (1959) (testimony of Philip A. Loomis, Director, Division of Trading and Exchanges, SEC) (''(The language of Section 206(4)) is almost the identical wording of Section 15(c)(2) of the Securities Exchange Act in regard to brokers and dealers.'') and S. Rep. No. 1760, 86th Cong., 2d Sess. 8 (June 28, 1960) (''(The language of section 206(4)) is almost the identical wording of Section 15(c)(2) of the Securities Exchange Act of 1934 in regard to brokers and dealers.''). *See also* H.R. Rep. No. 1655, 91st Cong., 2d Sess. at 4 (Dec. 7, 10, 1970) (the amendment to section 14(e) ''is identical to that contained in existing section 15(c)(2) of the Exchange Act''). Congress, in amending section 15(c)(2) to expand the Commission's authority to prohibit fraud by municipal securities dealers, described the Commission's rulemaking authority under section 15(c)(2)(D) as including ''the promulgation of prophylactic rules.'' S. Rep. No. 75, 94th Cong., 1st Sess. 228 (Apr. 14, 1975).

manipulative act for an investment adviser to provide advisory services for compensation to a government entity within two years after the adviser, any of its partners, executive officers or solicitors made a contribution to an elected official who could influence the selection of the adviser. The rule would also make it unlawful for an adviser to solicit contributions for an official of a government client while providing or seeking to provide the government client advisory services. Proposed rule 206(4)–5 would not be a ban on political contributions, but rather a ban, or ''time-out,'' on conducting advisory business with a government client for two years after a contribution is made.

Investment advisers subject to the proposed rule would include all investment advisers that are not prohibited from registering with the Commission.[68] As a result, the rule would apply to Commission-registered advisers and those exempt from registration under section 203 of the Advisers Act, such as those advisers that had fewer than fifteen clients during the last twelve months.[69]

The rule generally would not apply to smaller advisers that are registered with state securities authorities.[70] We believe that the great majority of advisers to public funds are registered with the Commission. We, therefore, are not proposing to cover state-registered advisers under the proposed rule. We request comment on our assumption, and on whether we should extend the scope of the proposed rule to include state-registered advisers.

The Commission modeled proposed rule 206(4)–5 after MSRB rule G–37, which we believe has successfully addressed pay to play in the municipal bond market. This approach should minimize the compliance burdens on firms that would be subject to both rules by allowing them to adopt common compliance procedures. We have modified the proposed rule, however, to reflect the different statutory framework under which the rule would be adopted and the differences between municipal underwriting and asset management. The differences between proposed rule 206(4)–5 and rule G–37 are highlighted below. Comment is requested on whether we should use rule G–37 as a model for proposed rule 206(4)–5. Are there additional differences in the selection of municipal underwriters and investment advisers that should be reflected in the rule?

The Commission considered proposing a different approach to address pay to play, which would require an adviser to disclose information concerning its political contributions. Disclosure, however, may not be effective to protect public pension plan clients. Disclosure to a pension plan's trustees would be ineffective because, in some cases, the trustees would have received the contributions. Disclosure to plan beneficiaries also would be ineffective because they are generally unable to act on the information by moving their pension assets to a different plan or reversing adviser hiring decisions.[71] Moreover, disclosure requirements have not worked in the past at stopping pay to play practices and can be circumvented.[72] We request comment on this approach.

1. ''Pay to Play'' Restrictions

Proposed rule 206(4)–5 would prohibit investment advisers from providing advice for compensation to a ''government entity''[73] within two years after a contribution to an official of the government entity has been made by (i) the adviser, (ii) any of its partners, executive officers or solicitors, or (iii) any political action committee (''PAC'') controlled by the adviser or by any of the adviser's partners, executive officers or solicitors.[74] Each element of the proposed rule and one exception from the prohibition are discussed below.

Investment advisers making contributions covered by the proposed rule would not be prohibited from providing advisory services to a government client, but only from *receiving compensation* from the client for providing advisory services. This approach is intended to avoid requiring an adviser to abandon a government client after the adviser or any of its partners, executive officers or solicitors make a political contribution covered by the rule. An adviser subject to the prohibition would likely be obligated to provide (uncompensated) advisory services until the government client finds a successor.[75] Alternatively, the rule could establish a time period after the expiration of which the adviser could no longer provide advisory services. We request comment on which approach would cause the least disruption to the government client.

The prohibitions in the rule would be triggered by a contribution to an *official of a government entity*. Government entities under the proposed rule include all state and local governments, their agencies and instrumentalities, and all government pension plans and other collective government funds.[76] An official would include an incumbent, candidate or successful candidate for elective office of a government entity if the office (or an appointee of the office) is directly or indirectly responsible for, or can influence the outcome of, the selection of an investment adviser.[77] Generally, executive or legislative officers who hold a position with influence over the selection of an investment adviser are government officials under the proposed rule.[78] These definitions are substantively the same as those in MSRB rule G–37.[79]

[68] Proposed rule 206(4)–5(a).

[69] Section 203(b) of the Advisers Act (15 U.S.C. 80b–3(b)). The Commission is including unregistered advisers within the scope of the rule principally to make the rule applicable to advisers to private investment companies. *See* discussion *infra* section II.A.4.

[70] Amendments to the Advisers Act in 1996 placed regulatory responsibility for these advisers in the hands of state regulators. *See* section 203A of the Advisers Act (15 U.S.C. 80b–3a) enacted as part of Title III of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[71] For these reasons, the Commission is not proposing a reporting requirement for advisers required to keep records of their political contributions under the proposed amendments to the recordkeeping rules. *See* discussion of recordkeeping amendments *infra* at Section II.B. MSRB rule G–37, however, does establish a reporting and disclosure system for broker-dealers subject to that rule. MSRB rule G–37(e)(ii).

[72] *See* discussion of ''gatekeepers'' *supra* section II.A.2.

[73] ''Government entity'' is defined by the proposed rule as any State or political subdivision of a State, including any agency, authority, or instrumentality, plan or pool of assets controlled by the State or political subdivision or any agency, authority or instrumentality thereof; and officers, agents, or employees of the State or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity. Proposed rule 206(4)–5(e)(3). In this Release, we use the term government entity interchangeably with ''government client'' and ''public pension plan.''

[74] Proposed rule 206(4)–5(a)(1).

[75] An investment adviser that violates the rule may be required, under its fiduciary duties, to continue providing advisory services to the public fund, for a reasonable period of time, until the fund obtains a new adviser. *See* Temporary Exemption for Certain Investment Advisers, Investment Advisers Act Release No. 1736 (July 22, 1998) (63 FR 40231, 40232 (July 28, 1998)) (describing an investment adviser's fiduciary duties to an investment company in the case of an unforeseeable assignment of the advisory contract).

[76] Proposed rule 206(4)–5(e)(3).

[77] Proposed rule 206(4)–5(e)(4).

[78] The scope of authority of the particular office of an official, not the individual, would determine whether the official may have influence over the awarding of an investment advisory contract. In some cases, authority to select and terminate an investment adviser is completely delegated to the staff of a public fund, in which case a government official may not be able to influence the selection. *See supra* note 32. Under the proposed rule, contributions to the official would not trigger the prohibitions of the rule.

[79] MSRB rule G–37(g)(ii) and (g)(vi).

The proposed rule covers *contributions* made by an investment adviser, its partners, executive officers and solicitors; and any PAC controlled by the adviser or any of its partners, executive officers or solicitors. The proposed rule uses the same definition of contribution as MSRB rule G–37.[80] A contribution would generally be anything of value made to an official to influence a federal, state or local election, including any payments for debts incurred in an election, and transition or inaugural expenses incurred by a successful candidate for state or local office.[81]

Contributions made to influence the selection process are typically made not by the firm, but by officers and employees of the firm who have a direct economic stake in the business relationship with the government client. This is why the MSRB also applied the prohibitions of rule G–37 to contributions made by ''municipal finance professionals'' employed by a broker-dealer. There is no group, however, within the typical investment advisory firm that corresponds to municipal finance professionals. In our examination of pay to play practices involving investment advisers, we found that political contributions intended to influence the selection of the advisory firm were typically made by executives of the adviser or persons who solicit government clients on behalf of the adviser. Therefore, we are proposing to limit application of the rule to contributions made by the adviser or its partners, executive officers or solicitors.

Under the proposed rule, the term *executive officer* includes the adviser's president, vice-presidents in charge of a business unit or division of the adviser, and other officers or persons who perform a policy-making function for the adviser.[82] A *solicitor* is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.[83] Employees who play a role in obtaining government clients are thus covered by the proposed rule as are third-party solicitors an investment adviser engages to obtain clients. Contributions by other employees of the adviser or other persons (such as spouses, control persons and affiliates) would not otherwise trigger the rule's prohibitions unless the adviser or any of its partners, executives or solicitors used the person to indirectly make a contribution. This could occur, for example, if a firm paid a non-executive employee a bonus with the expectation or understanding that the employee would make a political contribution that, if made by the firm, would trigger the rule's prohibition.[84]

The Commission has drafted the proposed rule so that its prohibitions are triggered by political contributions by persons we have found are typically involved in pay to play practices and who, in the context of an advisory firm, are likely to have an economic incentive to make contributions to influence the advisory firm's selection. We are mindful of the burdens the proposed rule would place on advisory firms and on the ability of persons associated with an adviser to participate in civic affairs. We thus have narrowly tailored the rule to achieve our goal of ending adviser participation in pay to play practices. We request comment on the scope of the rule in its application to persons associated with an adviser. Are there less restrictive alternatives that would accomplish our goals?

Proposed rule 206(4)–5 contains a *de minimis* provision that would permit a partner, executive officer or solicitor to make contributions of $250 or less to an elected official or candidate without triggering the rule's prohibitions if the person making the contribution is entitled to vote for the official or candidate.[85] The Commission assumes that contributions of less than $250 are typically made without the intent or ability to influence the selection process for investment advisers and thus do not involve the conflicts of interest the rule is intended to prevent. Comment is requested on the scope of the exception. The $250 amount is the same as the *de minimis* amount excepted from MSRB rule G–37.[86] Should the amount be increased or decreased? Should we provide a *de minimis* exemption for contributions of a lesser amount, *e.g.* $100, to officials for whom an individual is not entitled to vote?

Under the proposed rule, a contribution made by a partner, executive officer or solicitor of an adviser would also be attributed to any other adviser that employs or engages the person who made the contribution within two years after the date the contribution was made.[87] As a result, an investment adviser would be required to ''look-back'' in time to determine whether it would be subject to any business restrictions under the proposed rule when employing or engaging a partner, executive officer or solicitor. This provision, which is similar to one in MSRB rule G–37,[88] would prevent advisers from circumventing the rule by channeling contributions through departing employees, or by influencing the selection process by hiring persons who have made political contributions. Comment is requested on the look-back requirement. Would a shorter period be sufficient to prevent circumvention of the rule?

2. Solicitation Restrictions

Another way an adviser can attempt to influence the selection process is by soliciting contributions for an elected official. Therefore, like MSRB rule G–37,[89] the proposed rule would prohibit an adviser from providing or seeking to provide advisory services for compensation while the adviser, or any of its partners, executive officers or solicitors, solicit any person or PAC to make, or coordinate, any contribution to an official of a government entity to which the adviser is providing or seeking to provide investment advisory

[80] MSRB rule G–37(g). Like rule G–37, the proposed rule would encompass, for federal offices, only those contributions to an official of a government entity who is seeking election to a federal office. Proposed rule 206(4)–5(e)(3).

[81] Proposed rule 206(4)–5(e)(1). Contributions to political parties would not trigger the proposed rule's prohibitions, unless the contribution is earmarked or known to be provided to an official. Contributions to state and local political parties are, however, subject to the proposed rule's recordkeeping requirements. *See infra* section II.B.

[82] Proposed rule 206(4)–5(e)(2). The definition of ''executive officer'' is the same as that used in Advisers Act rule 205–3. 17 CFR 275.205–3.

[83] Proposed rule 206(4)–5(e)(6). The definition of ''solicitor'' is the same as that used in Advisers Act rule 206(4)–3. 17 CFR 275.206(4)–3.

[84] *See* discussion of indirect contributions *infra* section II.A.3.

[85] Proposed rule 206(4)–5(b). Under the proposed rule, a partner, executive officer or solicitor of an investment adviser could, without triggering the prohibitions of the rule, contribute up to $250 in both the primary election campaign and the general election campaign (up to $500) of each official for whom the person making the contribution would be entitled to vote. For purposes of this rule, a person would be ''entitled to vote'' for an official if the person's principal residence is in the locality in which the official seeks election.

[86] MSRB rule G–37(b).

[87] Proposed rule 206(4)–5(a)(1)(ii). Persons who are employees as well as ''independent contractors'' would be covered by the proposed rule. In no case would the prohibition imposed by the proposed rule be longer than two years from the date the executive officer makes a covered contribution. If, for example, an executive officer becomes employed by an investment adviser one year and six months after making a contribution, the new employer would be subject to the proposed rule's prohibition for the remaining six months of the two-year period. The executive officer's employer at the time of the contribution would be subject to the proposed rule's prohibition for the entire two-year period regardless of whether the executive officer remains employed by the adviser. However, if an executive officer is not an employee of an adviser, the adviser would not be responsible for any recordkeeping requirements with respect to that executive officer. *See supra* section II.B.

[88] MSRB rule G–37(g)(iv).

[89] MSRB rule G–37(c).

services.[90] This provision would also prohibit advisers from seeking to influence the selection process by, for example, ''bundling'' [91] contributions from its employees or by making contributions through a third party, such as a ''gatekeeper.''

In a gatekeeper arrangement, political contributions are arranged by an intermediary, typically a pension consultant, which distributes or directs contributions to elected officials or candidates. The gatekeeper ensures that advisers not making a requisite amount of contributions are not included among the final candidates for advisory contracts. In addition, the gatekeeper may arrange ''swaps'' of contributions between elected officials in order to shield the contributions from public disclosure or to circumvent plan restrictions on contributions to trustees.[92] Under the proposed rule, the gatekeeper in these arrangements would be soliciting political contributions and, if the gatekeeper is an investment adviser, would violate the proposed rule.[93]

3. Direct and Indirect Contributions or Solicitations

The proposed rule would also prohibit acts ''done indirectly, which, if done directly would be considered a fraudulent, deceptive or manipulative act under the rule.'' [94] Thus, an adviser could not circumvent the rule by directing or funding contributions through third parties, including, for example, consultants, attorneys, family members or persons controlling the adviser who have an economic interest in the adviser being awarded an advisory contract. This provision would also cover contributions made, directed or funded, with the expectation that, as a result of the contribution, another contribution would be made by a third party for the benefit of the adviser. Contributions made through gatekeepers (described above) thus would be considered made ''indirectly'' for purposes of the proposed rule.

4. Private Investment Companies

In some cases, advisers to ''private investment companies,'' [95] such as hedge funds and venture capital pools, have reportedly made contributions to elected officials who have influenced the decision of a government entity to invest in the adviser's company.[96] The proposed rule would treat an investment by a government entity in a private investment company the same as if the government entity entered into an advisory contract directly with the adviser.[97] As a result, a contribution by an adviser, any of its partners, executive officers or solicitors to an official of a government entity who can influence the decision to invest in the private fund, would trigger the prohibitions of the proposed rule. If the government entity was an investor in the fund at the time of the contribution, the adviser would be required to cause the private investment company to redeem the investment of the government entity, or, alternatively, return to the government entity amounts it received as compensation for managing the assets of the private investment company attributable to the government entity's investment. The Commission requests comment on whether additional types of government investments should be covered by the proposed rule. In particular, should the rule apply to off-shore funds, which do not fall within the definition of private investment company, and therefore are not subject to the proposed rule?[98]

5. Exemptions

Under the proposed rule the Commission could, upon application, exempt advisers from the rule's prohibitions that are triggered by inadvertent contributions or when imposition of the prohibitions is inconsistent with the rule's intended purpose. In determining whether to grant an exemption, we would consider whether (i) the exemption is in the public interest and consistent with the purposes of the rule, (ii) the adviser, before the contribution is made, had developed procedures to ensure compliance with the rule and had no actual knowledge of the contributions, and (iii) the adviser, after the contribution was made, took appropriate preventative and remedial measures, including all available steps to obtain a return of the contribution.[99]

These factors are similar to those considered by the NASD and the appropriate bank regulators in determining whether to grant an exemption under MSRB rule G–37(i). Under the proposed rule, however, exemptive authority will be exercised by the Commission.[100] In applying the criteria, we expect to take into account, among other things, the varying facts and circumstances presented by each application. We would apply these exemptive provisions with sufficient flexibility to avoid consequences disproportionate to the violation while accomplishing the remedial purpose of the rule.[101] We request comment on the proposed exemptive criteria. Are there additional criteria the Commission should consider when determining whether to grant an exemption.

[90] Proposed rule 206(4)–5(a)(2)(i). An investment adviser would be seeking to provide advisory services to a government entity when it responds to an RFP, communicates with a government entity regarding that entity's formal selection process for investment advisers, or engages in some other solicitation of investment advisory business with the government entity. A violation of paragraph (a)(2)(i) of the proposed rule would not trigger a two-year ban on the provision of investment advisory services for compensation, but would be a violation of the rule.

[91] An employee or person acting on an adviser's behalf ''bundles'' contributions by coordinating small contributions from several employees of the adviser to create one large contribution.

[92] For example, Adviser A advises Plan X, while Adviser B advises Plan Y. The ''gatekeeper'' may direct a political contribution from Adviser A to the elected official, who is a trustee to Plan Y, and from Adviser B to the elected official, who is a trustee to Plan X, agreeing to place both advisers on each plan's approved list. Persons reviewing records of the political contributions would have no way of determining that the contributions were swapped and that they created conflicts of interest on the part of the advisers as well as the elected officials.

[93] Regardless of whether the gatekeeper is an investment adviser, a person participating in such a scheme would, if the rule is adopted, likely be aiding and abetting an adviser's violation of the rule. *See* section 209(d) of the Act (15 U.S.C. 80b–9(d)) (authorizing Commission enforcement action for aiding and abetting a violation of the Advisers Act or any Advisers Act rule).

[94] Proposed rule 206(4)–5(a)(2)(ii). *See also* section 208(d) of the Advisers Act (15 U.S.C. 80b–8(d)).

[95] The proposed rule defines a private investment company as an investment company exempt from Commission registration under section 3(c)(1) or (3)(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and 3(c)(7)). Proposed rule 206(4)–5(e)(5).

[96] The articles describing allegations that advisers to private investment companies engage in pay to play practices are available in File No. S7–19–99.

[97] Proposed rule 206(4)–5(c). The proposed rule would thus ''look through'' the private investment company and treat its security holders as clients of the adviser. *Cf.* rule 205–3(b) (17 CFR 275.205–3(b)) (equity owners of private investment companies treated as clients for purposes of performance fee exemptive rule).

[98] Off-shore funds are generally not required to register with the Commission under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)).

[99] Proposed rule 206(4)–5(d).

[100] The MSRB has provided four ''Questions and Answers'' regarding application of MSRB rule G–37–(i). Question 4, *Additional Rule G–37 Q&As*, June 15, 1995, MSRB Rule Book at 196 (1999), *Questions and Answers Regarding Rule G–37(i)*, June 29, 1998, MSRB Rule Book at 199 (1999). Denials of an exemption pursuant to MSRB Rule G–37(i) are not subject to appeal to the Commission. *See* In re Morgan Stanley & Co., Securities Exchange Act Release No. 39459 (Dec. 17, 1997).

[101] Under the proposed rule, an adviser applying for an exemption, could place advisory fees earned between the date of the contribution triggering the prohibition and the date on which we determine whether to grant an exemption in an escrow account. The escrow account would be payable to the adviser if the Commission grants the exemption. If the Commission does not grant the exemption, the fees contained in the account must be returned to the public fund.

B. Recordkeeping

We are also proposing amendments to rule 204–2 to require an investment adviser that is registered with us and has government clients to make and keep certain records of contributions made by the adviser, its partners, executive officers and solicitors.[102] These records would be confidential,[103] and only reviewed by our staff in the course of an adviser examination. We believe they would be necessary to allow us to enforce compliance with rule 206(4)–5, if adopted.

The proposed amendments would require an adviser to make and keep a list of its partners, executive officers and solicitors, the states in which the adviser has, or is seeking, government clients, the identity of those clients, and the contributions made by the firm and its partners, executive officers and solicitors to government officials and candidates.[104] These requirements would be similar to the MSRB recordkeeping rule for broker-dealers.[105]

These new recordkeeping requirements should not be burdensome. As discussed above, a single contribution could, under the rule, lead to a two-year suspension of advisory activities for a government client. We would expect, therefore, that advisers would adopt sufficient internal procedures to prevent the rule's prohibitions from being triggered. The records that we propose registered advisers make and keep would be those an adviser undertaking a serious compliance effort would ordinarily make, and thus we assume the amendments would involve no substantial additional burdens. Comment is requested on our assumptions and on whether our assessment of the burdens is correct. We request that commenters opposing the new recordkeeping requirements suggest alternative means we could use to enforce the new rule.

C. Transition Period

The prohibition and recordkeeping requirements under the proposed rule would arise from contributions made on or after the effective date of the rule, if adopted. As a result, firms would need to begin monitoring contributions made by their partners, executive officers and solicitors on that date. The Commission requests comment on whether firms would require additional time to develop procedures to comply with the proposed rule and, if so, how long of a transitional period following the rule's adoption would be necessary?

D. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and rule amendment that are the subject of this release, or to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

III. Cost/Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules, and understand that compliance with proposed rule 206(4)–5 and the proposed amendments to rule 204–2 may impose costs on some advisers. The proposed rule and rule amendments would apply only to investment advisers that provide advisory services to government clients and which make political contributions. In addition, the proposed rule and rule amendments would only affect the political contributions made by the adviser, and its partners, executive officers and solicitors. The majority of advisers and advisory employees thus would be unaffected by the proposed rule and rule amendments.

A. Benefits

Proposed rule 206(4)–5 would likely yield several important benefits to investment advisers and state and local governments, both direct and indirect. The proposed rule would reduce or eliminate the costs of political contributions incurred by investment advisers through pay to play practices. While not readily quantifiable, the record above indicates that advisers, and their partners, executive officers and solicitors, have made substantial contributions to elected officials from whom the advisers are seeking business.[106] We believe these contributions would decrease substantially if the proposed rule were adopted. This could result in lower advisory fees being paid by the state or local government for advisory services, as advisers would not have to recoup the cost of contributions through fees the advisers charge the government client.

The proposed rule should also yield several indirect benefits, including benefits to state and local governments and taxpayers. If state and local governments select an adviser on the basis of campaign contributions, the most qualified adviser may not be selected. As discussed above, awarding advisory contracts to advisers that make political contributions may lead to inferior management, and diminished or negative returns.[107] Similarly, an adviser that is selected on bases other than merit may obtain soft dollars and other ancillary benefits at the expense of the government client. Finally, the proposed rule would level the playing field for advisers to state and local governments. Campaign contributions create artificial barriers to competition for firms that cannot or will not make political contributions. Eradicating pay to play arrangements enables advisory firms, particularly smaller advisory firms, to compete on the basis of merit, rather than their ability to make contributions.

B. Costs

The proposed rule and rule amendments would impose some costs on advisers that provide advisory services to government clients. The proposed rule would require an adviser with government clients, and an adviser which solicits business from government clients, to incur costs to monitor contributions made by the adviser, and its partners, executive officers and solicitors, and to establish procedures to comply with the proposed rule and rule amendments. The initial and ongoing compliance costs imposed by the proposed rule would vary significantly among firms, depending on a number of factors. These include the number of partners, executive officers and solicitors of the adviser, the degree to which compliance procedures are automated, and whether the adviser is affiliated with a broker-dealer firm that is subject to rule G–37. A smaller adviser, for example, would likely have a small number of partners, executive officers and solicitors, and thus expend less resources to comply with the proposed rule and rule amendments than a larger adviser.

As a comparison, Commission staff has been advised that the burden imposed by rule G–37 on smaller broker-dealer firms is negligible. Although a large adviser is likely to spend more resources to comply with

[102] 17 CFR 275.204–2.

[103] Section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)) prohibits the Commission staff from disclosing to anyone outside the Commission any information obtained as a result of an examination or investigation without Commission approval.

[104] Proposed rule 204–2(l).

[105] MSRB rule G–8(a)(xvi). Like rule G–37, the proposed rule requires an investment adviser to keep, in addition to records of political contributions, records of any other ''payments'' made to officials. A payment is defined as any gift, subscription, loan, advance, or deposit of money or anything of value.

[106] *See supra* note 38.

[107] *See supra* note 63 and accompanying text.

the rule than a smaller adviser, an adviser with a broker-dealer affiliate that is required to comply with MSRB rule G–37 could likely use some or all of the compliance procedures established by the affiliate. As a result, many advisers with broker-dealer affiliates may spend few resources to comply with the proposed rule and rule amendments.

Based on compliance with other recordkeeping rules, Commission staff anticipates that most advisory firms would develop compliance procedures to monitor the political contributions made by the adviser and its partners, executive officers and solicitors. We estimate that the costs imposed by the proposed rule would be higher initially, as firms establish and implement procedures to comply with the rule and rule amendments. If we adopt the proposed rule and rule amendments, firms with government clients would likely develop and implement compliance procedures within 60 to 90 days after adoption. It is anticipated that compliance expenses would then decline to a relatively constant amount in future years.

The Commission has limited data on the costs that the proposed rule and rule amendments would impose on investment advisers with government clients. We estimate that as many as 1,500 investment advisers registered with the Commission may be affected by the proposed rule and rule amendments.[108] Based on registration information filed with the Commission, we estimate that approximately 450 advisers have fewer than five partners, executive officers, or solicitors that would be subject to the proposed rule (''smaller firms''); approximately 825 advisers have between five and 15 partners, executive officers or solicitors (''medium firms''); and approximately 225 advisers have more than 15 partners, executive officers, or solicitors that would be subject to the prohibitions of the proposed rule (''larger firms'').

Advisers that are exempt from registration with the Commission would be subject to the proposed rule (but not the rule amendments). The Commission has limited data regarding the number of investment advisers that are exempt from registration under section 203(b) of the Advisers Act. Reports indicate that the number of exempt advisers may exceed 3,000.[109] While not readily quantifiable, the estimated number of exempt advisers likely includes advisers to off-shore funds that would not be subject to the proposed rule. The Commission also has limited information regarding the number of partners, executive officers and solicitors of exempt advisers. For purposes of this analysis, it is anticipated that the number of persons of each exempt advisory firm that would be subject to the proposed rule are comparable to the ranges for registered investment advisers, described above.

Although the time needed to comply with the proposed rule would vary significantly from adviser to adviser, the Commission estimates that firms with government clients would spend between 2.5 hours and 250 hours to establish adequate procedures to comply with the proposed rule. These estimates are derived in part from conversations with industry professionals regarding broker-dealer compliance with rule G–37. Commission staff estimates that ongoing compliance with the proposed rule would require between 10 and 1,000 hours, annually. Initial compliance procedures would likely be designed and administered by compliance professionals and clerical staff. We estimate that the hourly wage rate for compliance professionals is $114, including benefits, and for clerical staff, $15 per hour, including benefits. To establish and implement adequate compliance procedures, the Commission staff estimates that the proposed rule would impose initial compliance costs of approximately $285[110] per smaller firm, approximately $13,387.50[111] per medium firm, and approximately $22,312.50[112] per larger firm. It is estimated that the proposed rule would impose annual, ongoing compliance expenses of approximately $892.50[113] per smaller firm, $53,550[114] per medium firm, and $89,250[115] per larger firm.

The prohibitions of the proposed rule may also impose other, less quantifiable costs on advisers and political officials. An adviser that becomes subject to the prohibitions of the proposed rule would no longer be eligible to receive advisory fees from its government client. The adviser, however, would likely be obligated under its fiduciary duties to continue providing advisory services to the government client for a period of time without compensation. An adviser that provides uncompensated advisory services to a government client may incur opportunity costs if the adviser is unable to pursue other government clients. Advisers to government clients, as well as the partners, executive officers and solicitors of the adviser, also may be less likely to make political contributions to political officials, possibly imposing costs on the officials if they are unable to secure alternate funding.

We anticipate that the proposed rule amendments would impose few, if any, additional costs. As discussed above, advisers generally would establish internal compliance procedures to comply with the proposed rule. Advisers would create and maintain various records, as required by their own compliance procedures. The proposed rule amendments are intended to cover those records an adviser typically would maintain in complying with the proposed rule. Advisers that are exempt from Commission registration under section 203(b) of the Advisers Act would be subject to the proposed rule, but not the proposed recordkeeping amendments. We have requested comment on the scope of the proposed rule and rule amendments.

C. Requests for Comment

The Commission requests comment on the effects of the proposed rule and rule amendments on individual investment advisers and on the advisory profession as a whole. We request data to quantify the costs and value of the benefits associated with the proposed rule. Specifically, comment is requested on the costs of establishing compliance procedures to comply with the proposed rule, both on an initial and ongoing basis. Comment also is requested on the costs of using compliance procedures of an affiliated broker-dealer that the broker-dealer established as a result of rule G–37. In addition, we request data

[108] This number was used for purposes of the Paperwork Reduction Act analysis, *infra* section IV.

[109] Hal Lux, *Hedge Fund? Who Me?*, Institutional Investor, Aug. 1998, at 33; Bethany McLean, *Everybody's Going Hedge Funds*, Fortune, June 8, 1998, at 180.

[110] The per firm cost estimate is based on our estimate that development of initial compliance procedures for smaller firms would take 2.5 hours of professional time (at $114 per hour).

[111] The per firm cost estimate is based on our estimate that development of initial compliance procedures for medium firms would take 112.50 hours of professional time (at $114 per hour) and 37.5 hours of clerical time (at $15 per hour).

[112] The per firm cost estimate is based on our estimate that development of initial compliance procedures for larger firms would take 187.50 hours of professional time (at $114 per hour) and 62.5 hours of clerical time (at $15 per hour).

[113] The per firm cost estimate is based on our estimate that ongoing compliance procedures for smaller firms would take 7.5 hours of professional time (at $114 per hour) and 2.5 hours of clerical time (at $15 per hour), per year.

[114] The per firm cost estimate is based on our estimate that ongoing compliance procedures for medium firms would take 450 hours of professional time (at $114 per hour) and 150 hours of clerical time (at $15 per hour), per year.

[115] The per firm cost estimate is based on our estimate that ongoing compliance procedures for larger firms would take 750 hours of professional time (at $114 per hour) and 250 hours of clerical time (at $15 per hour), per year.

regarding our assumptions about advisers exempt from registration under section 203(b) of the Act, such as the number of advisers that would be subject to the proposed rule, and the number of partners, executive officers and solicitors of these exempt advisers. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Paperwork Reduction Act

The proposed rule amendments contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995,[116] and the Commission has submitted the amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Rule 204–2'' under the Advisers Act. Rule 204–2 contains a currently approved collection of information number under OMB control number 3235–0278. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB number is displayed.

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.[117] The current collection of information for rule 204–2 is based on average of 235.47 burden hours each year, per Commission-registered adviser, for a total of 1,483,461 burden hours. The current total burden is based on 6,300 potential respondents.

The proposed amendments to rule 204–2 would require registered investment advisers that provide advisory services to government clients to maintain certain records of contributions made by the adviser or any of its partners, executive officers, or solicitors. These records would be required to be maintained in the manner, and for the period of time, as other books and records under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2. Advisers that are exempt from Commission registration under section 203(b) of the Advisers Act would not be subject to the recordkeeping requirements.

Commission records indicate that there currently are approximately 8,200 potential respondents to the collection of information imposed by rule 204–2. As a result of the increase in the number of advisers registered with the Commission, the total burden is being increased by 447,393 hours (1,900 new advisers × 235.47 hours). We estimate that there may be as many as 1,500 advisers that provide advisory services to government clients and would thus be affected by the proposed rule amendments. Under the proposed amendments, each respondent would be required to retain the records on an ongoing basis. The proposed amendments to rule 204–2 are estimated to increase the burden by approximately two hours, to 237.47, per Commission-registered adviser with government clients. The weighted average burden per Commission-registered adviser is 235.83. The annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 thus would be 1,933,854 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609 with reference to File No. S7–19–99. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–19–99, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed rule 206(4)–5 and proposed amendments to rule 204–2, both under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the proposed rule would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or any of its partners, executive officers or solicitors made a contribution to certain elected officials or candidates. The prohibition would not result from contributions of up to $250 (per election) made by a partner, executive officer or solicitor of the adviser to an elected official or candidate for whom the person making the contribution can vote. The rule amendments would require a registered adviser that has government clients and makes political contributions to maintain certain records of their political contributions. The IRFA states that the new rule and rule amendments are designed to prevent advisers from engaging in pay to play practices, and to protect advisory clients (and their beneficiaries) from the consequences of pay to play.

The IRFA contains the statutory authority for the proposed rule and rule amendments. The IRFA also discusses the effect of the proposed rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if (i) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV (17 CFR 279.1), (ii) it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (iii) it is not in a control relationship with another investment adviser that is not a small entity.[118]

The Commission estimates that of the investment advisers subject to the proposed rule and rule amendments, approximately 1,000 are small entities. The Commission has no information regarding the number of small-entity advisers that provide advisory services

[116] 44 U.S.C. 3501.

[117] *See* section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)).

[118] Rule 0–7 (17 CFR 275.0–7).

to government clients. Advisers to state and local governments, however, are unlikely to be small entities. The proposed rule and rule amendments, therefore, would likely affect few or no small entities.

The IRFA states that the proposed rule and rule amendments would impose no new reporting requirements. The proposed rule and rule amendments, however, would create certain new compliance and recordkeeping requirements. The proposed rule imposes a new compliance requirement by prohibiting an adviser from providing advisory services for compensation to government clients for two years after the adviser or any of its partners, executive officers or solicitors makes a contribution to certain elected officials or candidates. The proposed rule amendments would impose new recordkeeping requirements by requiring an adviser to state and local governments that makes political contributions to maintain certain records of its contributions and its advisory clients. An investment adviser that either does not make political contributions or does not provide advisory services to a state or local government would be unaffected by the proposed rule and rule amendments. Moreover, as discussed above, few or no small entities are likely to be affected by the proposed rule and rule amendments. There are no rules that duplicate, overlap, or conflict with, the proposed rule and rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule amendments that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule and rule amendments for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule and rule amendments, or any part thereof, for small entities.

As discussed in more detail in the IRFA, we believe it would be both unfeasible and unnecessary to exempt small entities from the proposed rule and rule amendments. After taking into account the resources available to small entities and the potential burden that could be placed on small-entity investment advisers, the Commission is proposing to require small entities to be subject to the proposed rule and rule amendments. As discussed in more detail in the IRFA, we have taken steps to minimize the effects on small-entity investment advisers. We have determined that it does not appear feasible to establish different reporting or compliance requirements or to further clarify, consolidate, or simplify the reporting or compliance requirements.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule and rule amendments. A copy of the IRFA may be obtained by contacting Jeffrey O. Himstreet, Attorney, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549–0506.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule and rule amendment on the economy on an annual basis. Commenters should provide empirical data to support their views.

VI. Statutory Authority

The Commission is proposing new rule 206(4)–5 of the Act pursuant to the authority set forth in sections 206(4) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(4), 80b–11(a)).

The Commission is proposing amendments to rule 204–2 of the Act pursuant to the authority set forth in sections 204 and 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80b–6(4)).

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.206(4)–5 is added to read as follows:

§ 275.206(4)–5 Political contributions by certain investment advisers.

(a) *Prohibitions.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), it shall be unlawful:

(1) For any investment adviser not prohibited from registering with the Commission under section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by:

(i) The investment adviser;

(ii) Any partner, executive officer or solicitor of the investment adviser (including a person who becomes a partner, executive officer or solicitor within two-years after the contribution is made); or

(iii) Any political action committee controlled by the investment adviser or by any partner, executive officer or solicitor of the investment adviser; and

(2) For any investment adviser not prohibited from registering with the Commission under section 203A(a) of the Act (15 U.S.C. 80b–3a(a)), or any of its partners, executive officers or solicitors:

(i) To solicit any person or political action committee to make, or coordinate, any contribution to an official of a government entity to which the investment adviser is providing or seeking to provide investment advisory services; or

(ii) To do anything indirectly which, if done directly, would result in a violation of this section.

(b) *Exception.* Paragraph (a)(1) of this section does not apply to contributions made by a partner, executive officer or solicitor to officials for whom the partner, executive officer or solicitor was entitled to vote at the time of the contributions and which in the aggregate do not exceed $250 to any one official, per election.

(c) *Special rule for private investment companies.* For purposes of this section, an investment adviser to a private investment company in which a government entity invests provides investment advisory services to the government entity.

(d) *Exemptions.* The Commission, upon application, may conditionally or unconditionally exempt an investment adviser from the prohibition under paragraph (a)(1) of this section. In determining whether to grant an exemption, the Commission will consider, among other factors, whether:

(1) The exemption is consistent with the purposes of this section;

(2) The investment adviser, before the contribution(s) resulting in the prohibition was made:

(i) Developed and instituted procedures reasonably designed to ensure compliance with this section;

(ii) Had no actual knowledge of the contribution(s); and

(3) The investment adviser:

(i) Has taken all available steps to obtain a return of the contribution(s); and

(ii) Has taken other remedial or preventive measures as may be appropriate under the circumstances.

(e) *Definitions.* For purposes of this section:

(1) *Contribution* means any gift, subscription, loan, advance, or deposit of money or anything of value made for:

(i) The purpose of influencing any election for federal, state or local office;

(ii) Payment of debt incurred in connection with any such election; or

(iii) Transition or inaugural expenses of the successful candidate for State or local office.

(2) *Executive officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) *Government entity* means any State or political subdivision of a State, including

(i) Any agency, authority, or instrumentality of the State or political subdivision;

(ii) Plan or pools of assets controlled by the State or political subdivision or any agency, authority or instrumentality thereof; and

(iii) Officers, agents, or employees of the State or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.

(4) *Official* means any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate:

(i) For an elective office of a government entity, if the office is directly or indirectly responsible for, or can influence the outcome of, the use of an investment adviser by a government entity; or

(ii) For any elective office of a government entity, if the office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the use of an investment adviser.

(5) A *Private investment company* is a company that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) but for the exceptions to that definition in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1)).

(6) A *Solicitor* is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(f) *Effective date.* The prohibition on providing investment advisory services as described in this section arises only from contributions made on or after (the effective date of this section).

3. Section 275.204–2 is amended by revising paragraphs (e)(1) and (h)(1) and adding paragraph (l) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(e)(1) The following books and records must be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser:

(i) Books and records required to be made under the provisions of paragraphs (a) to (c)(1) (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this section); and

(ii) Books and records required to be made under the provisions of paragraph (1) of this section.

* * * * *

(h)(1) Any book or other record made, kept, maintained and preserved in compliance with §§ 240.17a–3 and 240.17a–4 of this chapter under the Securities Exchange Act of 1934, or with rules adopted by the Municipal Securities Rulemaking Board, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

* * * * *

(l)(1) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) that provides investment advisory services to a government entity, must make and keep the following records:

(i) The names, titles and business and residence addresses of all partners, executive officers or solicitors of the investment adviser;

(ii) The States in which the investment adviser or any of its partners, executive officers, or solicitors is providing or seeking to provide investment advisory services to a government entity;

(iii) All government entities to which the investment adviser has provided investment advisory services in the past five years, but not prior to (insert effective date of rule); and

(iv) All direct or indirect contributions or payments made by the investment adviser or any of its partners, executive officers, or solicitors or a political action committee controlled by the investment adviser or any of its partners, executive officers, or solicitors to an official, a political party of a State or political subdivision thereof, or a political action committee.

(2) Records of the contributions and payments must be listed in chronological order and indicate:

(i) The name and title of each contributor;

(ii) The name and title (including any city/county/state or other political subdivision) of each recipient of a contribution or payment; and

(iii) The amount and date of each contribution or payment.

(3) For purposes of this section:

(i) The terms *contribution*, *government entity*, *official*, *executive officer* and *solicitor* have the same meanings as set forth in § 275.206(4)–5.

(ii) The term *payment* means any gift, subscription, loan, advance, or deposit of money or anything of value.

Dated: August 4, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20489 Filed 8–9–99; 8:45 am]

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federal register

Tuesday
August 10, 1999

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes; Proposed Rule

Proposed Technical Standard Order (TSO)–C135, Transport Airplane Wheels and Wheel and Brake Assemblies; Proposed Rule

Proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–6063; Notice No. 99–16]

RIN 2120–AG80

Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to revise the airworthiness standards for transport category airplanes to harmonize braking systems design and test requirements with standards proposed for the European Joint Aviation Requirements (JAR). These proposals were developed in cooperation with the Joint Aviation Authorities (JAA) of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee (ARAC), and are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures contained in the airworthiness standards without reducing, but potentially enhancing, the current level of safety.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to U.S. Department of Transportation Dockets, Docket No. FAA–1999–6063, 400 Seventh Street SW., Room Plaza 401, Washington DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m weekdays, except Federal holidays. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mahinder K. Wahi, FAA, Propulsion/Mechanical Systems/Cabin Safety Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2142; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters must identify the regulatory docket or notice number and submit comments in duplicate to the Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The Docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered to the extent practicable. The proposals in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–1999–6063.'' The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Communications must identify the notice number of docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The airworthiness standards for transport category airplanes are contained in 14 CFR part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the relevant standards of part 25. These standards apply to airplanes manufactured within the U.S. for use by U.S.-registered operators and to airplanes manufactured in other countries and imported under a bilateral airworthiness agreement.

In Europe, the Joint Aviation Requirements (JAR) were developed by the Joint Aviation Authorities (JAA) to provide a common set of airworthiness standards for use within the Europe aviation community. The airworthiness standards for European type certification of transport category airplanes, JAR–25, are based on part 25 of Title 14. Airplanes certificated to the JAR–25 standards, including airplanes manufactured in the U.S. for export to Europe, receive type certificates that are accepted by the aircraft certification authorities of 23 European countries.

Although part 25 and JAR–25 are very similar, they are not identical. Differences between the FAR and the JAR can result in substantial additional costs when airplanes are type certificated to both standards. These additional costs, however, frequently do not bring about an increase in safety. For example, part 25 and JAR–25 may use different means to accomplish the same safety intent. In this case, the manufacturer is usually burdened with meeting both requirements, although the level of safety is not increased correspondingly. Recognizing that a common set of standards would not only economically benefit the aviation industry, but would also maintain the necessary high level of safety, the FAA and JAA consider harmonization to be a high priority.

In 1988, the FAA, in cooperation with the JAA and other organizations representing the American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and

the airworthiness requirements of Europe, especially in the areas of Flight Test and Structures.

The Aviation Rulemaking Advisory Committee

The Aviation Rulemaking Advisory Committee (ARAC) was formally established by the FAA on January 22, 1991 (56 FR 2190) to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Starting in 1992, the FAA harmonization effort for various systems related airworthiness requirements was undertaken by the ARAC. A working group of industry and government braking systems specialists of Europe, the United States, and Canada was chartered by notice in the **Federal Register** (59 FR 30080, June 10, 1994). The working group was tasked to develop a harmonized standard, such as a Technical Standard Order (TSO), for approval of wheels and brakes to be installed on transport category airplanes and to develop a draft notice of proposed rulemaking (NPRM), with supporting economic and other required analyses, and/or any other related guidance material or collateral documents, such as advisory circulars, concerning new or revised requirements and the associated test conditions for wheels, brakes and braking systems, installed in transport category airplanes (§ 25.731 and 25.735). The JAA is to develop a similar proposal to amend JAR–25, as necessary, to achieve harmonization.

The rulemaking proposal contained in this notice is based on a recommendation developed by the Braking Systems Harmonization Working Group, and presented to the FAA by the ARAC as a recommendation.

General Discussion of the Proposals

The FAA proposes to amend 14 CFR 25.731 and 25.735 to harmonize these sections with JAR–25. The JAA intends to publish a Notice of Proposed Amendment (NPA), also developed by the Braking Systems Harmonization Working Group, to revise JAR–25 as necessary to ensure harmonization in those areas for which the proposed amendments differ from the current JAR–25, Change 14. When published, the NPA will be placed in the docket for this rulemaking.

Generally, the FAA proposes to: (1) add appropriate existing JAR requirements to achieve harmonization; (2) move some of the existing regulatory text, considered to be of an advisory nature, to an advisory circular; (3) add regulations addressing automatic brake systems, brake wear indicators, pressure release devices, and system compatibility; and (4) consolidate and/or separate requirement subparagraphs for clarity.

A new proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis, has been developed by the ARAC Harmonization Working Group to ensure consistent application of these proposed revised standards. Public comments concerning AC 25.735–1X are invited by separate notice published elsewhere in this issue of the **Federal Register**. The JAA intends to publish an Advisory Material Joint (AMJ), also developed by the Harmonization Working Group, to accompany its NPA. The proposed AC and the proposed AMJ contain harmonized advisory information.

A new proposed TSO–C135 has also been developed by the Harmonization Working Group as a harmonized standard for approval of transport airplane wheels and wheel and brake assemblies to replace applicable parts of the existing TSO–C26c, Aircraft Wheels and Wheel-Brakes Assemblies, dated May 18, 1984. Pubic comments concerning TSO–C135 are invited by separate notice published elsewhere in this issue of the **Federal Register**. The JAA intends to adopt TSO–C135 as Joint Technical Standard Order (JTSO)–C135 and publish it to accompany their NPA.

Section by Section Discussion of the Proposals

Proposal 1. The FAA proposes to revise the current heading of § 25.735, ''Brakes,'' to read ''§ 25.735 Brakes and braking systems.''

Discussion: This section covers not only the brakes and their performance requirements and safety considerations, but also provides requirements for the systems and equipment associated with the brakes. As examples, the proposed additional paragraph (b)(2) refers to the brake hydraulic system and the hydraulic fluid supplying the brakes, and the proposed paragraph (e) refers to the antiskid system. The proposed change is of an editorial nature only, and consequently would have no impact on the current level of safety.

Proposal 2. The FAA proposes to add a heading to and revise the text of § 25.735(a) to read, ''(a) *Approval.* Each assembly consisting of a wheel(s) and brake(s) must be approved.''

Discussion: The current § 25.735(a), which states that each brake must be approved, is considered incomplete. Although a wheel not associated with a brake (non-braked) may be approved on its own per the applicable TSO, a brake approval is always considered in combination with its associated wheel(s) (i.e., for a combined wheel(s) and brake(s) assembly). The proposed change is of an editorial nature only and therefore would have no impact on the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Proposal 3. The FAA proposes to add the heading ''Brake system capability'' to § 25.735(b), to separate and revise the current text of the first sentence of § 25.735(b) into §§ 25.735(b) and (b)(1), and to delete the current text of the entire second sentence to read:

''(b) *Brake system capability.* The brake system, associated systems and components must be designed and constructed so that: (1) if any electrical, pneumatic, hydraulic or mechanical connecting or transmitting element fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest with a braked roll stopping distance of not more than two times that

obtained in determining the landing distance as prescribed in § 25.125.''

Discussion: The current text of the first sentence of § 25.735(b) reads, ''The brake systems and associated systems must be designed and constructed so that if any electrical, pneumatic, hydraulic, or mechanical connecting or transmitting element (excluding the operating pedal or handle) fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest under conditions specified in § 25.125 with a mean deceleration during the landing roll of at least 50 percent of that obtained in determining the landing distance as prescribed in that section.''

Under this proposal, the term ''components'' would be added to the terms ''brake system and associated systems'' in the first sentence to make it more comprehensive. The parenthetical phrase ''(excluding the operating pedal or handle)'' would be deleted because no justification could be found for such an exclusion. The words ''braked roll stopping distance'' would be inserted in place of ''landing roll'' to clarify that the requirement refers only to the distance covered while the brakes are applied. The change in concept from at least 50 percent mean deceleration to not more than two times the landing distance is intended to eliminate any possible confusion between ''mean'' and ''average'' deceleration, and to state the requirement more clearly in terms of its real intent. The other changes in text are editorial and are made for clarity.

The current second sentence reads ''subcomponents within the brake assembly, such as brake drum, shoes, and actuators (or their equivalents), shall be considered as connecting or transmitting elements, unless it is shown that leakage of hydraulic fluid resulting from failure of the sealing elements in these subcomponents within the brake assembly would not reduce the braking effectiveness below that specified in this paragraph.'' The current second sentence would be removed and, due to its advisory content, included as guidance material in proposed AC 25.735–1X.

The proposed changes are clarifications of current regulations and the associated terminology and therefore would have no impact on the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Proposal 4. The FAA proposes to add a new § 25.735(b)(2) that would contain the intent and content of the ACJ 25.735(b) of JAR–25 regarding protection against fire resulting from hydraulic fluid leakage, spillage, or spraying on hot brakes. The proposal would state that, ''(2) Fluid lost from a brake hydraulic system, following a failure in, or in the vicinity of, the brakes, is insufficient to cause or support a hazardous fire on the ground or in flight.''

Discussion: Although the proposed requirement was previously included in ACJ 25.735(b) as acceptable means of compliance and interpretative material, it is now thought more appropriate that these practices should be considered as requirements as they have generally been treated as such in the past by both airplane manufacturers and regulatory authorities. The current level of safety would not be affected by this proposed change as it would adopt an existing industry practice. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 5. The FAA proposes to add the heading ''Brake controls'' to § 25.735(c), and to separate and revise the current text of § 25.735(c) into §§ 25.735(c) and (c)(1) to read: ''(c) *Brake Controls.* The brake controls must be designed and constructed so that: (1) Excessive control force is not required for their operation.''

Discussion: The current text reads, ''Brake controls may not require excessive control force in their operation.'' The proposed changes are clarifications of current regulations and the associated terminology and therefore the current level of safety would not be impacted. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 6. The FAA proposes to add a new § 25.735(c)(2) to read: ''(2) If an automatic braking system is installed, means are provided to (i) arm and disarm the system, and (ii) allow the pilot(s) to override the system by use of manual braking.''

Discussion: The intent and content of the proposed changes have generally been adopted in the design of current automatic braking systems and are currently included in FAA Order 8110.8, ''Engineering Flight Test Guide for Transport Category Airplanes,'' as interpretative and acceptable means of compliance. Consequently, both the airplane manufacturers and the regulatory authorities have generally considered them as standard practices; therefore, they would not impact the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 7. The FAA proposes to amend § 25.735(d) by adding the heading, ''Parking brake,'' and by modifying the current text from, ''The airplane must have a parking control that, when set by the pilot, will without further attention, prevent the airplane from rolling on a paved, level runway with takeoff power on the critical engine.'' to ''(d) *Parking brake.* The airplane must have a parking brake control that, when selected on, will, without further attention, prevent the airplane from rolling on a dry and level paved runway when the most adverse combination of maximum thrust on one engine and up to maximum ground idle thrust on any, or all, other engine(s) is applied. The control must be suitably located or be adequately protected to prevent inadvertent operation. There must be indication in the cockpit when the parking brake is not fully released.''

Discussion: Introduction of the word ''brake'' before ''control'' clarifies that the paragraph refers to the means provided to the flightcrew for the application of the wheel brakes in the airplane parking mode. By revising the text, as proposed, the requirements would be enhanced to cover not only the case of a single engine takeoff thrust check with all other engines stopped, but would also cover an equally if not more probable case where any or all other engines are operating and producing up to a maximum ground idle thrust. The proposal also clarifies the extent of the takeoff thrust to be considered for the ''critical'' engine as the maximum that can be achieved, and by implication also requires the relevant thrust cases for remaining engine(s) according to the environmental circumstances that are dictated for the achievement of the maximum takeoff thrust on the critical engine. The word ''dry'' is added solely for clarification of the current understanding of this requirement.

The requirement for suitable location or protection against inadvertent operation of the parking brake control is derived from the current ACJ 25.735(d) of JAR–25 and is introduced because it is believed that such considerations should be regarded as requirements, and have generally been treated as such in the past by both airplane manufacturers and regulatory authorities. The additional requirement for cockpit indication when the parking brake is ''not fully released'' is to caution the pilot against a takeoff with the parking brake set. The proposed changes potentially enhance the current level of safety by clarifying intent and addressing come critical cases. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 8. The FAA proposes to add the heading ''Antiskid system'' to § 25.735(e), to delete the current text

''no single probable malfunction will result in a hazardous loss of braking ability or directional control of the airplane'' as being superfluous, and in order to facilitate the introduction of the new proposed § 25.735(e)(1) and (e)(2) under proposals 9 and 10 respectively, revise the remaining current text to read:

''(e) *Antiskid system*. If an antiskid system is installed:''

Discussion: The current § 25.735(e9 reads: ''If antiskid devices are installed, the devices and associated systems must be designed so that no single probable malfunction will result in hazardous loss of braking ability or directional control of the airplane.'' The reference to antiskid devices and associated systems would be changed to ''antiskid system,'' this being more appropriate to the paragraph's intent. The term ''probable'' was incompatible with the terminology of § 25.1309 because a ''probable'' malfunction cannot be associated with either major or hazardous effects and, if used in the ''§ 25.1309'' sense, could lead to a requirement that could be seen as less severe than § 25.1309 for that specific failure condition, with no obvious technical/state of the art reasons. It appears that the terminology (probable and hazardous) used was probably not ''§ 25.1309 related'' when the requirement was first introduced. Rather than trying to define the words, it is considered that the requirement is adequately covered by § 25.1309 and the current § 25.735(e) is superfluous. The proposed changes are of a clarifying and an editorial nature only and therefore would have no impact on the current level of safety. Appropriate advisory material would be included in proposed AC 25.735–1X.

Proposal 9. The FAA proposes to add a new § 25.735(e)(1) to read.

''(1) It must operate satisfactory over the range of expected runway conditions, without external adjustment.''

Discussion: The intent and content of the proposed changes are currently included in FAA Order 8110.8, ''Engineering Flight Test Guide for Transport Category Airplanes,'' as interpretative material and acceptable means of compliance and are deemed appropriate to be adopted as requirements. Both the airplane manufacturers and the regulatory authorities have, in the past, considered them as standard practices; therefore, they would not impact the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 10. The FAA proposes to add a new § 25.735(e)(2) to read: ''(2) It must, at all times, have priority over the automatic braking system, if installed.''

Discussion: The intent and content of the proposed change is currently included in FAA Order 8110.8, ''Engineering Flight Test Guide for Transport Category Airplanes,'' as interpretative material and acceptable means of compliance and is deemed appropriate to be adopted as a requirement. Both the airplane manufacturers and the regulatory authorities have, in the past, considered it as a standard practice; therefore, it would not impact the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 11. The FAA proposes to amend § 25.735(f) by adding the heading ''Kinetic energy capacity,'' by consolidating the requirements of current paragraphs (f) and (h), by adding similar requirements for a high energy landing condition, by removing paragraphs (f)(1) and (2), and paragraphs (h)(1) and (2), and by revising the text to read:

''(f) *Kinetic energy capacity.* The design landing stop, the maximum kinetic energy accelerate-stop, and the most severe landing stop brake kinetic energy absorption requirements of each wheel and brake assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy. Energy absorption rates defined by the airplane manufacturer must be achieved. These rates must be equivalent to mean decelerations not less than 10 fps^2 [feet per second] for the design landing stop and 6 fps^2 for the maximum kinetic energy accelerate stop. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe. Design landing stop is an operational landing stop at maximum landing weight. Maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. Most severe landing stop is a stop at the most critical combination of airplane landing weight and speed.

Discussion: The current paragraphs (f) and (h) state that the brake kinetic energy capacity ratings may not be less than the determined energy absorption requirements. The proposed paragraph (f) would require the calculation of the necessary energy absorption capacity, and require dynamometer test substantiation of the capability of the wheel and brake assemblies to absorb the energy at not less than specified rates. Usually, brakes are sized to exceed the calculated energy absorption requirements (i.e., their capacity exceeds the requirements, hence the heading ''Kinetic energy capacity''). The term ''rating'' would be deleted because it is more relevant to the TSO than to the regulation. The proposed change would encompass the requirements of current paragraph (h) without the need for complete duplication of text.

The term ''rejected takeoff'' used under current paragraph (h) would be replaced with ''accelerate-stop'' for compatibility with § 25.109 terminology; and the term ''most severe landing stop'' would be added to address cases such as emergency return to land after takeoff, where the brake energy for a flaps up landing may exceed that corresponding to the accelerate-stop energy. For the accelerate-stop and the most severe landing stop, it is intended that the initial brake temperature resulting from previous brake use must be accounted for as specified in paragraphs 3.3.3.3 and 3.3.4.3 in the proposed TSO–C135. It should be noted that the consideration for the initial temperature (in terms of residual energy) reflects an existing British Civil Aviation authority (CAA) Specification 17 requirement. Changing the term ''main wheel-brake assemblies'' to ''wheel and brake assemblies,'' ensures the paragraph,'' ensures the paragraph's applicability to any wheels fitted with brakes (i.e., includes the possibility of nose wheel brakes, etc.) and further ensures the understanding that the absorption requirements apply to the wheel and brake assembly. The substantiation statement requires that the wheel and brake assemblies be capable of absorbing the calculated levels of kinetic energy at the fully worn limit and that the energy absorption capability substantiation testing be conducted on the dynamometer.

The current §§ 25.735(f)(1) and (h)(1) would be incorporated in proposed AC 25.735–1X, because their content is not strictly part of the requirement, but provides advice on the primary features that should be conservatively included in a rational analysis.

The current §§ 25.735(f)(2) and (h)(2) are not strictly the requirement, but advice on the method of energy calculation to be used. Consequently, these would be incorporated in proposed AC 25.735–1X.

Because the required energy capacity of *each* wheel and brake assembly must be determined, the need to refer to

''designed unequal braking distributions'' is no longer necessary and would be deleted.

The current level of safety would be retained and possibly enhanced by addressing the most severe landing stop condition. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 12. The FAA proposes to remove the current § 25.735(g) requirement.

Discussion: The current § 25.735(g) requirement states that when setting up the dynamometer test inertia, an increase in the initial brake application speed is not a permissible method of accounting for a reduced (i.e., lower than ideal) dynamometer mass. This method is not permissible because, for a target test deceleration, a reduction in the energy absorption rate would result, and could produce a performance different from that which would be achieved with the correct brake application speed. Such a situation is recognized and is similarly stated in the proposed new TSO–C135, which would provide an acceptable means for wheel and brake assembly approval under § 25.735(a), thus making current § 25.735(g) unnecessary. The proposed change consolidates existing requirements and deletes redundant wording, and therefore would not impact the current level of safety.

Proposal 13. The FAA proposes to add a new § 24.735(g), ''Brake condition after high kinetic energy dynamometer stop(s),'' to read:

''(g) *Brake condition after high kinetic energy dynamometer stop(s).* Following the high kinetic energy stop demonstration(s) required by paragraph (f) of this section, with the parking brake promptly and fully applied for at least three (3) minutes, it must be demonstrated that for at least five (5) minutes from application of the parking brake, no condition occurs (or has occurred during the stop), including fire associated with the tire or wheel and brake assembly, that could prejudice the safe and complete evacuation of the airplane.''

Discussion: Paragraph (g) would require that the parking brake be applied for a minimum of three minutes, which is considered to be the minimum period of time required to cover the brake's ability to maintain the airplane in a stationary condition to allow a safe evacuation.

The requirement also gives consideration to the fact that the flightcrew may not be aware of the condition of the brake assemblies at the commencement of the flight, nor of the condition of the brake and wheel assemblies following the braking maneuver. Furthermore, the reason for the severe braking could encompass both airplane system and engine failures or fires. It would therefore appear sensible that it should be demonstrated that neither during the stop, nor for a reasonable period of time after its completion, no condition(s) shall occur as a result of these maneuvers that could further prejudice the safe and complete evacuation of the airplane. On the basis that an evacuation may be determined as prudent or necessary, and that such an evacuation must be capable of completion, irrespective of the timely response of the emergency services, for minutes would appear to be a reasonable period of time for the associated brake systems and equipment to remain free from conditions that might prejudice or jeopardize the evacuation. It is proposed that this period should commence at the time of initial application of the parking brake, this being a time during which the possible need for evacuation and airport emergency services occurs following an accelerate-stop. The proposed changes provide for the additional demonstration of a safe condition following high energy absorption by the wheels and brakes, which was not previously required. Although previously approved brakes may have been able to comply with the requirement, approval could not have been refused had this not been the case. It is therefore believed that the proposed changes would provide a potential enhancement of the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 14. The FAA proposes to add a modified version of the current JAR 25.735(i) as new 14 CFR 25.735(h), ''Stored energy systems,'' to read:

''(h) *Stored energy systems.* An indication to the flightcrew of usable stored energy must be provided if a stored energy system is used to show compliance with paragraph (b)(1) of this section. The available stored energy must be sufficient for:

(1) At least six (6) full applications of the brakes when an antiskid system is not operating; and,

(2) Bringing the airplane to a complete stop when an antiskid system is operating, under all runway surface conditions for which the airplane is certificated.''

Discussion: A full brake application is defined as an application from brakes fully released to brakes fully applied, and back to fully released. For those airplanes that may provide a number of independent braking systems, which are not ''reliant'' on a stored energy system for the demonstration of compliance with paragraph (b)(1) of this section, but which perhaps incorporate a stored energy device, this requirement is not applicable. It would be unreasonable that the requirement for a minimum energy capacity and the provision of means to indicate the level of stored energy to the flightcrew should be maintained, particularly if its failure would have a minimal consequence on airplane or passenger safety.

In the event that an hydraulic accumulator is used for energy storage and the gas pressurization depletes, a pressure indication alone as currently required in JAR 25.735(i) would be inadequate because it would not provide indication of such faults to the flightcrew. In fact, the current typical flight deck presentation could give a false sense of security to the crew because it would almost inevitably indicate a satisfactory pressure, regardless of the real situation. Consequently, the proposed rule would require a measure of the stored energy, rather than pressure, to be presented to the flightcrew.

The minimum level of stored energy required for the emergency/standby braking means would be presented as a requirement rather than as advisory material. In the majority of cases, this material has been used as a virtual requirement in the past by airplane manufacturers and regulatory authorities. The proposed change would potentially enhance the current level of safety because the FAA is proposing to adopt a common but not universal industry practice and an improvement over the existing JAR rule. Applicable advisory material would be included in the proposed new AC 25.735–1X.

Proposal 15. The FAA proposes to add a new § 25.735(i), ''Brake wear indicators,'' to read:

''(i) *Brake wear indicators.* Means must be provided for each brake assembly to indicate when the heat sink is worn to the permissible limit. The means must be reliable and readily visible.''

Discussion: In order to ensure, as far as is practicable, that the brake heat sink is not worn beyond its allowable wear limits throughout its operational life, it is considered necessary to provide some device that can readily identify the fully worn limit of the heat sink. The proposal reflects a requirement included in a series of airworthiness directives issued between 1989 and 1994 to require establishment of brake wear limits and to provide means to indicate the same. The British Civil Aviation Authority (CAA) Specification No. 17

also specifies the provision of such an indicator, and the majority of wheel and brake assembly designs include such a device. The proposed rule would have no impact on the current level of safety, because the FAA is proposing to adopt an existing industry practice. Appropriate advisory information would be included in proposed AC 25.735–1X.

Proposal 16. The FAA proposes to add a new § 25.735(j), ''Overtemperature burst prevention,'' a new § 25.731(d), ''Overpressure burst prevention,'' and a new § 25.731(e), ''Braked wheels,'' to read as follows:

''§ 25.735(j) *Overtemperature burst prevention.* Means must be provided in each braked wheel to prevent wheel failure and tire burst that may result from elevated brake temperatures. Additionally, all wheels must meet the requirements of § 25.731(d).''

''§ 25.731(d) *Overpressure burst prevention.* Means must be provided in each wheel to prevent wheel failure and tire burst that may result from excessive pressurization of the wheel and tire assembly.''

''§ 25.731(e) *Braked wheels.* Each braked wheel must meet the applicable requirements of § 25.735.''

Discussion—§ 25.735(j): There is an existing requirement (§ 25.729(f)) related to the protection of equipment in wheel wells against the effects of bursting tires and a similar requirement is stated in TSO–C26c, Wheels and Wheel-Brake Assemblies. JAR 25.729(f) requires protection of equipment on the landing gear and in wheel wells against tire burst and elevated brake temperatures, and a similar requirement is stated in the ''Minimum Operational Performance Specification for Wheels and Brakes on JAR Part 25 Civil Aeroplanes'' (Document ED–69). However, there is no direct requirement in either part 25 or JAR–25 that means must be provided to prevent wheel failure and tire burst that could result from elevated brake temperatures. As a result, it has become an industry practice to incorporate pressure release device(s) that function as a result of elevated wheel temperatures to deflate the tires. Nevertheless, it is believed to be both reasonable and prudent that such a requirement should be clearly stated in the paragraph related to airplane brakes and braking systems. The proposed requirement for temperature activated devices would not impact the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Discussion—§ 25.731(d): Wheel failure and tire burst due to over-inflation presents a hazard to ground personnel and the airplane. Certain airplane manufacturers require wheel pressure release devices that reduce this hazard. This is considered a safety issue requiring the incorporation of these devices. Incorporation of pressure release devices in tire inflation equipment is not considered adequate due to a history of misuse resulting in serious injuries or fatalities. Installation in the wheel reduces the potential for tampering or misuse and insures proper levels of protection. The proposed change would retain and potentially enhance the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Discussion—25.731(e): This section contains regulations applicable to all airplane wheels. If the wheel is braked, additional regulations apply, which are contained in § 25.735. Section 25.731(e) is added to provide a cross-reference to those additional requirements. The proposed change would retain and potentially enhance the current level of safety.

Proposal 17. The FAA proposes to add a new § 25.735(k), ''Compatibility,'' to read:

''(k) *Compatibility.* Compatibility of the wheel and brake assemblies with the airplane and its systems must be substantiated.''

Discussion: Reliable and consistent brake system performance can be adversely affected by incompatibilities within the system and with the landing gear and the airplane. As part of the overall substantiation of safe and anomaly free operation, it is necessary to show that no unsafe conditions arise from incompatibilities between the brakes and brake system with other airplane systems and structures. Areas such as antiskid tuning, landing gear dynamics, tire type and size, brake combinations, brake characteristics, brake and landing gear vibrations, etc., need to be explored and corrected if necessary. Therefore, this requirement is introduced to address these issues which are normally covered by airplane manufacturers during development of the airplane and must be addressed by modifiers of the equipment. Incorporation of this requirement would potentially enhance the current level of safety. Appropriate advisory information would be included in proposed AC 25.735–1X.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule is not ''a significant regulatory action'' under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by OMB. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Although numerous revisions would be made to § 25.735, only one would impose additional quantified costs for both part 25 large and small airplane manufacturers (see below—proposal 11). One ARAC member, a manufacturer of part 25 small airplanes, claimed that proposals 7, 14, and 16 would also impose incremental costs, but provided no specific estimates (these proposals are also discussed below). Essentially all of the changes codify current industry practice or conform 14 CFR 25.735 to corresponding sections of the JAR. Adoption of the proposed changes would increase harmonization and commonality between American and European airworthiness standards, thus enhancing safety. Harmonization would eliminate unnecessary duplication of

airworthiness requirements, thus reducing manufacturers' certification costs (6 substantive proposals out of 17 total in the subject NPRM would essentially mirror the proposed European standards; the 11 others would not differ significantly). The FAA believes the enhanced safety benefits and harmonization cost savings would exceed the relatively low incremental costs of the proposed rule (see Summary of Costs and Benefits section below).

Proposal 7. Changes regarding parking brake control and cockpit indication of the brake essentially reflect current industry practice for the majority of part 25 manufacturers; consequently, there are no expected incremental costs. As noted above, one manufacture of part 25 small airplanes, however, indicated that its current designs do not meet this requirement and that costs for cockpit indication in future designs would, in fact, be incremental. The manufacturer, however, did not provide such costs to the FAA. The FAA invites that manufacture (and/or other interested parties) to provide detailed cost estimates during the public comment period.

Proposal 11. One ARAC member, a manufacturer of part 25 large airplanes, notes that the average impact of the 10 percent residual rejected takeoff energy requirement would be a 2 to 3 percent increase in the brake's energy absorption requirements. Notwithstanding, this increase is smaller than the tolerances on its ability to define brake requirements and the brake manufacturer's conformance to the specifications. Also, higher residual energies would enable the manufacturer to raise its recommended brake temperatures for dispatch, so any potential higher brake costs would be offset by more efficient aircraft operation (shorter turnaround times, less time at gate waiting for brakes to cool).

The term ''most severe landing stop'' (MSL) would be added to address cases such as immediate return to land after takeoff where the brake energy for a flaps up landing may exceed that corresponding to the accelerate-stop energy. The MSL requirement, while a new FAA requirement, has been in effect in Europe (per British CAA); consequently, many large part 25 airplane manufacturers currently meet this standard. Notwithstanding, large part 25 airframe and brake manufacturers note that in almost all cases either the MSL stop energy would not exceed the maximum kinetic energy accelerate-stop energy, or the MSL stop condition is extremely improbable. One part 25 large airplane manufacturer, however, noted that demonstrating adherence to this requirement for its typical airplane model would add the equivalent of two additional high-energy dynamometers tests in which the test brake would be destroyed; estimated incremental one-time costs for this equal approximately $60,000 per type certification. Another manufacturer, however, estimates only one test in the $20,000–$40,000 range. Manufacturers of small part 25 airplanes would experience some incremental one-time testing costs totaling approximately $20,000 per type certification.

The aforementioned nonrecurring costs for either the part 25 large or small airplane type certification would easily be offset by the harmonization cost savings cited earlier. Any potential safety benefits from avoiding even one minor accident would add to such benefits. The FAA therefore finds proposal 11 to be cost beneficial.

Proposal 14. As the stored energy requirement reflects current industry practice for most part 25 manufacturers, there would be no expected incremental costs associated with it. However, the same manufacturer (of part 25 small airplanes) that reported potential costs for proposal 7, also indicated that its current designs do not include usable stored energy indication, and compliance with this requirement in future designs would impose incremental costs. Detailed cost estimates, however, were not provided. The FAA requests that the manufacturers (or others) provide detailed costs estimates during the public comment period.

Proposal 16. In the last several years, many wheel manufacturers have included pressure release devices in most new production wheels in order to avoid potential liability. Codification of existing industry practice would ensure that the enhanced level of safety is retained. There are no expected incremental costs associated with this proposal since it does reflect current industry practice. However, the same manufacturer (of part 25 small airplanes) that, in contrast to other manufacturers, reported potential costs for proposals 7 and 14 indicated that the requirement for wheel pressure release devices would also impose incremental costs in future designs. Again, the FAA invites that manufacturer (or others) to provide detailed cost estimates during the public comment period.

Summary of Costs and Benefits

As delineated above, and barring more detailed information for proposals 7, 14, and 16, the FAA concludes that only proposal 11 would result in incremental costs attributable to the subject NPRM. Demonstrating adherence to the MSL requirement would increase nonrecurring testing costs from $20,000–$60,000 for a part 25 large airplane type certification; the amount for a part 25 small airplane type certification is estimated to be $20,000. According to one manufacturer, cost savings from harmonization, in terms of avoiding added costs of coordination and documentation (with the JAA and involving, for example, additional travel overseas, reports, etc.) would be equal to or greater than the maximum incremental cost of $60,000. The FAA believes that potential safety benefits resulting form specification of minimum accepted standards would supplement these cost-savings. Although there were numerous (approx. 170) accidents involving brake failures during landings in the period 1982–1995, none were determined to have been directly preventable by the subject provisions. Different designs in future type certifications, however, could present other problems (unexpected) and raise future accident rates. This proposed rule is expected to reduce the chances of future accidents by codifying in 14 CFR part 25 (and therefore making mandatory) what was prevailing, but not necessarily universal, industry practice.

For the reasons specified, the FAA finds the proposed rule to be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes as ''a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact

on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would affect manufacturers of part 25 transport category airplanes produced under future new airplane type certifications. For manufacturers, a small entity is one with 1,500 or fewer employees. No part 25 airplane manufacturer has 1,500 or fewer employees. Notwithstanding, the relatively low annualized incremental certification costs are not considered significant within the meaning of the RFA. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of manufacturers identified as small entities.

International Trade Impact Statement

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

This proposed rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result would be a positive step toward removing impediments to international trade.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) or State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall develop a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any 1 year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Amend § 25.731 to add new paragraphs (d) and (e) to read as follows:

§ 25.731 Wheels.

* * * * *

(d) *Overpressure burst prevention.* Means must be provided in each wheel to prevent wheel failure and tire burst that may result from excessive pressurization of the wheel and tire assembly.

(e) *Braked Wheels.* Each braked wheel must meet the applicable requirements of § 24.735.

3. Revise § 25.735 to read as follows:

§ 25.735 Brakes and braking systems.

(a) *Approval.* Each assembly consisting of a wheel(s) and brake(s) must be approved.

(b) *Brake system capability.* The brake system, associated systems and components must be designed and constructed so that:

(1) If any electrical, pneumatic, hydraulic, or mechanical connecting or transmitting element fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest with a braked roll stopping distance of not more than two times that obtained in determining the landing distance as prescribed in § 25.125.

(2) Fluid lost from a brake hydraulic system following a failure in, or in the vicinity of, the brakes is insufficient to cause or support a hazardous fire on the ground or in flight.

(c) *Brake controls.* The brake controls must be designed and constructed so that:

(1) Excessive control force is not required for their operation.

(2) If an automatic braking system is installed, means are provided to:

(i) Arm and disarm the system, and

(ii) Allow the pilot(s) to override the system by use of manual braking.

(d) *Parking brake.* The airplane must have a parking brake control that, when selected on, will, without further attention, prevent the airplane from rolling on a dry and level paved runway when the most adverse combination of maximum thrust on one engine and up to maximum ground idle thrust on any, or all, other engine(s) is applied. The control must be suitably located or be adequately protected to prevent inadvertent operation. There must be indication in the cockpit when the parking brake is not fully released.

(e) *Antiskid system.* If an antiskid system is installed:

(1) It must operate satisfactory over the range of expected runway conditions, without external adjustment.

(2) It must, at all times, have priority over the automatic braking system, if installed.

(f) *Kinetic energy capacity.* The design landing stop, the maximum kinetic energy accelerate-stop, and the most severe landing stop brake kinetic energy absorption requirements of each wheel and brake assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy. Energy absorption rates defined by the airplane manufacturer must be achieved. These rates must be equivalent to mean decelerations not less than 10 fps^2 for the design landing stop and 6 fps^2 for the maximum kinetic energy accelerate stop. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe. Design landing stop is an operational landing stop at maximum landing weight. Maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. Most severe landing stop is a stop at the most critical combination of airplane landing weight and speed.

(g) *Brake condition after high kinetic energy dynamometer stop(s).* Following the high kinetic energy stop demonstration(s) required by paragraph (f) of this section, with the parking brake promptly and fully applied for at least three (3) minutes, it must be demonstrated that for at least five (5) minutes from application of the parking brake, no condition occurs (or has occurred during the stop), including fire associated with the tire or wheel and brake assembly, that could prejudice the safe and complete evacuation of the airplane.

(h) *Stored energy systems.* An indication to the flightcrew of the usable stored energy must be provided if a stored energy system is used to show compliance with paragraph (b)(1) of this section. The available stored energy must be sufficient for:

(1) At least six (6) full applications of the brakes when a antiskid system is not operating; and

(2) Bringing the airplane to a complete stop when an antiskid system is operating, under all runway surface conditions for which the airplane is certificated.

(i) *Brake wear indicators.* Means must be provided for each brake assembly to indicate when the heat sink is worn to the permissible limit. The means must be reliable and readily visible.

(j) *Overtemperature burst prevention.* Means must be provided in each braked wheel to prevent wheel failure and tire burst that may result from elevated brake temperatures. Additionally, all wheels must meet the requirements of § 25.731(d).

(k) *Compatibility.* Compatibility of the wheel and brake assemblies with the airplane and its systems must be substantiated.

Issued in Washington, DC, on August 3, 1999.

Ronald T. Wojnar,

Deputy Director, Aircraft Certification Service.

[FR Doc. 99–20518 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)—C135, Transport Airplane Wheels and Wheel and Brake Assemblies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed technical standard order and request for comments.

SUMMARY: This notice announces the availability of and request comments on a proposed technical standard order (TSO) pertaining to transport airplane wheels and wheel and brake assemblies. The proposed TSO prescribes the minimum performance standards that transport category airplane wheels and wheel and brake assemblies must meet to be identified with the applicable TSO marking. this notice provides interested persons an opportunity to comment on the proposed TSO concurrently with a notice of proposed rulemaking and a proposed advisory circular on the same subject, published elsewhere in this issue of the **Federal Register.**

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Send all comments on the proposed technical standard order to the Federal Aviation Administration, Attention: Mahinder Wahi, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056. 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: Mahinder Wahi, at the above address, telephone (425) 227–2142; facsimile (425) 227–1320; e-mail mahinder.wahi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO by submitting such written data, views, or arguments as hey desire to the above specified address. Comments must identify the title and number of the TSO (TSO–C135) and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final TSO.

Background

As stated above, this proposed TSO prescribes he minimum performance standards that transport category airplane wheels and wheel and brake assemblies must meet to be identified with the applicable TSO marking. Information provided in an appendix to the TSO include the minimum performance specifications, general design specifications, minimum performance under standard test conditions, and data requirements.

The material contained in the proposed TSO was developed by the Braking Systems Harmonization Working Group of the Aviation Rulemaking Advisory committee to ensure consistent application of the standards proposed under separate notice, ''Revision of Braking Systems Airworthiness Standards to Harmonize with European Airworthiness Standards to Harmonize with European Airworthiness Standards for Transport Category airplanes,' and a corresponding proposed Advisory Circular (AC–25.735–IX, ''Brakes and Braking Systems Certification Tests and Analysis'' published elsewhere in this issue of the **Federal Register.** the corresponding advisory material and TSO developed by the JAA are AMJ 25.735 and JTSO–C135.

How To Obtain Copies

A copy of proposed TSO–C135 may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, D.C. on August 3, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–20520 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular which provides guidance as to acceptable means of demonstrating compliance with a separate notice of proposed rulemaking on the subject of brakes and braking systems published elsewhere in this issue of the **Federal Register**. This notice provides interested person an opportunity to comment on the proposed AC concurrently with the proposed rulemaking, as well as a proposed Technical Standard Order on the same subject also published elsewhere in this issue of the **Federal Register.**

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Send all comments on the proposed advisory circular to the Federal Aviation Administration, Attention, Mahinder Wahi, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. 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: Mahinder Wahi at the above address, telephone (425)) 227–2142; facsimile (425) 227–1320; or e-mail mahinder.wahi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire to the above specified address. Comments must identify the title of the AC and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Airplane Directorate before issuing the final AC.

Discussion

Although 14 CFR part 25 and the Joint Aviation Requirements, JAR–25, are very similar, they are not identical. Differences between the FAR and the JAR can result in substantial additional costs when airplanes are type certificated to both standards. Starting in 1992, the harmonization effort for various systems-related airworthiness requirements was undertaken by the Aviation Rulemaking Advisory Committee (ARAC). A working group (the Braking Systems Harmonization Working Group)) of industry and government braking systems specialists from Europe, the United States, and Canada was chartered by notice in the **Federal Register** (59 FR 30080, June 10, 1994). The working group was tasked to develop harmonized standards and any

collateral documents, such as advisory circulars, concerning new or revised requirements for braking systems, and the associated test conditions for braking systems, installed in transport category airplanes (§§ 25.731 and 25.735). The Joint Aviation Authorities (JAA)) have developed a similar proposal to amend JAR 25.731 and JAR 25.735, as necessary, to achieve harmonization.

The advisory material contained in the proposed AC was developed by the Braking Systems Harmonization Working Group to ensure consistent application of the standards proposed under separate notice, ''Revision of Braking Systems Airworthiness Standards to Harmonize with European Airwothiness Standards for Transport Category Airplanes,'' and a corresponding proposed Technical Standards Order (TSO–C135), ''Transport Airplane Wheels and Wheel and Brake Assemblies,'' published elsewhere in this issue of the **Federal Register.** The corresponding advisory material and TSO developed by the JAA are AMJ 25.735 and JTSO–C135.

Issuance of AC 25.735–1X is contingent on final adoption of the proposed amendment to part 25.

How To Obtain Copies

A copy of proposed AC 25.735–1X may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, D.C. on August 3, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–20519 Filed 8–9–99; 8:45 am]

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federal register

Tuesday
August 10, 1999

Part IX

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA03

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would govern the disclosure of institutional and financial assistance information provided to students under the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (Title IV). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The proposed regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Paula Husselmann, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: ifainprm@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann or Lloyd Horwich. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you can call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

These proposed regulations would revise the current Student Assistance General Provisions, 34 CFR part 668, concerning the disclosure of institutional and financial assistance information to students under the financial assistance programs authorized under Title IV. The revisions implement the Higher Education Amendments of 1998, Public Law 105–244, enacted October 7, 1998.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, D.C., Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over

the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee IV. Committee IV was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Jesuit Colleges and Universities
Career College Association
Council for Higher Education Accreditation
Council of Recognized National Accrediting Agencies
Council for Regional Accrediting Commissions
Education Finance Council
Legal Services Counsel (a coalition)
National Association of College and University Business Officers
National Association of Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid
Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
National Women's Law Center
State Higher Education Executive Officers Association
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

The following organizations were members of the committee for the purpose of developing proposed regulations relating to the reporting of campus crime only:

American Psychological Association
International Association of Campus Law Enforcement Administrators
International Association of Chiefs of Police
Security on Campus, Inc. (C. & H. Clery)
Society of Professional Journalists

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Subpart D—Student Consumer Information Services

The proposed regulations would (1) retitle Subpart D as Institutional and Financial Assistance Information for Students, to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

The proposed regulations would remove current § 668.42 and incorporate it into proposed § 668.41. Therefore, the proposed regulations would renumber current §§ 668.43–668.49 as §§ 668.42–668.48. The headings in this section for proposed §§ 668.43–668.48 reflect the proposed renumbering. There is no discussion of proposed § 668.42 (current § 668.43), because there is no proposed change other than the renumbering.

Section 668.41 Reporting and Disclosure of Information

Prior to the 1998 Amendments, section 485(a) of the HEA required an institution to provide specified information about the institution and its administration of the Title IV, HEA programs to all current students, and upon request to prospective students. The 1998 Amendments provided that, instead of providing the information to current students, an institution must provide current students a list of the information to which they are entitled. The 1998 Amendments did not affect an institution's responsibility concerning prospective students.

The proposed regulations would amend § 668.41 to comply with the changes made to the HEA by the 1998 Amendments, to make the information disclosure process more understandable and less burdensome to institutions, and to make the information more accessible to students, parents, employees, and other interested parties. These proposed regulations would move definitions from the various sections under Subpart D and consolidate them into § 668.41. In addition, these proposed regulations repeat many existing provisions for which no changes are proposed, but which are included to provide context for the proposed changes. These changes are discussed in the following paragraphs.

As stated previously, the 1998 Amendments require an institution to provide each enrolled student with a list of the various information that the institution must provide, upon request, to the student. Proposed § 668.41(c) implements this requirement. Proposed § 668.41(c) would require an institution to include with the list a brief description of the required disclosures. The description should be sufficient to allow the student to understand the nature of the disclosure and make an informed decision whether to request the full disclosure. The following is an example of such a description:

> A copy of [name of institution]'s annual security report. This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by [name of institution]; and on public property within, or immediately adjacent to and accessible from, the campus. The report also includes institutional policies concerning campus security, such as policies concerning alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by contacting [name of office] or by accessing the following website [address of website].

The proposed regulations would group together an institution's reporting and disclosure obligations, what must be disclosed, and to whom the disclosure must be made. These proposed regulations also would allow an institution to use the Internet or, for current students and current employees, an Intranet website, to make most of the required disclosures under Subpart D. The committee thought that use of the Internet or an Intranet would benefit institutions by reducing their publication costs and benefit individuals interested in the information by making the information more accessible.

However, an institution could not rely on the Internet or an Intranet to disclose to a prospective student-athlete and his or her parents the graduation or completion rate information and, if applicable, transfer-out rate information, required under § 668.48. The HEA requires an institution to provide this information to a student and the student's parents at the time the institution offers the student athletically related student aid.

The Secretary believes that because Congress singled out this group of prospective students and identified a student-specific time when the institution must make the disclosure, it would be inappropriate to allow the institution to use the Internet, a broad distribution medium, to disclose the information. Disclosure of this information as a posting on the Internet would not ensure that the student and his or her parents receive the information at the time the HEA requires. An institution may provide the information in paper form or through electronic mail.

An institution that chooses to use an Internet website, or an Intranet website, to make a required disclosure would be required to provide a notice, to each

person to whom the institution must disclose information, that the required information is available on the website. The proposed regulations would require that this notice (1) identify the information required to be disclosed, (2) provide the exact electronic website address for accessing the information, and (3) state that the person is entitled to a paper copy of the information, upon request.

The proposed regulations also state that a notice must be provided directly to each person to whom notice must be given. For example, the notice could be a paper document that is handed or mailed to each person, or it could be electronically mailed. It would not be sufficient for an institution simply to post the notice (as opposed to the actual disclosures, which in most cases may be posted on a website) on its Internet website or to make the notice available at electronic information kiosks. The notice requirements would also apply to the list of information that the 1998 Amendments require an institution to provide to all enrolled students.

Where an institution must make a disclosure upon request, it may not require that the request be in writing. The Secretary believes that requiring an otherwise properly directed request to be made in writing runs counter to the purpose of ensuring easy access to the information that must be disclosed.

Section 668.42 Preparation and Dissemination of Materials

The proposed regulations would remove current § 668.42 and incorporate it into proposed § 668.41, as discussed.

Section 668.43 Institutional Information

The statute requires and, therefore these proposed regulations require, that an institution disclose the requirements for a student's officially withdrawing from the institution. This proposed regulatory provision also makes other minor wording changes.

Section 668.45 Information on Completion or Graduation Rates

The proposed regulations would amend provisions relating to an institution's disclosure of its completion or graduation rate and, if applicable, transfer-out rate to comply with changes made to the HEA by the 1998 Amendments and by Public Law 105–18, the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia.

An institution will continue to be able to comply with all requirements concerning disclosure of its completion or graduation rate, and if applicable, transfer-out rate, by completing the National Center for Education Statistics' Graduation Rate Survey (GRS).

Cohort Changes

These proposed regulations incorporate changes made by Section 60001 of Public Law 105–18 which changed the beginning of the required cohort period used to calculate an institution's completion/graduation rate and, if applicable, transfer-out rate. This change requires an institution to establish a cohort beginning September 1 of each year, instead of July 1 of each year. The new cohort for calculating these rates is for students who enter an institution on or after September 1, 1998. The Secretary informed institutions of these changes in a June 1998 Dear Colleague Letter (GEN–98–11). An institution that established cohorts beginning on September 1 for students who entered the institution between September 1, 1996 and August 31, 1998 for purposes of the GRS survey may continue to report rates based on those cohorts.

Transfer-Out Rate

The proposed regulations implement the new statutory provisions pertaining to students who transfer from one institution to another. Under current regulations, an institution must disclose a transfer-out rate for students who subsequently enroll in any program of an eligible institution for which the program of the prior institution provided substantial preparation. This requirement has applied equally to institutions such as community colleges that prepare students in significant numbers for transfer to other institutions, as well as to traditional four-year institutions that have only a small, incidental number of transfers.

Under proposed § 668.45(a)(2), a transfer-out rate would be required only of institutions that determine that their mission includes providing substantial preparation for their students to transfer-out, such as community colleges. The proposed regulations would allow an institution to determine for itself if it provides substantial preparation for its students for transfer to a program at another eligible institution. Substantial preparation does not include preparation for a student to enroll in a graduate or professional program after the student completes an undergraduate program. The Secretary anticipates that the required transfer-out rate will not apply to most four-year institutions, although any institution may disclose a transfer-out rate pursuant to proposed § 668.45(f)(3).

Disclosure Date

Under current regulations, an institution is required to disclose its completion/graduation and transfer-out rates no later than January 1 following 150% of the normal time for completion/graduation from its programs. For example, an institution that offers four-year programs only, must disclose its rates for a cohort of students no later than the January 1 following six years from the date that the cohort began the program. The 1998 Amendments changed the disclosure date from January 1 to July 1 for any rate that an institution discloses on or after October 1, 1998, regardless of when the institution established the cohort.

Establishing the Cohort

Under current regulations, an institution that does not operate on a term basis must include in the cohort any first-time, full-time, certificate or degree-seeking student who attended at least one day of class. In an effort to achieve greater consistency between term and non-term institutions, for programs less than or equal to one academic year in length, the proposed regulations would include in the cohort only students who attend at least fifteen days of class. For programs that are longer than one academic year, the proposed regulations would include in the cohort only students who attend at least thirty days of class. The Secretary requests comments on whether these proposed timeframes are appropriate, in light of their potential impact on the completion or graduation and transfer-out rates.

Optional Disclosures

Current regulations provide that an institution may disclose a separate completion/graduation rate for students who transfer into the institution. Pursuant to the 1998 Amendments, the proposed regulations would give institutions the option of disclosing two additional rates. The first optional rate is a completion/graduation and transfer-out rate of students who have left school for the following reasons: to serve in the Armed Forces, to serve on official church missions, to serve with a foreign aid service of the Federal Government (e.g., the Peace Corps), because they are totally and permanently disabled, or because they are deceased. The second optional rate is a transfer-out rate even when the institution's mission does not include providing substantial preparation for its students to enroll in a program at another eligible institution.

Section 668.46 Institutional Security Policies and Crime Statistics

The proposed regulations would amend requirements relating to an institution's disclosure of its annual security report to current and prospective students and employees to comply with changes made by the 1998 Amendments and to improve the administration of the campus security regulations. The Secretary also proposes to reorganize this section so that the various requirements are more clearly presented.

Definitions—§ 668.46(a)

Business day. The proposed regulations would define a business day to mean Monday through Friday, excluding any day when the institution is closed. The 1998 Amendments require an institution that has a campus police or campus security department to establish a crime log and to enter or update information in the crime log within two business days after the campus police or campus security department receives the information.

Campus, noncampus building or property, and public property. The 1998 Amendments revised the definition of a campus and added definitions of noncampus building or property and public property for an institution to follow in complying with the campus security requirements. The proposed regulations would reflect those changes. Previously, the HEA defined campus to mean property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution for its educational purposes, as well as any property owned or controlled by a student organization recognized by the institution, or any property owned by a third-party but controlled by the institution.

a. *Campus.* The first part of the proposed definition of ''campus'' remains the same: property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution for its educational purposes. However, the new definition specifically includes residence halls. The second part of the proposed definition is property that is within or reasonably contiguous to the area described in the first part of the definition, that is owned by the institution and controlled by another person, that is frequently used by students, and that supports institutional purposes such as a food or other retail vendor.

b. *Noncampus building or property.* The first part of the definition of ''noncampus building or property'' is not significantly different from what is in the current regulatory definition of campus: any building or property owned or controlled by a student organization recognized by the institution. The proposed regulations would define recognition to mean official recognition because it may be difficult for an institution to know about organizations that it does not officially recognize. The second part of the definition is a building or property owned or controlled by the institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution. Under this provision, an institution would pay particular attention to whether students frequently use the site to determine if a location qualifies as a noncampus building or property site for campus security purposes. If students do not frequently use a site, the proposed regulations would exclude that site from noncampus buildings or property. For example, if students do not frequently go to a cooperative extension site of a land-grant institution, the institution would not consider that site a noncampus building or property.

c. *Public property.* The 1998 Amendments require the reporting of crime statistics on public property as part of an institution's annual security report. The proposed regulations would define public property to be all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus or immediately adjacent to and accessible from the campus. This definition reflects statutory changes and the committee's agreement that public property be limited to property accessible from the campus. The definition would not require an institution to include in its annual security report statistics of crimes committed on, for example, highways that are adjacent to the campus, but which are separated from the campus by a fence or other man-made barrier.

Campus security authority. These proposed regulations would modify the definition of a ''campus security authority'' in the current regulations. Under current regulations, this definition serves to identify which campus officials are responsible for making timely warning reports. The proposed definition would also apply to the statistical reporting requirements.

The proposed definition would include (1) a campus police department or a campus security department of an institution (previously a campus law enforcement unit), (2) an individual who has responsibility for campus security, but who is not part of a campus police department or a campus security department (for example, a person who only monitors the entrance to institutional property), (3) any individual specified by the institution to receive reports of offenses, and (4) any official of the institution who has significant responsibility for student and campus activities, such as student housing, student discipline, and campus judicial proceedings.

Current regulations exclude persons with significant counseling responsibilities from the definition of a ''campus security authority.'' The proposed regulations would exclude only pastoral counselors and professional counselors. The committee agreed to propose this change to ensure that crime victims and others have full access to the services of pastoral and professional counselors, but also to avoid situations where an expansive definition of counselor might be used to evade statistical reporting. These regulations propose to define a ''pastoral counselor'' as an employee of an institution who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. The proposed regulations would define a ''professional counselor'' as an employee of an institution whose official responsibilities include providing psychological counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. The Secretary requests comments on these proposed exclusions from the definition of a campus security authority.

The proposed regulations would include as a campus security authority, for purposes of reporting crime statistics in the institution's annual security report, an individual who has responsibility for campus security but who does not constitute a campus police department (for example, an access monitor who checks student identification at a building entrance). However, since this individual is separately defined from a campus police department, this individual would not be responsible for maintaining a crime log under proposed § 668.46(f).

Referred for campus disciplinary action. The 1998 Amendments require an institution to disclose in its crime statistics the number of persons referred for campus disciplinary action for

liquor-law, drug-law, and weapons possession violations. The proposed regulations would define the term ''referred for campus disciplinary action'' to mean the referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

Annual Security Report—§ 668.46(b)

The current regulations list various categories of information and required disclosures that an institution must include in the annual security report required by § 668.46. In conjunction with the proposal described below to exclude professional and pastoral counselors from the statistical reporting requirements, these proposed regulations would change the annual security report to improve and encourage voluntary reporting by students. The proposed regulations would include in the list of required disclosures:

- A description of the institution's procedures for preparing the annual disclosure of crime statistics. Currently, an institution must include a description of its procedures for making timely warning reports. The proposed regulations would require that an institution also include a description of its procedures for preparing the annual disclosure of crime statistics, in recognition of the need for students and employees to know when and how the crime statistics are gathered and disseminated by an institution.
- A statement that discloses whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis, and, if the institution has such a policy, a description of the policy and relevant procedures. The regulations propose this statement in an effort to encourage the voluntary reporting of crime statistics by a victim or witness.
- A statement that discloses whether the institution has a policy encouraging pastoral or professional counselors employed by the institution, if and when the counselor deems it appropriate, to inform the person being counseled of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. The committee agreed to propose this statement in an effort to encourage the reporting of crime statistics. Many negotiators felt strongly that the decision whether and when to provide this information to the person being counseled must remain entirely within the counselor's professional discretion. The Secretary agrees, and these proposed regulations would not interfere with that discretion.
- A statement of the institution's policy concerning the monitoring and recording (through local police agencies) of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by an institution.

Change in Statutory Reference

To conform to the 1998 Amendments, the proposed regulations would change the reference in § 668.46(b)(10) from Section 1213 to Section 120(a)–(d) of the HEA.

Report of Statistics—§ 668.46(c)

New Crime Disclosures

The 1998 Amendments changed the list of crimes that an institution must disclose in its annual security report. Current regulations require that the statistical report include a murder category; the 1998 Amendments added an additional category of manslaughter. Under the standard definitions used by the Uniform Crime Reporting System (UCR) of the Federal Bureau of Investigation (FBI), manslaughter is broken into two categories: nonnegligent manslaughter, and negligent manslaughter. Under UCR, the former is reported together with murder under a single category; negligent manslaughter is separately reported. Murder and nonnegligent manslaughter is the willful (nonnegligent) killing of one human being by another. Manslaughter by negligence is the killing of another person through gross negligence.

The proposed regulations would incorporate manslaughter into the regulations by adding nonnegligent manslaughter to the current murder category and adding a new negligent manslaughter category. Collectively the two categories would be referred to as ''criminal homicide'' consistent with the FBI's definitions.

The 1998 Amendments also added the category of arson to the crime disclosure list. Arson is defined in the UCR as any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

The proposed regulations would amend Appendix E to Part 668 of the Student Assistance General Provisions to include the definitions of criminal homicide and arson, as provided in the UCR.

Current regulations require an institution to disclose the number of arrests for the most recent calendar year for liquor-law, drug-law, and weapons possession violations. The 1998 Amendments changed the period for which these violations must be disclosed from the most recent calendar year to the most recent three calendar years to be consistent with the three calendar-year requirement for other crimes. The 1998 Amendments also require that institutions disclose not only the number of arrests for liquor-law, drug-law, and weapons possessions violations, but also the number of persons who were referred for campus disciplinary action for these activities. If a student was both arrested and referred for campus disciplinary action for the same violation, the proposed regulations would require that the institution report the statistic only under arrests.

Hate Crime Disclosure

Current regulations require an institution to disclose the number of hate crimes only among the statistics it reports for murder, forcible rape, and aggravated assault. A hate crime is one in which the victim is selected intentionally because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. The 1998 Amendments expanded the hate crime disclosure requirements. The 1998 Amendments require an institution to disclose, by category of prejudice, the number of hate crimes among:

(1) all the crimes that it is required to report (excluding arrests for and persons referred for campus disciplinary action for liquor-law, drug-law, or weapons-law violations); and

(2) any other crimes involving bodily injury reported to a local police agency or a campus security authority.

The proposed regulations would implement that change, and would require that an institution use the UCR standard of evidence of prejudice to assist in determining if a hate crime occurred. Under this standard, an incident must manifest evidence that the perpetrator selected the victim on the basis of prejudice in order to be considered a hate crime.

Disclosure of Location of Crime

The 1998 Amendments require an institution to provide a geographic breakdown for the required crime statistics according to the following categories: (1) On campus, (2) noncampus building or property, (3) public property, and (4) dormitories or other residential facilities for students on campus. The proposed regulations would incorporate these categories and clarify that the dormitory and residential facility category is a subset of the campus category.

How a Crime Is Recorded

Currently, the Secretary requires an institution to report a crime statistic for the calendar year in which the crime occurred. The proposed regulations do not address this matter specifically. In response to discussions during negotiated rulemaking, the Secretary requests comments as to whether the final regulations should require an institution to report a crime statistic for the calendar year in which the crime was reported to the institution, rather than for the calendar year in which it occurred.

Protecting Identity

The proposed regulations include the provision of the 1998 Amendments that specifically prohibits an institution from identifying the victim or the alleged perpetrator of the crime in the institution's disclosure of its crime statistics.

Time Period for Statistics and Transition to New Requirements

The HEA requires an institution to disclose the previous three calendar years' crime statistics for the required statistical disclosures. For example, an institution must include in its annual security report for 1999, crime statistics for calendar years 1996, 1997, and 1998. As discussed under the sections titled ''New crime disclosures,'' ''Hate crime disclosure,'' and ''Disclosure of location of crime,'' the 1998 Amendments changed the required statistical disclosures and the geographic areas for which the statistics must be reported; the changes were effective October 1, 1998.

Because the HEA requires the statistical disclosures to be reported on a calendar-year basis, the Secretary interprets the HEA to require that the changes concerning the collection and disclosure of crime statistics take effect at the beginning of the calendar year immediately following passage of the 1998 Amendments. Therefore, an institution must begin collecting statistics using the new categories, effective for calendar year 1999. An institution's 2000 report—which will include statistics for calendar years 1997, 1998, and 1999—must include statistics for calendar year 1999 using the new categories. An institution may continue to report statistics for calendar years 1997 and 1998 using the previously applicable categories, except that an institution may use the new categories for 1997 and 1998 if it wants to do so.

Access to Counseling

The proposed regulations would make clear that an institution is not required to report statistics relating to crimes that are reported to a pastoral counselor or a professional counselor who is functioning within the scope of his or her license or certification. These regulations are proposed in response to the counseling community's strongly held belief, expressed during the negotiated rulemaking sessions, that required reporting from counselors has had a chilling effect on victims and others' seeking counseling, particularly where counselors felt compelled under their professional ethical codes to notify individuals of the reporting requirement.

The proposed rule agreed to by the committee is intended to ensure that crime victims and others are not deterred from seeking appropriate psychological or pastoral care. The committee was of the opinion that the proposed changes to the regulation would encourage other confidential reporting options so that statistical data can be obtained without infringing on the individual's expectation of confidentiality.

Compilation of Crimes

Under existing regulations, an institution must use the definitions of crimes provided by the UCR System and the Hate Crime Collection Guidelines published by the FBI. For the application of these definitions and classification of crime, an institution may use either the UCR Reporting Handbook or the UCR Reporting Handbook: National Incident-Based Reporting System (NIBRS) EDITION, except in determining how to report a single incident involving multiple criminal offenses. If an institution reports a crime involving multiple offenses, the institution must use the UCR Reporting Handbook, including the FBI's Hierarchy Rule.

Use of a Map

The proposed regulations would add a provision to encourage an institution to use a map to aid in the disclosure of its crime statistics. The purpose of a map is to clearly depict and disclose the areas for which the institution will be reporting crime statistics; that is, its campus, noncampus buildings or property, and public property. If an institution chooses to use a map to depict these areas, the institution may limit its reporting of crime statistics to crimes committed in those areas, as long as the map accurately depicts these areas as defined by regulation. If an institution has separate campuses and chooses to use a map to depict the appropriate geographic areas, the proposed regulations would require that the institution use separate maps for separate campuses.

Obtaining Statistics From Local and State Police Agencies

The Secretary proposes to clarify that an institution may rely on statistical information supplied by local and State police agencies, as long as the institution makes a reasonable, good faith effort to obtain these statistics. The Secretary encourages an institution to document its efforts to obtain these data, including its success or lack of success in obtaining the data.

Disclosure Date for Annual Security Report

The committee agreed to change the date by which an institution must disclose its annual security report from September 1 to October 1 of each year because many institutions do not begin fall enrollment until after September 1.

Timely Warning—§ 668.46(e)

The 1998 Amendments did not change the requirement that an institution make a timely warning report to the campus community when a crime that the institution considers to be a threat to students and employees is reported to a campus security authority or a local police agency. Proposed § 668.46(a) would broaden the definition of a campus security authority, by excluding only pastoral counselors and professional counselors as defined in the regulation, as opposed to the current exclusion of any individual with significant counseling responsibilities. Therefore, the timely warning requirement still would not apply for crimes reported to pastoral and professional counselors. However, the timely warning requirement would apply for crimes reported to any campus security authority, including those who have significant counseling responsibilities but are not a pastoral or professional counselor.

Crime Log Requirements—§ 668.46(f)

The 1998 Amendments introduced a requirement that an institution with a campus police or campus security department of any kind maintain a daily, written crime log of any crime reported to that department that occurred on campus, in or on a noncampus building or property, or on public property. It is the Secretary's view that this provision includes an institution that contracts out its security

services. The institution must make this log available for public inspection.

Entries into the crime log must include the nature, date, time, and general location of each crime, and the disposition of the complaint, if known. The log must be written and easily understood. The proposed regulations would require that each crime be entered into the log based on the date the crime was reported, rather than the date the crime occurred. The 1998 Amendments require an institution to make an entry or addition to an entry in the log within two business days of the report of the crime, or the report of additional information, to the campus police or campus security department, unless disclosing the information is prohibited by law or would jeopardize the confidentiality of the victim. The 1998 Amendments also permit an institution to withhold crime log information if release of the information would jeopardize an ongoing criminal investigation or jeopardize the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence. However, once the adverse effect of disclosing the crime log information is no longer likely to occur, the institution must disclose the information. The Secretary wishes to emphasize that an institution may withhold only the specific information that would have an adverse effect described previously; an institution may not automatically withhold all of the log information relating to such a crime. The proposed regulations would permit an institution to archive crime log information after 60 days, as long as the institution makes archived material available for public inspection within two business days of a request. The committee recognizes that some institutions are already required by State law to maintain a crime log; the proposal does not require maintenance of a separate Federal log. An institution may use a State log to comply with the requirements of these regulations, as long as that log includes all of the information and procedures required under this proposal.

Report to the Secretary

The 1998 Amendments require each institution to submit annually the statistical section of its security report to the Secretary. The Secretary will make a form available to institutions for the reporting of this information and will notify institutions when and how to submit their crime statistics. There is no requirement that an institution submit statistical information in the institution's crime log to the Secretary.

Recordkeeping Requirements

Section 668.24 of the Student Assistance General Provisions provides the recordkeeping requirements for an institution to administer the student financial assistance programs under Title IV of the HEA. Generally, an institution must retain records for three years.

An institution is required to maintain campus security records to document the information it must include in its annual security report, which must include information covering the previous three calendar years. An institution must keep campus security records for three years following the last year the information is included in its annual security report.

For example, an institution must include campus security information for the 1997 calendar year in its 1998, 1999, and 2000 annual security reports. Under proposed § 668.41(e), the report must be distributed annually by October 1. Therefore, an institution would be required to maintain its 1997 campus security records until October 1, 2003.

Section 668.47 Report on Athletic Program Participation Rates and Financial Support Data

The 1998 Amendments amended section 485(g) of the HEA (the Equity in Athletics Disclosure Act, or EADA) to require institutions to disclose additional data about revenues and expenses attributable to their intercollegiate athletic activities and to require institutions to submit their annual EADA report to the Secretary.

The proposed regulations would implement the changes made by the 1998 Amendments and reflect the committee's agreement to provide greater specificity in the definitions and in the disclosure requirements.

The primary change to the EADA made by the 1998 Amendments was the relocation of disclosure requirements concerning revenues and expenses attributable to an institution's intercollegiate athletic activities from section 487(a) (Program Participation Agreements), to section 485(g). In addition, the audit requirement under section 487(a), which applied only to institutions that awarded athletically related student aid, was repealed by the 1998 Amendments.

Previously, the EADA required an institution to disclose its operating expenses for each varsity team, its combined revenues from all men's sports, and its combined revenues from all women's sports. The amended statute requires the following additional breakdowns of revenues and expenses: (1) total revenues and expenses attributable to an institution's intercollegiate athletic activities; and (2) revenues and expenses attributable to football, men's basketball, women's basketball, all men's sports combined except football and basketball, and all women's sports combined except basketball.

The committee agreed to propose additional clarifications to § 668.47. The proposed regulations would include in the definitions of revenues and expenses examples of revenues and expenses that would be included in an institution's EADA report. The examples would not expand the statutory definitions of revenues and expenses. The basis for determining whether a revenue or expense should be included in an institution's EADA report is simply whether the item was attributable to the institution's intercollegiate athletic activities. The examples are meant merely to provide guidance on revenues and expenses that frequently will be attributable to intercollegiate athletic activities. Clarifying language also has been added to the definitions of operating expenses and recruiting expenses.

Several negotiators noted that some individuals have used EADA to gauge whether an institution is in compliance with Title IX of the Education Amendments of 1972 and that, in some cases a misunderstanding of how the EADA dealt with the counting of athletes who participated on more than one varsity team caused an institution to appear to be out of compliance with the athletic financial aid provisions of Title IX. Under Title IX, for purposes of counting participation opportunities provided to male and female athletes, an athlete is counted as a participant for each sport he or she plays. However, for purposes of calculating the equitable distribution of athletic financial aid under Title IX, a scholarship athlete who plays on more than one team is counted as a participant only once because he or she receives only one scholarship.

Therefore, these proposed regulations would add a requirement that in addition to listing the number of participants for each varsity team, an institution provide an unduplicated head count of individuals who participated on at least one varsity team. The committee believes additional reporting requirements should correct the confusion concerning the number of individuals participating on varsity teams.

The Secretary notes that the EADA and Title IX were enacted for different, but complementary, purposes. The

EADA is designed to make students, prospective students, and others aware of an institution's participation rates, staffing, and financial support for its men's and women's intercollegiate athletic programs. Title IX prohibits discrimination based on gender in education programs. Title IX does not require identical programs for men and women. Therefore, differences between men's and women's athletic programs reflected in an institution's EADA report do not necessarily reflect that the institution is or is not in compliance with Title IX (the Secretary has published Title IX definitions and requirements at 34 CFR part 106 and 44 FR 71413 (Dec. 11, 1979)).

The committee agreed to propose a modification of the requirement that institutions report whether their head and assistant coaches are full-time or part-time. The current regulations require an institution to report whether a coach is assigned to a team full-time or part-time. The proposed change would require an institution to indicate whether a coach is assigned to a team full-time or part-time, and if, part-time, whether the coach is a full-time or part-time employee of the institution. This change would better enable prospective student athletes and others to understand a coach's status.

For example, the committee noted that most coaches at National Collegiate Athletic Association Division III institutions are part-time. However, many of those coaches are full-time employees of their institutions, and therefore are effectively as accessible to their student-athletes as are full-time coaches at other institutions. The Secretary believes that providing for institutions to provide this information would benefit both institutions and students.

The Secretary does not consider cheerleading a sport for purposes of the EADA. To be considered a sport under the EADA, an activity's primary purpose must be to engage in intercollegiate competition.

Section 668.48 Report on Completion or Graduation Rates for Student-Athletes

Proposed § 668.48 simply reflects the previous discussion of transfer-out rates in § 668.45, by indicating that a transfer-out rate need only be disclosed by an institution to which the required transfer-out rate is applicable (that is, an institution that determines that its mission includes providing substantial preparation for students to enroll in a program at another eligible institution).

Section 668.48(a)(1)(ii), (iv) and (vi) requires an institution to disclose a completion or graduation rate and, if applicable, a transfer-out rate for students in specified cohorts who received athletically related student aid. The Secretary wishes to clarify that an institution that offers a predominant number of programs based on semesters, trimesters, or quarters only must include in the rates required by § 668.48(a)(1)(ii), (iv) and (vi) students who received athletically-related student aid by October 15 or the end of the institution's drop-add period for the relevant academic year.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 668.41 *Reporting and disclosure of information.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these proposed regulations are institutions of higher education that participate in the Title IV, HEA programs. These institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. These proposed regulations would minimize administrative and regulatory burden on institutions by permitting an institution to use Internet or Intranet websites to comply with the statutory requirement to make campus security information available to current or prospective employees and students.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Proposed §§ 668.41, 668.43, 668.45, 668.46, 668.47, and 668.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Institutional and Financial Assistance Information

These regulations affect the following types of entities eligible to participate in the Title IV, HEA programs: Public educational institutions, private non-profit educational institutions, and private for-profit educational institutions.

The information to be collected is institutional and financial assistance information concerning each institution. Each institution annually must make the information available to enrolled and prospective students, and must submit certain information to the Secretary.

Educational institutions that participate in Title IV, HEA programs must collect this information to satisfy the requirements for participation set forth in section 485 of the HEA. Each institution annually must submit to the Secretary the data required by §§ 668.45 through 668.48. The Secretary will use these data to prepare reports concerning graduation rates, campus crime, and gender equity in athletics and will make the data publicly available.

Annual public reporting and recordkeeping burden is estimated to average 3 hours for each response for 8500 respondents, and an additional .5 hour for 1800 respondents, for Sec. 668.41; .5 hour for each response for 8500 respondents for Sec. 668.43; 20 hours for each response for 8500 respondents for Sec. 668.45; 29 hours for each response for 8500 respondents for Sec. 668.46; 5.5 hours for each response for 1800 respondents for Sec. 668.47; and 20 hours for each response for 8500 respondents for Sec. 668.48. These hours include the time needed for searching existing data sources, and gathering, maintaining, and disclosing the data.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the collection of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm

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To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: August 2, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, 1099c and 1141, unless otherwise noted.

2. The title of subpart D is revised to read as follows:

Subpart D—Institutional and Financial Assistance Information for Students

3. Section 668.41 is revised to read as follows:

§ 668.41 Reporting and disclosure of information.

(a) *Definitions.* The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time freshman student means an entering freshman who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Notice means information provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing

through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2)(i) and (ii), (e)(2) and (3), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any disclosure requirement under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the disclosure on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the disclosure is required; and

(2) Prospective students or prospective employees by posting the disclosure on an Internet website.

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to § 99.7. The notice must list and briefly describe the disclosures and inform the student how to obtain the disclosures.

(2) An institution that makes a disclosure to enrolled students required under paragraph (d), (e), or (g) of this section by posting the disclosure on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which that disclosure is posted; and

(ii) A statement that the institution will provide a paper copy of that disclosure on request.

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student, on request, through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42);

(2) The institution (pursuant to § 668.43);

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation; and

(4) The terms and conditions under which students receiving Federal Family Education Loan or William D. Ford Federal Direct Loan assistance may obtain deferral of the repayment of the principal and interest of the loan for—

(i) Service under the Peace Corps Act (22 U.S.C. 2501);

(ii) Service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951); or

(iii) Comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

(e) *Annual security report.* (1) *Enrolled students and current employees—annual security report.* By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in § 668.46(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report.* If an institution chooses to distribute its annual security report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report.* If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report.* The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(f) *Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.*

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, an institution that is attended by students receiving athletically related student aid, when it offers a prospective student-athlete athletically related student aid, must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to § 668.48.

(g) *Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.*

(1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available on request to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report

available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Authority: 20 U.S.C. 1092)

§ 668.42 [Amended]

4. Section 668.42 is removed, and §§ 668.43 through 668.49 are redesignated as §§ 668.42 through 668.48, respectively.

5. Newly redesignated § 668.43 is revised to read as follows:

§ 668.43 Institutional information.

(a) Institutional information that the institution must make readily available upon request to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) The requirements for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of any special facilities and services available to disabled students;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted; and

(9) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

(b) The institution must make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Authority: 20 U.S.C. 1092)

6. Newly redesignated § 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, full-time undergraduate students who enter the institution on or after September 1, 1998, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, full-time undergraduate students who enter the institution on or after September 1, 1998, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of programs based on semesters, trimesters, or quarters must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate -or degree-seeking, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an institution must count as entering students only first-time freshman students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time freshman student who is enrolled as of October 15, or the end of the institution's drop-add period.

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time freshman student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) Beginning with the group of students who enter the institution between September 1, 1998 and August 31, 1999, and for groups of students who enter during succeeding September 1 through August 31 time periods, an institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the point in time that 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, within 150% of normal time for completion from that program.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who, within 150% of the normal time for completion or graduation from the program in which they were enrolled, have not completed or graduated and subsequently enroll in any program of an eligible institution for which its program provides substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(4) Are totally and permanently disabled; or

(5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraph (d) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Authority: 20 U.S.C. 1092)

7. Newly redesignated § 668.46 is revised to read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) *Additional definitions that apply to this section.*

Business Day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) An individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) An individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. A pastoral counselor or professional counselor, when acting as such, is not considered a campus security authority.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: An employee of an institution who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: An employee of an institution whose official responsibilities include providing psychological counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

Prospective employee: An individual who has contacted an institution for the purpose of requesting information concerning employment with the institution.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Referred for campus disciplinary action: The referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

(b) *Annual Security Report.* An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c).

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;

(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and

(iii) Describe procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for

inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(c) *Crime statistics.* (1) *Crimes that must be reported.* An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following offenses reported to local police agencies or to a campus security authority:

(i) Criminal Homicide:

(A) Murder and Nonnegligent Manslaughter.

(B) Negligent Manslaughter.

(ii) Sex Offenses:

(A) Forcible Sex Offenses.

(B) Nonforcible Sex Offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

(viii)(A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(2) *Reported Crimes if a Hate Crime:* An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

(3) *Crimes by location.* The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (2) of this section according to the following categories:

(i) On campus.

(ii) Of the crimes in paragraph (c)(3)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

(iii) In or on a noncampus building or property.

(iv) On public property.

(4) *Identification of the victim.* The statistics required under paragraphs (c)(1) and (2) of this section may not include the identification of the victim or the person accused of committing the crime.

(5) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (2) of this section for crimes reported to a pastoral or professional counselor.

(6) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (2) of this section using the definitions of crimes provided in Appendix E to this Part, and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306; (304–625–2823).

(7) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (2) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas, and may limit its reporting of crime statistics to crimes committed in those areas, if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(8) *Statistics from police agencies.* In complying with the statistical reporting

requirements under paragraphs (c)(1) through (3) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning.* (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(1) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(f) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(g) *Report to the Secretary.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by paragraph (c) of this section to the Secretary. (Authority: 20 U.S.C. 1092)

8. Newly redesignated § 668.47 is revised to read as follows:

§ 668.47 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses.*

(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as ''game-day expenses''), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (i.e., a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving, but such combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and within each category, the number who were assigned to the team on a full-time or part-time basis, and of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(Authority: 20 U.S.C. 1092)

9. Newly redesignated § 668.48 is amended as follows:

A. In paragraph (a)(1), by removing ''By July 1, 1997, and by every July 1 every year thereafter, each'' and adding, in its place, ''Annually, by July 1, an''; by removing ''shall'' and adding in its place ''must''; and by removing ''an annual'' and adding, in its place ''a''.

B. In paragraph (a)(1)(iii), by adding '', if applicable,'' before ''transfer-out''; and by removing ''§ 668.46(a)(1), (2), (3) and (4)'' and adding, in its place, ''§ 668.45(a)(1)'';

C. In paragraph (a)(1)(iv), by adding '', if applicable,'' before ''transfer-out''; and by removing ''§ 668.46(a)(1), (2), (3) and (4)'' and adding, in its place, ''§ 668.45(a)(1)'';

D. In paragraph (a)(1)(v), by adding '', if applicable,'' before ''transfer-out'' both times it appears; by removing '' § 668.46(a)(2), (3), and (4)'' and adding, in its place, ''§ 668.45(a)(1)''; and by removing ''shall'' and adding, in its place, ''must'';

E. In paragraph (a)(1)(vi), by adding '', if applicable,'' before ''transfer-out'' both times it appears; by adding after ''recent,'' ''completing or graduating''; by removing ''§ 668.46(a)(2), (3), and (4)'' and adding in its place

''§ 668.45(a)(1)''; and by removing ''shall'' and adding in its place ''must''; and

F. In paragraph (b), by removing ''§ 668.46'' and adding in its place ''§ 668.45''; by removing ''(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)'' and adding in their place ''(a)(1)(iii) through (vi)''; and by adding '', if applicable,'' before ''transfer-out.''

10. Appendix E is amended by removing the definition of ''Murder,'' and by adding the following definitions before the definition of ''robbery:''

Appendix E to Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

* * * * *

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