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# federal register

Monday
November 8, 1999

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# Presidential Documents

**Title 3—**

## The President

**Memorandum of October 27, 1999**

## Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

**Memorandum for the Secretary of State**

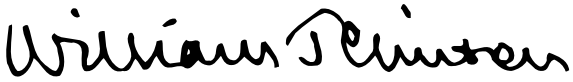
Pursuant to the requirements set forth under the heading ''Policy Toward Burma'' in section 570(d) of the FY 97 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

(1) progress toward democratization in Burma;

(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourist industry, and environmental quality; and

(3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling this requirement to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
*Washington, October 27, 1999.*

[FR Doc. 99–29334
Filed 11–5–99; 8:45 am]
Billing code 4710–10–M

# Presidential Documents

## Presidential Determination No. 2000–4 of October 27, 1999

## Pakistan and India

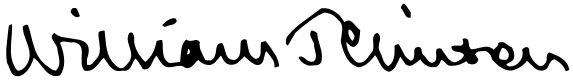
### Memorandum for the Secretary of State

Pursuant to the authority vested in me as President of the United States, including under title IX of the Department of Defense Appropriations Act, 2000 (Public Law 106–79), I hereby waive the sanctions contained in sections 101 and 102 of the Arms Export Control Act, section 620E(e) of the Foreign Assistance Act of 1961, and section 2(b)(4) of the Export-Import Bank Act of 1945:

(1) with respect to India, insofar as such sanctions would otherwise apply to activities of the Export-Import Bank, the Overseas Private Investment Corporation, and the Trade and Development Agency; assistance under the ''International Military Education and Training'' program; the making of any loan or the providing of any credit to the Government of India by any U.S. bank; assistance to the Asian Elephant Conservation Fund, the Rhinoceros and Tiger Conservation Fund, and the Indo-American Environmental Leadership program; and any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and

(2) with respect to Pakistan, insofar as such sanctions would otherwise apply to any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and the making of any loan or the providing of any credit to the Government of Pakistan by any U.S. bank.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, October 27, 1999.*

[FR Doc. 99–29335
Filed 11–5–99; 8:45 am]
Billing code 4710–10–M

# Presidential Documents

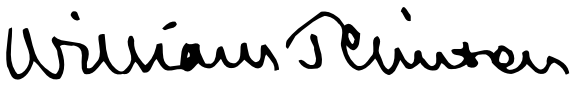
**Presidential Determination No. 2000–5 of October 29, 1999**

## Determination To Authorize the Furnishing of Drawdown Assistance to the Iraqi National Congress Under Section 4(a)(2) of the Iraq Liberation Act of 1998

**Memorandum for the Secretary of State [and] the Secretary of Defense**

Pursuant to the authority vested in me as President of the United States, including section 4(a)(2) of the Iraq Liberation Act of 1998 (Public Law 105–338) (the ''Act''), and consistent with Presidential Determination 99–13 of February 4, 1999, I hereby direct the furnishing of up to $5 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training in order to provide assistance to the Iraqi National Congress.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, October 29, 1999.*

[FR Doc. 99–29336
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# Rules and Regulations

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 99–AWP–22]**

### Modification of Class E Airspace; Willows-Glen County Airport, California

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E airspace area at Willows-Glen County Airport, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 34 at Willows-Glen County Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 34 SIAP to Willows-Glen County Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Willows-Glen County Airport, Willows, CA.

**EFFECTIVE DATE:** 0901 UTC December 30, 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 September 29, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Willows-Glen County Airport, CA (64 FR 52475). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport, Willows, CA.

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 7400.9G dated September 1, 1999, and effective September 16, 1999, 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 CFR part 71 modifies the Class E airspace area at Willows-Glen County Airport, CA. The development of a GPS RWY 34 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 34 SIAP at Willows-Glen County Airport, Willows, CA.

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 this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; 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 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

**AWP CA E5 Willows-Glen County Airport, CA [Revised]**

Willows-Glen County Airport, CA
(Lat. 39°30′59″ N, long. 122°13′03″ W)
Maxwell VORTAC
(Lat. 39°19′03″ N, long. 122°13′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Willow-Glen County Airport and within 2 miles each side of the Maxwell VORTAC 360° radial, extending from the 6.4-mile radius to 3 miles north of the Maxwell VORTAC.

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

**Dawna J. Vicars,**

*Assistant Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 99–29144 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 95–AWP–44]**

### Establishment of Class E Airspace; Montague, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E controlled airspace for Siskiyou County Airport, Montague, CA. The establishment of Class E airspace 1,200 feet or more above ground level (AGL) is necessary to provide controlled airspace for Instrument Flight Rules (IFR) operations, specifically the departure procedure from runway 35 for Siskiyou County Airport. In addition, this action corrects two minor errors to the geographical coordinates for this airspace designation.

**EFFECTIVE DATE:** 0901 UTC, December 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Debra Trindle, Airspace Specialist, Airspace Branch, AWP–521.10, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

**SUPPLEMENTARY INFORMATION:**

### History

On January 8, 1996, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend Class E Airspace at Siskiyou County Airport to provide adequate controlled airspace for IFR operations (61 FR 550). The proposed airspace action was published as an amendment to existing airspace and should have been published as a proposal to establish additional airspace. The existing Class E airspace does not require an amendment. The establishment of additional Class E airspace 1,200 feet or more AGL is necessary to provide controlled airspace for IFR operations, specifically the departure procedure from runway 35 for Siskiyou County Airport.

After issuance of the original NPRM, the FAA discovered this error in the proposal. Therefore, on June 18, 1999, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM), which corrected this error and reopened the comment period (64 FR 32828). Again, interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. No comments were received.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

### The Rule

This amendment to 14 CFR part 71 establishes Class E airspace 1,200 feet or more AGL, at Siskiyou County Airport, Montague, CA. Additionally, this rule corrects two minor errors in the geographical coordinates in the new airspace description for Siskiyou County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adaption 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

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.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

**AWP CA E5 Montague, CA [New]**

Montague, Siskiyou County Airport, CA
(Lat. 41°46′54″ N, long. 122°28′05″ W)
Montague NDB
(Lat. 41°43′38″ N, long. 122°28′55″ W)
Klamath Fall VORTAC
(Lat 42°09′12″ N, long. 121°43′39″ W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of Siskiyou County Airport. That airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5.2 miles west of the 356° and 176° bearings from the Montague NDB, extending from 7 miles north to 1 mile south of the NDB and within 8.3 miles east and 5.2 miles west of the 180° bearing from the Montague NDB, extending from the NDB to 16.5 miles south of the NDB, and from lat 41°52′23″ N, long, 122°24′32″ W, thence clockwise along the 34.8 mile radius of Klamath Falls VORTAC to lat 42°13′02″ N, long 122°30′11″ W, to lat 42°11′00″ N, long. 122°16′30″ W, to lat 41°51′00″ N, long. 122°22′02″ W and thence counterclockwise along the 6.1 mile radius of the Siskiyou County Airport to the point of beginning

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

**Dawna J. Vicars,**

*Assistant Manager, Air Traffic Division, Western Pacific Region.*

[FR Doc. 99–29145 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 934

**[ND–038–FOR, Amendment No. XXVII]**

### North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the North Dakota regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

North Dakota proposed revisions to rules for the definition of replacement of water supply, the issuance of rules, consolidation for multiple permit operations, the submission of an annual map to the Commission for all permit areas, and performance standards for the disposal of noncoal wastes. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261–6550, Internet address: GPadgett@OSMRE.GOV.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can find later actions on North Dakota's program and program amendments at 30 CFR 934.15 and 934.16.

## II. Proposed Amendment

By letter dated September 2, 1998, (Administrative Record No. ND–BB–01) North Dakota sent us an amendment to its program under SMCRA. North Dakota's amendment was in response to a July 17, 1997 letter (administrative record No. ND–BB–02) that we sent in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 934.16(cc), and at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise and add were: (1) NDAC 69–05.2–01–02.90, Replacement of water supply; (2) NDAC 69–05.2–01–03, publication of hearing notices; (3) NDAC 69.05.2–05–09, Permit Applications—Consolidation for multiple permit operations; (4) NDAC 69–05.2–09–09, Permit applications—Operation plans—Surface water management—Ponds, impoundments, banks, dams, embankments, and diversions; (5) NDAC 69–05.2–13–02, Performance standards—General requirements—Annual map; (6) NDAC 69–05.2–13–08, Performance standards—General requirements Protection of fish, wildlife, and related environmental values; (7) NDAC 69–05.2–15–02, Performance standards—Suitable plant growth material—Removal; (8) NDAC 69–05.2–15–04, Performance standards—Suitable plant growth material—Redistribution; (9) NDAC 69–05.2–16–09, Performance standards—Hydrologic balance—Sedimentation ponds; and (10) NDAC 69–05.2–19–04, Performance standards—Waste materials—Disposal of noncoal wastes.

We announced receipt of the amendment in the September 21, 1998, **Federal Register** (63 FR 50177). In the same document we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. Because no one requested a public hearing or meeting, we did not hold one. The public comment period closed on October 21, 1998.

## III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. As discussed below, in accordance with SMCRA and 30 CFR 732.15 and 732.17, we find that the proposed program amendment submitted by North Dakota on September 2, 1998, is no less effective than the corresponding Federal regulations. Accordingly, we approve the proposed amendment.

1. *NDAC 69–05.2–01–02.90, Replacement of water supply.* North Dakota submitted a definition of ''Replacement of Water Supply,'' in accordance with the Federal definition at 30 CFR 701.5 and pursuant to a June 5, 1996 letter from OSM (administrative record No. ND–BB–13).

The proposed definition is very similar to the OSM definition except for the last part. Paragraph b(2) of the definition places additional requirements on a mining company when the water supply is not needed and the water supply owner waives the replacement of a premine water delivery system. The new language will require mining companies, when applying for final bond release, to provide public notice if the landowner waives the replacement of a premine water delivery system. The waiver would have to be clearly discussed in a newspaper advertisement and in letters that the mining company must provide as part of the bond release process. Based on comments received by the State on the final bond release application, the Commission will decide if a replacement water delivery system is needed to protect the public interest. If the Commission determines that a replacement water delivery system is needed, it would have to be installed by the mining company prior to the Commission granting final bond release. Providing the notice as part of the bond release process also gives interested persons the opportunity to request an informal conference on the bond release application and a formal hearing on the Commission's bond release decision. In accordance with Section 505(b) of SMCRA and the Federal regulations at 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations that are more stringent than those imposed under SMCR and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations for which no federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such provisions shall not be construed to be inconsistent with the Federal program. Accordingly, the Director is approving the proposed revision to 69–05.2–01–02.90.

2. *NDAC 69–05.2–01–03, Publication of hearing notices.* Current NDAC 69–05.2–01–03(5) deals with public hearings required in connection with the proposal of the issuance, amendment, or repeal of a rule and provides as follows:

> The commission will publish notice of hearing twice in the official newspapers of each county in which surface coal mining operations occur and each daily newspaper of general circulation in the state. The commission will file the notice of hearing with the legislative council. The commission will cause the first publication and the filing with the legislative council to occur at least thirty days before the hearing.

The State proposed to change the provision to require that the commission will cause the last (rather than the first) publication, as well as the filing with the legislative council, to occur at least thirty days before the hearing. This change is being made to be consistent with legislative changes to North Dakota's Administrative Practices Act and will result in more advance notice of hearings. There is no Federal counterpart regulation. This proposed rule is not inconsistent with any provision of the Federal program; therefore, we approve it.

3. *NDAC 69.05.2–05–09, Permit Applications—Consolidation for multiple permit operations.* There is no federal counterpart to this proposed rule. The current North Dakota rule allows permit monitoring plans to be consolidated into a single plan if a plan covers multiple permits. Most mines in North Dakota are incrementally permitted and therefore have multiple permits that apply to a given mine site.

Each of these permits contains nearly identical surface water, ground water, and wildlife monitoring plans. Any revision to the consolidated plan requires the filing of only one revision (to the most recently issued permit) rather than multiple revisions. We approved North Dakota's use of consolidated monitoring plans in the April 13, 1995 **Federal Register** (60 FR 18744, administrative record No. ND–BB–16). North Dakota's proposed revision would give the North Dakota Public Service Commission discretion to allow other required permit information and plans to be consolidated into a single document that covers more than one permit. Some examples of other permit information that could be appropriately consolidated are ownership and control information, violation history, lease information, permit and license listings.

North Dakota believes that consolidation is logical and appropriate where the same information applies to more than one permit. Thus consolidation would save time and effort for both the permittee and the State with no loss of information required by the approved State Program. The Commission would not allow the consolidation of site-specific mining and reclamation plans that apply to only one permit and therefore would not be appropriate for consolidation.

In a September 30, 1999 telephone conversation with Jim Deutsch, director of North Dakota Public Service Commission's Reclamation Division (administrative record No. ND–BB–17), Mr. Deutsch stated that the proposed rule has similar requirements and the same rationale that was submitted in writing to us with State Program Amendment ND–31–FOR (North Dakota amendment XXI) which OSM approved in the April 13, 1995 **Federal Register** (60 FR 18744, administrative record No. ND–BB–16). As outlined in the April 13, 1995 **Federal Register**, each consolidated document would be subject to the following requirements:

1. The consolidation of information and plans will be limited to sections of the permit application where the same information and plans cover more than one permit area. Each consolidated document will is subject to the approval procedures established for permit revisions.

2. Each mining permit must be revised to describe the specific information and plans to be consolidated into a single document covering the entire surface coal mining and reclamation under permit.

3. Each consolidated document is subject to review by the Commission at the time of the midterm review or renewal for each permit covered by the consolidated document in accordance with section 69–05.2–11–01.

4. A permittee may propose modifications to a consolidated document by filing a permit revision application to the most recently issued permit covered by the consolidated document.

In addition, a separate consolidated plan would have to be developed for each category of plans (e.g., violation history, lease information, permit and license listings, ownership and control information). This would allow for easier review of the consolidated plans by both the regulatory authority and the public where one mine is covered by multiple permits.

Also, individual permits would contain appropriate references to the various consolidated plans and the consolidated plans would be part of each permit. Since consolidated plans will be considered part of each mining permit they cover, failure to comply with the consolidated plans will subject the permittee to the same enforcement action as would the failure to comply with any other part of a mining permit. A single violation would be issued that lists all permits covered by the consolidated plan. North Dakota uses this same practice for violations of performance standards or requirements that are the same in more than one permit.

Since consolidated plans may have to be revised, the reference in each permit must be to the most current consolidated plan. North Dakota will review each consolidated plan as part of its midterm and permit renewal reviews and will require any necessary revisions that result from these reviews. The North Dakota Public Service Commission is not precluded from reviewing permits an requiring permit revisions more frequently than at midterm or permit renewal (every five years). This applies to more frequent reviews of consolidated plans if necessary. The permittee may request revision of a consolidated plan by applying for a permit revision to the most recently issued permit covered by the consolidated plan. When new areas are added to a mining operation by application for new permits, the consolidated plan for the operation will have to be updated, and the updated consolidated plan will be subject to the approval procedures for permit applications. Following final bond release of any portion of the area covered by the consolidated plan, the permittee would have to continue monitoring that area (and/or continue complying with the applicable consolidated plan) until the consolidated plan was revised to delete the released area from the applicable plan(s).

Based upon the above discussion, this proposed rule is not inconsistent with the Federal regulations; therefore, we approve it.

4. *NDAC 69–05.2–09–09, Permit application—Operation Plans—Surface Water Management—Ponds, impoundments, banks, dams, embankments, and diversions.* North Dakota is proposing to have operators submit a general surface water management plan that identifies and describes each water management structure and provides preliminary technical information on the structures. North Dakota's rules do not use the term, ''siltation structure,'' which is used in the Federal regulations. Use of that term, however, is not mandatory. Both North Dakota's rules and the Federal rules, however, require the same thing: that drain-off water from disturbed areas pass through sedimentation ponds and meet effluent standards before it leaves the permit area. The State will require that detailed plans must be submitted and approved prior to the construction of a structure and that detailed plans must be included with the application for any structure to be built within the first year of the permit term. North Dakota will require the operator to submit with the general plan a schedule for construction of the structures.

Federal regulations at 30 CFR 780.25(a) allow for a general plan to be submitted as long as no structures are built without prior approval and a timetable for construction of proposed structures is included with the submittal.

Also included in the proposed rule change is the incorporation of new OSM provisions of ponds meeting certain Natural Resources Conservation Service (NRCS) criteria. In 1994 (59 FR 53028, Oct. 20, 1994), OSM added additional information requirements for impoundments meeting Class B and C size criteria at 30 CFR 780.25(a). These changes were listed as a required program amendment in OSM's July 17, 1997 letter to the Public Service Commission. The State is requiring operators to submit this additional information for Class B and C impoundments. Mining Safety and Health Administration (MSHA) standards require that plans be prepared and certified by a qualified registered professional engineer. North Dakota states in NDAC 69–05.2–09–16.1(h) that ''plans must be certified as meeting the

requirements of this article'' and ''this article'' refers to NDAC 69–05.2 which includes a references to the MSHA provision on certification by a professional engineer at 30 CFR 77.216–2(17), as well as to a requirement (at 30 CFR 77.216(b)) that ''plans . . . be approved by the District Manager (of MSHA) prior to the beginning of any work associated with the construction of the impounding structure.''

A new addition to North Dakota rule at NDAC 69–05.2–09–09.2(j) requires information on any direct connections of the impoundment basin to ground water flow in the area. This added provision has no Federal counterpart.

30 CFR 780.25(a)(1)(v) requires that the general plan include a ''certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority.'' The State's counterpart is NDAC 69–05.2–09–09 which states:

> d. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable to remove each structure.

In addition, as stated above, the referenced 30 CFR 77.216(b) states that plans be approved by the District Manager (of MSHA) prior to the beginning of any work associated with the construction of the impounding structure.

Based on the above discussion, the revised rule requires the submittal of all information that is required by the Federal regulations and is no less effective than the Federal regulations; therefore, we approve it.

5. *NDAC 69–05.2–13–02, Performance standards—General requirements—Annual map.* There is no federal counterpart to this proposed rule. The required submission date for the annual map depicting permit areas and section lines is being moved back one month, from February to March. The reason is that coal operators in North Dakota have many other reports due near the beginning of the calendar year and need the additional month. In addition, the requirement for quarter lines is being eliminated because it is unnecessary and clutters the map. We find that this rule is not inconsistent with the Federal regulations and therefore approve it.

6. *NDAC 69–05.2–13–08, Performance standards—General requirements—Protection of fish, wildlife, and related environmental values.* North Dakota's existing rules include a requirement for the applicant to report to the Public Service Commission by each February 15 with the management plan results and data derived from the monitoring plan for the calendar year. The State has proposed to change the submittal of the monitoring reports to once every 2 years, in even numbered years. Yearly monitoring must still be carried out in accordance with approved monitoring plans.

The Federal regulations for protection and enhancement plans (30 CFR 780.16(b)) and performance standards (30 CFR 816.97) do not require a periodic report from the operator with management plan results and data derived from the monitoring plan for conducting fish and wildlife monitoring. Accordingly, we are approving the proposed revisions to NDAC 69–05.2–13–08.

*7.* NDAC 69–05.2–15–02, Performance standards—Suitable plant growth material—Removal. Existing North Dakota rule NDAC 69–05.2–15–02(2)(a) requires that

> (t)he suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by NDAC 69–05.2–08–10 must be removed and segregated in two separate operations, unless otherwise approved by the Commission. The topsoil removal operation for an area must be completed before subsoil removal begins or before any other disturbances occur in that area. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved must be removed and segregated. Further disturbances which significantly alter an area must not begin until the subsoil or other suitable strata removal operations for that area have been completed and approved by the commission.

North Dakota proposes to add the following statement to the end of rule NDAC 69–05.2–15–02(2)(a),

> (h)owever, the commission may waive the approval of subsoil removal operations if the operator demonstrates, in a detailed soil removal plan, surplus subsoil is available and that subsoil to be removed has good and relatively uniform characteristics. A request for such a waiver must be included as part of a detailed soil removal plan or permit revision application that contains the necessary information.

The Federal Regulations at 30 CFR 816.22(e) state that for subsoil segregation, ''[t]he regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 816.111, 816.113, 816.114, and 816.116 of this Chapter.''

North Dakota is proposing additional language to subsection 2 of NDAC 69–05.2–15–02 to allow the Commission to waive subsoil removal approvals when the operator demonstrates in a detailed soil removal plan that there is a surplus of stockpiled subsoil and the subsoil characteristics are good and relatively uniform. The Commission's rule has required operators to obtain approvals from the Reclamation Division once subsoil removal has been completed and before additional disturbance of the areas occur. The rule change will allow the Commission to waive such approvals in some instances. The waiving of this approval process will not reduce the amount of subsoil that must be removed and saved by the mine operator. A waiver request would be included as part of an annual soil removal plan or permit revision that provides the necessary information of soil inventories and a discussion of subsoil characteristics.

The Federal regulations allow the regulatory authority to require subsoil segregation. There is no counterpart or discussion in the Federal regulations for the need for regulatory approval following completion of subsoil salvage operations and prior to initiation of additional disturbance. The North Dakota rules would continue to require subsoil salvage. The proposed amendment would only allow the State to waive the requirement that operators obtain approvals from the Reclamation Division once subsoil removal has been completed and before additional disturbance of the areas occur and only if the operator makes the required demonstration.

Based on the above discussion, the proposed revisions to NDAC 69–05.2–15–02(2)(a) are not inconsistent with the Federal regulations and therefore we approve them.

8. *NDAC 69–05.2–15–04, Performance standards—Suitable plant growth material—Redistribution.* Under rule NDAC 69–05.2–15–04(4)(a)(2) North Dakota includes a tabled title ''Suitable Plant Growth Material Redistribution Thickness'' that identifies certain spoil properties (i.e., texture, sodium absorption ratio, and saturation percentage) and the total redistribution thickness of topsoil plus subsoil that must be used based on the given spoil properties.

North Dakota rule NDAC 69–05.2–15–04(4)(c) states that this paragraph is effective only for those areas disturbed prior to the year 1999.

North Dakota proposes to eliminate saturation percentage as one of the spoil

properties that must be used to determine total topsoil plus subsoil redistribution thickness. North Dakota also proposed to delete NDAC 69–05.2–15–04(4)(c).

The Federal regulations at 30 CFR 816.102(f) require that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

In the May 24, 1983 **Federal Register** promulgating the final rule in the Permanent Regulatory Program for backfilling and grading, two commenters were quoted as advocating retaining the 4-foot-cover requirement for acid- and toxic-forming material. We responded that:

> OSM is aware of the many potential problems that attend the proper disposal of toxic materials. However, a national standard for cover thickness is not the solution to these problems. Instead, the regulatory authority should set whatever standards, specific or otherwise, which provide the best solution within the state. The problems of interpretation will be avoided by allowing the state regulatory authorities to set and explain standards designed for local conditions. These standards must be based on the national performance standard requiring successful covering or treatment in accordance with the provisions of 30 CFR 816.102(f).

The change proposes to eliminate saturation percentage as a parameter used for determining the total soil respread thickness when it is based on graded spoil characteristics. This change is supported by North Dakota State University technical report No. 8, *(Relation of Saturation Percentage to Absorption Ratios in North Dakota Soils* by Eugene C. Doll and F. Scott Carter, February 1991) recommended that the saturation percentage parameter be eliminated since it is of little practical value. The other change to this rule would eliminate the sunset clause for allowing total soil respread thicknesses to be based on regraded spoil characteristics. The North Dakota public Service Commission originally adopted provisions to base the total soil respread thickness on graded spoil properties as a result of reclamation research findings from studies conducted on mined lands in North Dakota in the late 1970's and early 1980's. The studies were primarily conducted on small plots and occurred over a relatively short period of time. Therefore, when the original provision was adopted, the Commission added a sunset clause (subdivision c of subsection 4) to require a future review to determine if the provision should be retained or deleted. While waiting for additional research findings, the Commission extended the sunset clause on two occasions.

The sunset clause is now being eliminated since a 1997 research report by North Dakota State University (*Reducing the Management Variable in Assessing Reclamation Success* by Gary A. Albertson, February, 1997) found that yields on areas where the total soil respread thicknesses were based on the graded spoil properties were as good as reclaimed areas where all available topsoil and subsoil (up to 60 inches) has been respread.

While the Federal regulations require that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining be adequately covered with nontoxic and noncombustible material, they do not include specific spoil properties requiring burial or the depth of burial required. North Dakota's proposed amendment to NDAC 69–05.2–15–04(4)(a)(2), does not reduce the effectiveness of the existing State rules, and the revised rule is not inconsistent with the Federal requirements at 30 CFR 816.102(f) and therefore we approve it.

There is no federal counterpart to NDAC 69–05.2–15–04(4)(c). The deletion of this rule does not in any way render the State program less effective than the Federal regulations and therefore we approve it.

9. *NDAC 69–05.2–16–09, Performance standards—Hydrologic balance—Sedimentation ponds.* Revisions to this North Dakota rule are being made by the State to: (1) satisfy program amendment changes required in a July 17, 1997 letter from the U.S. Office of Surface Mining. (specifically, the reference to ponds meeting Mining Safety and Health Administration (MSHA) design criteria has been modified); and (2) to add performance standards for impoundments that meet the Class B or C criteria for dams in NRCS Technical Release No. 60 as required by the U.S. Office of Surface Mining in its July 17, 1997 letter).

As proposed, North Dakota's rules at 69–05.2–16–09.17 and 69–05.2–16–09.18 are no less effective than the corresponding Federal regulation at 30 CFR 816.49 dealing with stability, spillway, foundation investigations, and freeboard hydrograph. However, only NDAC 69–05.2–16–09.18, which refers to impoundments meeting class B or C criteria for dams, specify foundation testing, not .17, which refers to the MSHA criteria at 30 CFR 77.216. NDAC 69–05.2–16–09.17.d, however, states that ''The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met.'' Mine Safety and Health Administration regulations at 30 CFR 77.216–2(a)(5) state that ''The plan * * * shall contain * * * the following information: *A description of the physical engineering properties of the foundation materials on which the structure is or will be constructed*'' (underlining added for emphasis). In order to make a description of the physical engineering properties of the foundation materials, foundation testing must be done. North Dakota's rule is therefore the equivalent of the Federal regulations and we approve it.

10. *NDAC 69–05.2–19–04, Performance standards—Waste materials—Disposal of noncoal wastes.* This revision is in response to Program Requirement 934.16(cc) which calls for ''placement and storage standards for all types of noncoal hazardous wastes.'' North Dakota proposed adding wording to its rule dealing with disposal of noncoal wastes generated as part of a mining operation to read as follows:

Placement and storage of all types of noncoal wastes, including any hazardous materials, * * *

The addition of the language makes the North Dakota rule no less effective than the Federal regulations at 30 CFR 816.89 and we approve the revision. We also are removing the required program amendment at 30 CFR 934.16(cc).

11. *NDAC 69–05.2–08–15(3)(a).* The required program amendment at 30 CFR 934.16(n) requires revision to North Dakota rules for submission of site-specific fish and wildlife resource information when the permit or adjacent areas are likely to include species listed or proposed to be listed by North Dakota under State statutes similar to the Endangered Species Act.

This required program amendment resulted through a misunderstanding of the State's statute at NDCC (North Dakota Century Code) 20.1–02–05, ''Powers of the (Game and Fish Department) Director.'' It was interpreted in the January 9, 1992 **Federal Register** (57 FR 814) to mean that North Dakota had its own Endangered Species Act and if in fact it did, then it needed to refer to it, as the Federal regulations require at 30 CFR 780.16(a)(2).

After an extensive review of both North Dakota's statute and its regulations, it is clear that the State statute is referring to the U.S. Endangered Species Act of 1973. In a

June 19, 1997 letter (administrative record No. ND–BB–12) to ND Reclamation Division Director, James R. Deutsch, Natural Resource Biologist, John Schumacher, who is with the ND Game and Fish Department, stated that ''North Dakota does not have legislation governing endangered species,'' and ''We instead defer to the Federal laws and regulations.'' Therefore the existing State regulations, NDAC (North Dakota Administrative Code) 69–05.2–08–15(3)(a) are no less effective than the Federal regulations at 30 CFR 780.16(a)(2)(i) and we are eliminating the required program amendment at 30 CFR 934.16(n).

## IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

*1. Public Comments*

No individual or State agency name responded to OSM's invitation for comments.

*2. Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(I), we requested comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

The Agricultural Research Service of the U.S. Department of Agriculture responded on October 5, 1998 that it saw no problems with the proposed changes (administrative record No. ND–BB–05).

The U.S. Fish and Wildlife Service responded on October 9, 1998 that the proposed changes are logical and reasonable and that it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed rules (administrative record No. ND–BB–07).

*3. Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are to get a written agreement from the EPA for those provisions of the proposed amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We requested EPA's written agreement with the proposed amendment (administrative record No. ND–BB–03). On October 8, 1998, EPA gave its written agreement (administrative record No. ND–BB–06).

*4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we asked for comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–BB–03). Neither SHPO nor ACHP responded to our request.

## V. Director's Decision

Based on the above findings, we approve the proposed amendment as submitted on September 2, 1998.

To implement this decision we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage North Dakota to bring its programs into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*1. Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*2. 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 this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(c)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*4. 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.*).

*5. 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 that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*6. Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

## List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 13, 1999.

**Brent Wahlquist,**

*Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

### § 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * * * * * | * | * |
| 9/2/98 | 11–8–99 | NDAC 69–05.2.90 |
| | | NDAC 69–05.2–01–03 |
| | | NDAC 69–05.2–05–09 |
| | | NDAC 69–05.2–09–09 |
| | | NDAC 69–05.2–13–02 |
| | | NDAC 69–05.2–13–08 |
| | | NDAC 69–05.2–15–02 |
| | | NDAC 69–05.2–15–04 |
| | | NDAC 69–05.2–16–09 |
| | | NDAC 69–05.2–19–04 |

**§ 934.16 [Amended]**

3. Section 934.16 is amended by removing paragraphs (cc) and (n).

[FR Doc. 99–29152 Filed 11–5–99; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Chapter V

## Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Addition of Persons Blocked pursuant to Executive Order 13088

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Amendment of final rule.

**SUMMARY:** The Treasury Department is adding to appendix A to 31 CFR chapter V the names of persons determined to be state– or socially–owned entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro) and of individuals determined to be acting for or on behalf of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and/or the Government of the Republic of Serbia because of senior positions such individuals hold in those governments. Names of blocked persons appearing in section II of appendix A and blocked vessels appearing in appendix B pursuant to part 585 of 31 CFR chapter V are removed.

**EFFECTIVE DATE:** November 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

**SUPPLEMENTARY INFORMATION:**

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### Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC''). Appendix B to 31 CFR chapter V contains the names of vessels that are the property of blocked persons or specially designated nationals. Pursuant to Executive Order 13088 of June 9, 1998, ''Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo,'' (63 FR 32109, 3 CFR, 1998 Comp., p. 191), and the implementing Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586 (63 FR 54575, October 13, 1998) (the ''Regulations''), 650 entities are added to appendix A as entities organized or located in the Federal Republic of Yugoslavia (the ''FRY (S&M)'') which have been determined to be state– or socially–owned. Seventy–six individuals are also added to appendix A as having been determined to be acting for or on behalf of the Governments of the FRY (S & M) and/or the Republic of Serbia by virtue of the high–level positions they hold in those governments. These governments are defined in §§ 586.306 and 586.308 of the Regulations, respectively, and include ''all financial institutions and state–owned and socially–owned entities organized or located'' in the territories of the FRY (S&M) and the Republic of Serbia, respectively, as well as ''any persons acting or purporting to act for or on behalf of'' those governments. (The FRY (S&M) state– or socially–controlled entities and designated individuals are hereinafter referred to as ''Blocked Persons.'')

Any property subject to the jurisdiction of the United States in which a Blocked Person has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which a Blocked Person has an interest. The notes to the appendices are amended to revise the identifying abbreviation for Government of the FRY (S&M) Blocked Persons. All entries for entities and individuals listed in section II of appendix A as FRY (S&M) blocked persons, as well as for vessels listed in appendix B pursuant to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585, are removed. Assets blocked pursuant to part 585 remain blocked, and are not affected by this removal.

Designations of foreign persons blocked pursuant to the relevant statute,

Executive order, or regulations are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking or unblocking is effective upon the date of filing for public inspection with the Federal Register, or upon prior actual notice.

Since this rule involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191, with respect to the addition of blocked Government of the FRY (S&M) entities, and (2) 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 49 U.S.C. 40106; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat 890 (28 U.S.C. 2461 note); E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 501; E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930, with respect to the removal of blocked persons and vessels from the appendices pursuant to part 585, appendices A and B to 31 CFR chapter V are amended as set forth below:

1. The notes to the appendices to chapter V are amended by revising notes 4 and 6 to read as follows:

## APPENDICES TO CHAPTER V

**Notes:** * * *

* * * * *

4. Abbreviations: ''a.k.a.'' means ''also known as''; ''f.k.a.'' means ''formerly known as''; ''n.k.a.'' means ''now known as''; ''DOB'' means ''date of birth''; ''DWT'' means ''Deadweight''; ''FRYK'' means ''Federal Republic of Yugoslavia (Serbia and Montenegro) — Kosovo''; ''GRT'' means ''Gross Registered Tonnage''; ''POB'' means ''place of birth''.

* * * * *

6. References to regulatory parts in chapter V or other authorities:

[CUBA]: Cuban Assets Control Regulations, part 515;

[FRYK]: Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, part 586 (63 FR 54575, October 13, 1998);

[FTO]: Foreign Terrorist Organizations Sanctions Regulations, part 597;

[IRAQ]: Iraqi Sanctions Regulations, part 575;

[LIBYA]: Libyan Sanctions Regulations, part 550;

[NKOREA]: Foreign Assets Control Regulations, part 500;

[SDNT]: Narcotics Trafficking Sanctions Regulations, part 536;

[SDT]: Terrorism Sanctions Regulations, part 596;

[SUDAN]: Sudanese Sanctions Regulations, part 538;

[UNITA]: UNITA (Angola) Sanctions Regulations, part 590.

* * * * *

## Appendix A [Amended]

2. Appendix A to 31 CFR chapter V is amended by removing the designation ''I'' and its heading at the beginning of the appendix, and removing the designation ''II'', its heading, and the list of entities that follows the designation ''II'' in its entirety, and by adding the following names to appendix A inserted in alphabetical order to read as follows:

21 MAJ, Belgrade, Serbia [FRYK]
A.D. IZVOZNA BANKA, Belgrade, Serbia [FRYK]
ABM GRAFIKA, Novi Sad, Serbia [FRYK]
AERODROM BEOGRAD (a.k.a. AIRPORT BELGRADE), Belgrade, Serbia [FRYK]
AEROINZINJERING, Belgrade, Serbia [FRYK]
AGENCIA D.D., New York, U.S.A. [FRYK]
AGRO–UNIVERZAL, Kanijiza, Vojvodina (Serbia) [FRYK]
AGROBANKA BELGRADE (All offices worldwide) [FRYK]
AGROEXPORT, Belgrade, Serbia [FRYK]
AGROOPREMA, Belgrade, Serbia [FRYK]
AGROPANONIJA, Vrsac, Vojvodina (Serbia) [FRYK]
AGROPROMET, Kikinda, Vojvodina (Serbia) [FRYK]
AGROVOJVODINA (a.k.a. AGROVOJVODINA EXPORT–IMPORT), 23 Oktobra blvd. 61, 21000 Novi Sad, Vojvodina (Serbia) (All offices worldwide) [FRYK]
AGROVOJVODINA EXPORT–IMPORT (a.k.a. AGROVOJVODINA), 23 Oktobra blvd. 61, 21000 Novi Sad, Vojvodina (Serbia) (All offices worldwide) [FRYK]
AIK BANKA A.D., Nis, Serbia [FRYK]
AIK BANKA A.D., Senta, Serbia [FRYK]
AIK SUMADIJA, Kragujevac, Serbia [FRYK]
AIK VRANJE, Vranje, Serbia [FRYK]
AIR JUGOSLAVIA, Belgrade, Serbia [FRYK]
AIRPORT BELGRADE (a.k.a. AERODROM BEOGRAD), Belgrade, Serbia [FRYK]
ALCO BANKA A.D., Belgrade, Serbia [FRYK]
ALFA PLAM, Vranje, Serbia [FRYK]
ANDJELKOVIC, Zoran, Minister of Sports and Youth, Republic of Serbia, Serbia (DOB 1958) (individual) [FRYK]
ANGLO–YUGOSLAV BANK (n.k.a. AY BANK LIMITED), London, England [FRYK]
APATEX–APATIN, Industrijska Zona, 25260 Apatin, Serbia [FRYK]
APATINSKA PIVARA, Apatin, Serbia [FRYK]
ARENAL SHIPPING S.A., Office 803, Nicolaou Pentadromos Centre, Pentadromos Junction, Limassol, Cyprus [FRYK]
AS BANKA A.D., Belgrade, Serbia [FRYK]
AS IMPEX/AEROSERVIS, Serbia [FRYK]
ASI BANKA A.D., Belgrade, Serbia [FRYK]
ASNA BANKA A.D., Belgrade, Serbia [FRYK]
ASSOCIATED BANK OF KOSOVO (a.k.a. UDRUZENA KOSOVSKA BANKA) (All offices worldwide) [FRYK]
ASSOCIATED BELGRADE BANK (a.k.a. BEOBANKA, D.D.; a.k.a. BEOGRADSKA BANKA D.D.; a.k.a. UDRUZENA BEOGRADSKA BANKA) (All offices worldwide) [FRYK]
ASSOCIATION OF YUGOSLAV RAILWAYS (a.k.a. ZAJEDNICA JUGOSLOVENSKIH ZELEZNICA), Belgrade, Serbia [FRYK]
ASTRO–ORION, Serbia [FRYK]
ATEKS, Belgrade, Serbia [FRYK]
ATLAS BANKA A.D., Belgrade, Serbia [FRYK]
AUTOMOBILE INDUSTRY — CRVENA ZASTAVA (a.k.a. ZASTAVA; a.k.a. ZAVODI CRVENA ZASTAVA — KRAGUJEVAC), Kragujevac, Serbia [FRYK]
AUTOTEHNA, Belgrade, Serbia [FRYK]
AVIOGENEX, Milentia Popovica, 11070 Belgrade, Serbia [FRYK]
AVNOJA 57, Serbia [FRYK]
AY BANK LIMITED (f.k.a. ANGLO–YUGOSLAV BANK), London, England [FRYK]
B.B. INTERNATIONAL A.D., Belgrade, Serbia [FRYK]
B.B. NISKA BANKA A.S., Nis, Serbia [FRYK]
B.S.E. GENEX CO. LTD. (f.k.a. B.S.E. TRADING LIMITED), Heddon House, 149–151 Regent Street, London, W1R 8HP, England [FRYK]
B.S.E. TRADING LIMITED (n.k.a. B.S.E. GENEX CO. LTD.), Heddon House, 149–151 Regent Street, London, W1R 8HP, England [FRYK]
BABOVIC, Jovan, Minister of Agriculture, Forestry and Water Management, Republic of Serbia, Serbia (DOB 1946) (individual) [FRYK]
BAGERSKO BRODARSKO PREDUZECE, Hajduk Veljkov Venac 46, 11000 Belgrade, Serbia [FRYK]
BALKAN, Suva Reka, Serbia [FRYK]
BALKANIJA, Belgrade, Serbia [FRYK]
BAMBI, Pozarevac, Serbia [FRYK]
BANCA DE CREDIT COOPERAIST, Vrsac, Serbia [FRYK]
BANK FOR DEVELOPMENT OF KOSOVO AND METOHIJA (All offices worldwide) [FRYK]
BANK FOR FOREIGN TRADE AD (a.k.a. JUGOBANKA; a.k.a. JUGOBANKA D.D.; a.k.a. YUGOBANKA) (All offices worldwide) [FRYK]

BANK OF VOJVODINA (f.k.a. VOJVODINA BANK–ASSOCIATED BANK, NOVI SAD; n.k.a. VOJVODJANSKA BANKA, D.D.), Serbia (All offices worldwide) [FRYK]
BANQUE FRANCO YOUGOSLAVE, Paris, France [FRYK]
BANQUE NATIONALE DE YOUGOSLAVIE (a.k.a. NARODNA BANKA JUGOSLAVIJE; a.k.a. NATIONAL BANK OF YUGOSLAVIA), Belgrade, Serbia [FRYK]
BB CACANSKA BANKA A.D., Cacak, Serbia [FRYK]
BB LOZNICKA BANKA A.D., Loznica, Serbia [FRYK]
BB PIROTSKA BANKA A.D., Pirot, Serbia [FRYK]
BB POZAREVACKA BANKA A.D., Pozarevac, Serbia [FRYK]
BB PRIVREDNA BANKA A.D., Pancevo, Serbia [FRYK]
BB PROKUPACKA BANKA A.D., Prokuplje, Serbia [FRYK]
BB SABACKA BANKA A.D., Sabac, Serbia [FRYK]
BB UZICKA BANKA A.D., Uzice, Serbia [FRYK]
BB VALJEVSKA BANKA A.D., Valjevo, Serbia [FRYK]
BB VRANJSKA BANKA A.D., Vranje, Serbia [FRYK]
BC EXPORT CREDIT BANK A.D., Belgrade, Serbia [FRYK]
BEGEJ SHIPYARD, Temisvarski drum bb, 23000 Zrenjanin, Serbia [FRYK]
BEKO, Bulevar Vojvode Bojovica 6–8, 11000 Belgrade, Serbia [FRYK]
BEKO, Milan, Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1961) (individual) [FRYK]
BELGRADE BAKERY INDUSTRY, Belgrade, Serbia [FRYK]
BELGRADE BUS STATION, Belgrade, Serbia [FRYK]
BELGRADE FAIR, Belgrade, Serbia [FRYK]
BELGRADE HOLDING COMPANY — FREE ZONE, Belgrade, Serbia [FRYK]
BELGRADE–PREDUZECE ROBNIH KUCA, Belgrade, Serbia [FRYK]
BELGRADE RAILROAD TRANSPORTATION ORGANIZATION (a.k.a. ZELEZNICKO TRANSPORTNO PREDUZECE BEOGRAD), Belgrade, Serbia [FRYK]
BELGRADE WOOL COMBINAT, Belgrade, Serbia [FRYK]
BEOBANKA, D.D. (a.k.a. ASSOCIATED BELGRADE BANK; a.k.a. BEOGRADSKA BANKA D.D.; a.k.a. UDRUZENA BEOGRADSKA BANKA) (All offices worldwide) [FRYK]
BEOCINASKA FABRIKA CEMENTA, Trg Ive Lole Ribara 1, 21300 Beocin, Serbia [FRYK]
BEOGRAD AGRICULTURAL COMPLEX PKB, 11213 Padinska Skela, Belgrade, Serbia [FRYK]
BEOGRAD–PREDUZECE ZA UPRAVA ELEKTROENERGICNIK SISTEMA, Belgrade, Serbia [FRYK]
BEOGRADELEKTRO, Belgrade, Serbia [FRYK]
BEOGRADSKA BANKA D.D. (a.k.a. ASSOCIATED BELGRADE BANK; a.k.a. BEOBANKA, D.D.; a.k.a. UDRUZENA BEOGRADSKA BANKA) (All offices worldwide) [FRYK]
BEOGRADSKA CYPRUS OFFSHORE BANKING UNIT (COBU), Nicosia, Cyprus [FRYK]
BEOGRADSKA PLOVIDBA (a.k.a. BEOPLOV), Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
BEOPETROL, Belgrade, Serbia [FRYK]
BEOPLOV (a.k.a. BEOGRADSKA PLOVIDBA), Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
BETA BANKA A.D., Kraljevo, Serbia [FRYK]
BIMEL LIMITED, Cyprus [FRYK]
BINGO FRANCE (n.k.a. SIMPO FRANCE), 28 Rue du Puits Dixmes Sennia 606, 94320 Thiais–CEDEX, France [FRYK]
BIP, Bulevar Vojvode Putnika 5, 11000 Belgrade, Serbia [FRYK]
BJELASICA, Bijelo Polje, Serbia [FRYK]
BLAZIC, Branislav, Minister of Environmental Protection (a.k.a. Minister of Environment), Republic of Serbia, Serbia (DOB 1957) (individual) [FRYK]
BOJIC, Milovan, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 1955) (individual) [FRYK]
BOR–TOPIONICA I RAFINERIJA BAKRA, Bor, Serbia [FRYK]
BOROVO — BORELI, Sombor, Serbia [FRYK]
BOZIC, Milan (D.Sc.), Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1952) (individual) [FRYK]
BRODOGRADILISTE NOVI SAD, Kamenicka ada 1, 21000 Novi Sad, Serbia [FRYK]
BRODOIMPEX, Belgrade, Serbia [FRYK]
BUKOVICKA BANJA, Arandjelovac, Serbia [FRYK]
BULATOVIC, Momir, Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 21 Sep 1956) (individual) [FRYK]
BULATOVIC, Pavle, Minister of Defense, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1948; POB Montenegro) (individual) [FRYK]
BYE LTD., Morley House, 314–322 Regent Street, London W1R 5AE, England [FRYK]
C MARKET, Belgrade, Serbia [FRYK]
CANNED FRUIT AND VEGETABLE PRODUCTION OF PROKUPLJE (a.k.a. HISAR — FABRIKA ZA PRERADU VOCA I POVRCA), Prokuplje, Serbia [FRYK]
CENTRAL COMMERZ CONSULTING ENGINEERING TRADING GMBH, Zeppelinallee 71, 6000 Frankfurt 90, Germany [FRYK]
CENTROBANKA A.D., Belgrade, Serbia [FRYK]
CENTROCOOP — BELKAMEN, Kavadarci, Serbia [FRYK]
CENTROCOOP — INVEST, Belgrade, Serbia [FRYK]
CENTROCOOP — PROIZVODNJA, Belgrade, Serbia [FRYK]
CENTROCOOP (a.k.a. CENTROCOOP EXPORT–IMPORT ENTERPRISE) [FRYK]
CENTROCOOP EXPORT–IMPORT ENTERPRISE (a.k.a. CENTROCOOP) [FRYK]
CENTROCOOP FRANCE EXPORT IMPORT, 31 Rue St Ferdinand, 75017 Paris, France [FRYK]
CENTROCOOP GMBH, Winkelsfelderstrasse 21, 4000 Dusseldorf 30, Germany [FRYK]
CENTROCOOP ITALIANA, c/o Intex Srl., Via Della Greppa 4, 34100 Trieste, Italy (Branch office) [FRYK]
CENTROCOOP ITALIANA, Via Vitruvio 43, 20124 Milan, Italy [FRYK]
CENTROCOOP LTD., 162–168 Regent Street, London W1 5TB, England [FRYK]
CENTROCOOP PRAGUE, Gorkeho N16, Prague, Czech Republic [FRYK]
CENTROCOOP WARSAW, Warsaw, Poland [FRYK]
CENTROEXPORT, Belgrade, Serbia [FRYK]
CENTROMARKET, Belgrade, Serbia [FRYK]
CENTROPRODUCT (a.k.a. YUGOTOURS), Eisenberg Business Center, House Asia, Tel Aviv, Israel [FRYK]
CENTROPRODUCT HELLAS S.A.R.L., Xanthou 5, Kolonaki Square, Athens 10673, Greece [FRYK]
CENTROPRODUCT ROME (a.k.a. YUGOTOURS), Via Bissolati 76, 00187, Rome, Italy [FRYK]
CENTROPRODUCT S.A., c/o Orense 85, Esc. IV, 4A, Madrid 28020, Spain [FRYK]
CENTROPRODUCT S.R.L. (a.k.a. YUGOTOURS), Via Agnello 2, 20121 Milan, Italy [FRYK]
CENTROPRODUCT, BARI (a.k.a. YUGOTOURS), Via Principe Amedeo 25, 70121 Bari, Italy [FRYK]
CENTROPRODUCT, S.A.R.L. (a.k.a. YUGOTOURS S.A.R.L.), 39 avenue de Friedland, 75008 Paris, France [FRYK]
CENTROPRODUCT, TRIESTE, Via Fabrio Filzi 10, Trieste, Italy [FRYK]
CENTROPROJEKT, Belgrade, Serbia [FRYK]
CENTROPROM, Knez Mihailova 20, 11000 Belgrade, Serbia [FRYK]
CENTROSLAVIJA, Novi Sad, Vojvodina (Serbia) [FRYK]
CENTROTEKSTIL, Belgrade, Serbia [FRYK]
CENTROTEXTIL AUSSENHANDELS GMBH, Hochstrasse 48, 6000 Frankfurt am Main, Germany [FRYK]
CENTROTEXTIL AUSSENHANDELS GMBH, Karlstrasse 60, 8000 Munich, Germany [FRYK]
CENTROTEXTIL INC., New York, New York, U.S.A. [FRYK]
CEROVIC, Slobodan, Minister of Tourism, Republic of Serbia, Serbia (DOB 1955) (individual) [FRYK]
CHAMBER OF ECONOMY OF SERBIA (a.k.a. PRIVREDNA KOMORA SRBIJE), Belgrade, Serbia [FRYK]
CHAMBER OF ECONOMY OF YUGOSLAVIA (a.k.a. PRIVREDNA KOMORA JUGOSLAVIJE), Belgrade, Serbia [FRYK]
CINEX, Singerstrasse 2/8, 1010 Vienna, Austria [FRYK]
COMBICK AUSSENHANDELS GMBH (All offices worldwide) [FRYK]
COMBICK GMBH, Neuer Markt 1, 1010 Vienna, Austria [FRYK]
COMBICK GMBH, Post Office Box 322079, Militaerstrasse 90, 8004 Zurich, Switzerland [FRYK]

CONTINENTAL BANKA A.D., Belgrade, Serbia [FRYK]
CONTROLBANK (All offices worldwide) [FRYK]
COOPEX, Vienna, Austria [FRYK]
COSIC, Zivota, Minister of Mining and Energy (a.k.a. Minister of Energy and Mining), Republic of Serbia, Serbia (DOB 1942) (individual) [FRYK]
COTRA BV, J Luykenstraat 12 3HG, 1071 CM Amsterdam, Netherlands [FRYK]
CREDIBEL (All offices worldwide) [FRYK]
DAFIMENT BANK (All offices worldwide) [FRYK]
DANUBE (a.k.a. DUNAV), Smederevo, Serbia [FRYK]
DELTA BANKA A.D., Belgrade, Serbia [FRYK]
DEPOZITNO–KREDITNA BANKA A.D., Belgrade, Serbia [FRYK]
DES–SUBOTICA, Gavrila Principa 8, 24000 Subotica, Serbia [FRYK]
DIJAMANT BANKA DD, Zrenjanin, Serbia [FRYK]
DIJAMANT, Zrenjanin, Serbia [FRYK]
DIKOMBAU GMBH (branch office), Flandricher Strasse 13–15, 5000 Koln, Germany [FRYK]
DIKOMBAU GMBH, Lager Weg 16, 6000 Frankfurt am Main, Germany [FRYK]
DIMONT GMBH (a.k.a. DIMONT MONTAGE UND BAU GMBH), Wilhelm–Leuschner–Strasse 68, 6000 Frankfurt am Main, Germany [FRYK]
DIMONT MONTAGE UND BAU GMBH (a.k.a. DIMONT GMBH), Wilhelm–Leuschner–Strasse 68, 6000 Frankfurt am Main, Germany [FRYK]
DINARA BANKA A.D., Belgrade, Serbia [FRYK]
DINARA, Belgrade, Serbia [FRYK]
DIP (a.k.a. DRVNO INDUSTRIJSKO PREDUZECE), Belgrade, Serbia [FRYK]
DISBANKA A.D., Belgrade, Serbia [FRYK]
DOLPHINA BANK (All offices worldwide) [FRYK]
DROBNJAKOVIC, Dejan, Minister of Transportation, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1933) (individual) [FRYK]
DRVNO INDUSTRIJSKO PREDUZECE (a.k.a. DIP), Belgrade, Serbia [FRYK]
DTD BANKA A.D., Novi Sad, Serbia [FRYK]
DUNAV–TISA–DUNAV (a.k.a. DUNAV TISA DUNAV), Bulevar Marsala Tita 25, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
DUNAV (a.k.a. DANUBE), Smederevo, Serbia [FRYK]
DUNAV BANKA A.D., Belgrade, Serbia [FRYK]
DUNAV TISA DUNAV (a.k.a. DUNAV–TISA–DUNAV), Bulevar Marsala Tita 25, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
DUVANSKA INDUSTRIJA, Nis, Serbia [FRYK]
EI BULL HN, Nis, Serbia [FRYK]
EI–FABRIKA RADIO CEVI, Nis, Serbia [FRYK]
EI–NIS, Nis, Serbia [FRYK]
EKOS–BANKA A.D., Pec, Serbia [FRYK]
EKSKIMBANKA A.D., Belgrade, Serbia [FRYK]
ELEKTRODISTRIBUCIJA, Belgrade, Serbia [FRYK]
ELEKTROMETAL, Belgrade, Serbia [FRYK]
ELEKTRONSKA INDUSTRIJA, Bulevar Velijka Vlahovica 80–82, 18000 Nis, Serbia [FRYK]
ELEKTROPRIVEDA–PREDUZECE ZA PROIZVODNJU EL. ENERGIJE UGLJA, Belgrade, Serbia [FRYK]
ELEKTROPRIVREDA KOSOVA (a.k.a. KOSOVO ELECTRIC POWER COMPANY), Pristina, Kosovo (Serbia) [FRYK]
ELEKTROPRIVREDA SRBIJE (a.k.a. SERBIA ELECTRIC POWER INDUSTRY), Belgrade, Serbia [FRYK]
ELEKTROSRBIJA–DISTRIBUCIJA, Kraljevo, Serbia [FRYK]
ELEKTROTIMOK, Zajecar, Serbia [FRYK]
ELEKTROVOJVODINA, Novi Sad, Vojvodina (Serbia) [FRYK]
ELIND, Valjevo, Serbia [FRYK]
ENERGOGAS, Novi Beograd, Serbia [FRYK]
ENERGOPROJEKT, Belgrade, Serbia (All offices worldwide) [FRYK]
EXIMKOS (a.k.a. KOSOVO EXPORT IMPORT GMBH; a.k.a. KOSOVO GMBH; a.k.a. OMEGA GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
EXPORT IMPORT KOSOVO, Trg Republike 2, 38000 Pristina, Kosovo, Serbia [FRYK]
FABEG, Belgrade, Serbia [FRYK]
FABRIKA KABLOVA, Zajecar, Serbia [FRYK]
FABRIKA OPREME I DELOVA, Bor, Serbia [FRYK]
FABRIKA PUMPI JASTREBAC NIS, 12 Februara Bulevar 82, 18000 Nis, Serbia [FRYK]
FABRIKA STAKLA — ZAJECAR, Zajecar, Serbia [FRYK]
FABRIKA VENTILA ZA PNEUMATIKU, Bor, Serbia [FRYK]
FAM, Krusevac, Serbia [FRYK]
FAP–FAMOS, Belgrade, Serbia [FRYK]
FARKAS, Geza, Chief of Intelligence and Systems Directorate, GS, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1942; POB Becelji, Vojvodina, Serbia) (individual) [FRYK]
FEDERAL DIRECTORATE OF SUPPLY AND PROCUREMENT, Belgrade, Serbia [FRYK]
FERONIKL — GLOGOVAC, Glogovac, Kosovo (Serbia) [FRYK]
FERROUS EAST CORPORATION, Elizabeth, New Jersey, U.S.A. [FRYK]
FILIPOVIC, Rade (Ph.D.), Minister of Economy, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1946) (individual) [FRYK]
FINCOMTRA ESTABLISHMENT, Post Office Box 185, Vaduz, Liechtenstein [FRYK]
FINCONTRUST, Belgrade, Serbia [FRYK]
FIRST CORPORATE BANK (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
FIRST TEXTIL BANK A.D., Belgrade, Serbia [FRYK]
FOREIGN TRADE INSTITUTE (a.k.a. INSTITUT ZA SPOLJNU TRGOVINU), Belgrade, Serbia [FRYK]
FRIKOM, Padinska Skela, Serbia [FRYK]
FURNITURE AMERICANA, Hackensack, New Jersey, U.S.A. [FRYK]
GAS, Novi Sad, Vojvodina (Serbia) [FRYK]
GENERAL COMMERCE GMBH, Kaufinger Strasse 35, 8000 Munich 2, Germany [FRYK]
GENERAL IKL CORPORATION, Blauvelt, New York, U.S.A. [FRYK]
GENERAL MOTORS YU, Belgrade, Serbia [FRYK]
GENERALEXPORT (a.k.a. GENEX), Belgrade, Serbia [FRYK]
GENERALEXPORT ALEXANDRIA, 43, Saphia Zaghloul Street, Alexandria, Egypt [FRYK]
GENERALEXPORT ALMA ATA, Alma Ata, Khazakstan [FRYK]
GENERALEXPORT BAGHDAD, P.O. Box 2324 Alwiyah, Sa'adoun Street, Shaheen Building, Dard Al–Pasha, Baghdad, Iraq [FRYK]
GENERALEXPORT BEIJING, Unit 08–06/07, Liang Ma Tower, 8 North Dong San Huan Road, Chao Yang District, Beijing, People's Republic of China [FRYK]
GENERALEXPORT BRATISLAVA (a.k.a. YUGOTOURS), Palisady 31/II, 81106 Bratislava, Slovak Republic [FRYK]
GENERALEXPORT BUCHAREST, P.O. 22, Bd. N Balcescu Nr. 26, Sector 1, Bucharest, Romania [FRYK]
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GENERALEXPORT ISTANBUL (a.k.a. GENERALEXPORT LIAISON OFFICE), Dag. Apt. Daire No. 10, Cumhuriyet Cad. No. 10, Elmadag, Istanbul, Turkey [FRYK]
GENERALEXPORT KHARTOUM (a.k.a. GENERALEXPORT REPRESENTATIVE OFFICE; a.k.a. GENEX LTD. SUDAN), P.O. Box 6013, El Nugumi Str., 10 Khartoum, Sudan [FRYK]
GENERALEXPORT KIEV, Kiev, Ukraine [FRYK]
GENERALEXPORT KUWAIT, P.O. Box 1661 Safat, 13017 Safat Al Kuwait, Kuwait [FRYK]
GENERALEXPORT LIAISON OFFICE (a.k.a. GENERALEXPORT ISTANBUL), Dag. Apt. Daire No. 10, Cumhuriyet Cad. No. 10, Elmadag, Istanbul, Turkey [FRYK]
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GENERALEXPORT MOSCOW, Ul. Raevskogo 4, 121248 Moscow, Russia [FRYK]
GENERALEXPORT NORILSK, Norilsk, Russia [FRYK]
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GENERALEXPORT REPRESENTATIVE OFFICE (a.k.a. GENERALEXPORT KHARTOUM; a.k.a. GENEX LTD. SUDAN), P.O. Box 6013, El Nugumi Str., 10 Khartoum, Sudan [FRYK]
GENERALEXPORT RIGA, Kirowa 21, 2 floor, kv. 4, Riga, Latvia [FRYK]
GENERALEXPORT SAINT PETERSBURG, Kirowski Prospekt 26/28 kv 101, St. Petersburg, Russia [FRYK]

GENERALEXPORT SOCHI, Pirogowa 30 a, Sochi, Russia [FRYK]
GENERALEXPORT SOFIA, Aleksandar Stambolijski 49/III, 1000 Sofia, Bulgaria [FRYK]
GENERALEXPORT TASHKENT, Tashkent, Uzbekistan [FRYK]
GENERALEXPORT TEHRAN, P.O. Box 11365–7633, Str. Kharim Khane zand No. 1/53, Tehran, Iran [FRYK]
GENERALEXPORT ULAN BATOR, 6 Mikrorajon, Dom 41, Kvartira 9/4, Ulan Bator, Mongolia [FRYK]
GENERALEXPORT VOLGOGRAD, Chuikowa 37, 4 floor, kv. 4, Volgograd, Russia [FRYK]
GENERALEXPORT WARSAW, Ul. Wspolna 35 m. 8, 00–519 Warszawa, Poland [FRYK]
GENERALEXPORT YEREVAN, Yerevan, Armenia [FRYK]
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GENEX–AGRAR, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–ENGINEERING, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–INVEST, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX KRISTAL, Belgrade, Serbia [FRYK]
GENEX LOME — TOGO (a.k.a. GENERALEXPORT LOME), P.O. Box 4410, Lome, Togo [FRYK]
GENEX LTD. SUDAN (a.k.a. GENERALEXPORT KHARTOUM; a.k.a. GENERALEXPORT REPRESENTATIVE OFFICE), P.O. Box 6013, El Nugumi Str., 10 Khartoum, Sudan [FRYK]
GENEX MAGREB, Tunisia [FRYK]
GENEX–METALS, Post Office Box 636, Narodnih Heroja 43, 11070 Novi Beograd, Serbia [FRYK]
GENEX–PHARM, CHEMICALS AND CRUDE OIL, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–REPRESENTATION, Post Office Box 636, Dure Dakovica 31, 11000 Belgrade, Serbia [FRYK]
GENEX–TEXTILES, LEATHER AND FOOTWEAR, Post Office Box 636, Vladimira Popovica 8, 11070 Novi Beograd, Serbia [FRYK]
GENEX–TIMBER, PAPER AND PRINTING, Post Office Box 636, Narodnih Heroja 43, 11070 Novi Beograd, Serbia [FRYK]
GEOINSTITUT, Rovinjska 12, 11000 Belgrade, Serbia [FRYK]
GLIMMER MARITIME S.A., Panama City, Panama, c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
GLOBAL, Novi Sad, Vojvodina (Serbia) [FRYK]
GOJKOVIC, Maja, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1963) (individual) [FRYK]
GOLD INTERNATIONAL BANKA D.D., Belgrade, Serbia [FRYK]
GOSA, 11420 Smederevska Palanka, Industrijska 70, Serbia [FRYK]
GOSA, Smederevo, Serbia [FRYK]
GRANEXPORT, Belgrade, Serbia [FRYK]
GRUPO ICD–PAMS–SG, Belgrade, Serbia [FRYK]
GUMAPLAST, Indija, Vojvodina (Serbia) [FRYK]
HELINCO LTD., Amerikis 10, Athens 134, Greece [FRYK]
HELSER LTD., 7 Lassani Street, Thiseos 64 Ampelokipi, Thessaloniki, Greece [FRYK]
HEMOFARM, Vrsac, Vojvodina (Serbia) [FRYK]
HEMPRO — EXPORT UND IMPORT GMBH, Luisenstrasse 46 IV, 1040 Berlin, Germany [FRYK]
HEMPRO–BELGRADE REPRESENTATION, Str. Uiliam Gladston 38 fl 1, 1000 Sofia, Bulgaria [FRYK]
HEMPRO BELGRADE, Mala Stepanska 15, Prague, Czech Republic [FRYK]
HEMPRO EXPORT UND IMPORT GMBH, Luisenstrasse 46 IV, 1040 Berlin, Germany [FRYK]
HEMPRO–JUGOSLAWISCH–DEUTSCHE GMBH, Eschersheimer Landstrasse 61, 6000 Frankfurt am Main, Germany [FRYK]
HEMPRO, Belgrade, Serbia [FRYK]
HEMPRO, Kutuzovskii Prospekt d 13 kv 2, Moscow, Russia [FRYK]
HIP–PETROHEMIJA, Pancevo, Vojvodina (Serbia) [FRYK]
HIPOL, Odzaci, Serbia [FRYK]
HIPOZAL BANKA (All offices worldwide) [FRYK]
HISAR — FABRIKA ZA PRERADU VOCA I POVRCA (a.k.a. CANNED FRUIT AND VEGETABLE PRODUCTION OF PROKUPLJE), Prokuplje, Serbia [FRYK]
I.P.T. COMPANY, INC., Warminster, Pennsylvania, U.S.A. [FRYK]
IKARUS, Belgrade, Serbia [FRYK]
IKL (a.k.a. INDUSTRIJA KOTRLJAJUCIH LEZAJA), Kneza Danila 23–25, 11000 Belgrade, Serbia [FRYK]
IMK 14 OKTOBAR (a.k.a. METALWORKING MACHINES AND COMPONENTS INDUSTRY 14 OCTOBER), Krusevac, Serbia [FRYK]
IMLEK, Zajecar, Serbia [FRYK]
IMPEX OVERSEAS CORPORATION, New York, New York, U.S.A. [FRYK]
IMPEXPRODUKT, Wipplingerstrasse 36, 1010 Vienna, Austria [FRYK]
IMR — INDUSTRIJA MOTORA RAKOVICA (a.k.a. MOTOR INDUSTRY OF RAKOVICA), Belgrade, Serbia [FRYK]
IMT — INDUSTRIJA MASINA I TRAKTORA (a.k.a. MACHINES AND TRACTORS INDUSTRY), Belgrade, Serbia [FRYK]
INCETRA ETABLISSEMENT S.A., Corso Elvezia 10/II, Lugano, Switzerland [FRYK]
INCETRA ETABLISSEMENT S.A., Vaduz, Liechtenstein [FRYK]
INDUSTRIJA KABLOVA, Svetozarevo, Serbia [FRYK]
INDUSTRIJA KOTRLJAJUCIH LEZAJA (a.k.a. IKL), Kneza Danila 23–25, 11000 Belgrade, Serbia [FRYK]
INEC ENGINEERING CO. LTD., 175 Regent Street, London W1, England [FRYK]
INEC UK LTD., R/O Albion Street, London W2 2AS, England [FRYK]
INEX (a.k.a. INEX–INTEREXPORT LTD; a.k.a. INTEREXPORT LTD. CO.), 27 Marta 69, Belgrade, Serbia [FRYK]
INEX AG, Bahnhofquai 15, 8001 Zurich, Switzerland (All offices worldwide) [FRYK]
INEX BANKA D.D. (All offices worldwide) [FRYK]
INEX FRANCE SARL, 40 rue des Mathurins, 75008 Paris, France [FRYK]
INEX GMBH (a.k.a. INEX IMPORT EXPORT GMBH) (All offices worldwide) [FRYK]
INEX IMPORT EXPORT GMBH (a.k.a. INEX GMBH) (All offices worldwide) [FRYK]
INEX–INTEREXPORT (All offices worldwide) [FRYK]
INEX–INTEREXPORT ENGINEERING, 4, Shawarbi Street, Apt. ι5, Cairo, Egypt [FRYK]
INEX–INTEREXPORT HIP DEVELOPMENT AND ENGINEERING CONSORTIUM TRIPOLI, That Al Emad Complex, Tripoli, Libya [FRYK]
INEX–INTEREXPORT LTD (a.k.a. INEX; a.k.a. INTEREXPORT LTD. CO.), 27 Marta 69, Belgrade, Serbia [FRYK]
INEX ITALIANA SRL (All offices worldwide) [FRYK]
INEX PETROL AG, Bahnhofquai 15, 8001 Zurich, Switzerland [FRYK]
INEX PETROL AG, Karntner Ring 17/15, A–1010 Vienna, Austria [FRYK]
INEX TOURS INTERNATIONAL SRL, Via Vittor Pisani, 20124 Milan, Italy [FRYK]
INEX TURIST, Belgrade, Serbia [FRYK]
INEXAMER COMMERCIAL CORPORATION, New York, New York, U.S.A. [FRYK]
INEXPRODUCT LTD., 40–43, Chancery Lane, London W.C. 2, England [FRYK]
INKOTEHNA, Belgrade, Serbia [FRYK]
INLIT SRL, V. le Vittorio Veneto 24, 20124 Milan, Italy [FRYK]
INOS, Belgrade, Serbia [FRYK]
INSTITUT MIHAJLO PUPIN, Belgrade, Serbia [FRYK]
INSTITUT ZA SISTEME, Belgrade, Serbia [FRYK]
INSTITUT ZA SPOLJNU TRGOVINU (a.k.a. FOREIGN TRADE INSTITUTE), Belgrade, Serbia [FRYK]
INTEREXPORT BRUXELLES, Blvd. E Jacqmain 162, WTC–V19e etage, 1000 Brussels, Belgium [FRYK]
INTEREXPORT COMPANY LTD., Mutende Road, Woodlands Residential Area, Lusaka, Zambia [FRYK]
INTEREXPORT LTD. CO. (a.k.a. INEX; a.k.a. INEX–INTEREXPORT LTD), 27 Marta 69, Belgrade, Serbia [FRYK]
INTEREXPORT, Belgrade, Serbia [FRYK]
INTERKOMERC BANKA A.D., Belgrade, Serbia [FRYK]
INTERKOMERC, Belgrade, Serbia [FRYK]
INTERNATIONAL GENEX BANK (All offices worldwide) [FRYK]
INTERNATIONAL TRADE MARKETING, Belgrade, Serbia [FRYK]
INTERPROGRESS A.G., Renggerstrasse 50 CH–8037, Zurich, Switzerland [FRYK]
INTERPROGRESS EUROPE, 16 Avenue Hoche, 75008 Paris, France [FRYK]
INTERPROGRESS FRANKFURT (a.k.a. INTERPROGRESS GMBH), Hermann–Mattern Strasse 46/III, Zweigstelle, Berlin, Germany [FRYK]
INTERPROGRESS FRANKFURT (a.k.a. INTERPROGRESS GMBH), Reuterweg 93, 6000 Frankfurt am Main, Germany [FRYK]

INTERPROGRESS GMBH (a.k.a. INTERPROGRESS FRANKFURT), Hermann–Mattern Strasse 46/III, Zweigstelle, Berlin, Germany [FRYK]
INTERPROGRESS GMBH (a.k.a. INTERPROGRESS FRANKFURT), Reuterweg 93, 6000 Frankfurt am Main, Germany [FRYK]
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INTERPROGRESS PRT. LTD., P.O. Box 937, Pymble NSW 2073, Sydney, Australia [FRYK]
INTERPROGRESS S.T.R.I., 16 Avenue Hoche, 75008 Paris, France [FRYK]
INTERPROGRESS TRADING CORPORATION, New York, New York, U.S.A. [FRYK]
INTERSERVIS, Vojvodina (Serbia) [FRYK]
INTERSPED, Subotica, Serbia [FRYK]
INTERTEHNA, Belgrade, Serbia [FRYK]
INTYBRA REPRESENTACAO & COMERCIO SA, Rua Visc de Inhauma 134 S/927, Rio de Janeiro, Brazil [FRYK]
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INVEST IMPORT, Belgrade, Serbia (All offices worldwide) [FRYK]
INVESTBANKA (a.k.a. OSNOVNA PRIVREDNO–INVESTICIONA BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
INVESTBANKA BELGRADE (All offices worldwide) [FRYK]
INVESTINZENJERING, Belgrade, Serbia [FRYK]
ITALKOPRODUCT, Piazza Cavour 3, 20121 Milan, Italy [FRYK]
ITRANS, Serbia [FRYK]
IVKOVIC, Branislav, Minister of Science and Technology, Republic of Serbia, Serbia (DOB 1952) (individual) [FRYK]
IVO LOLA RIBAR — BEOGRAD, Belgrade, Serbia [FRYK]
J.I.B. INSPECTION LTD. (a.k.a. JUGOINSPEKT (CYPRUS) LTD.; a.k.a. JUGOINSPEKT LTD.), 57 Ledra St, No. 7, Nicosia, Cyprus [FRYK]
J.U.B. HOLDINGS LTD, 2 Sofoules Street, Chanteclair Bldg., 2nd Floor, No. 205, Nicosia, Cyprus; registered address: Xenios Commercial Centere, Archbishop Makarios III Avenue, Suite 504, Nicosia, Cyprus [FRYK]
JABUKA, Belgrade, Serbia [FRYK]
JANKOVIC, Dragoljub, Minister of Justice, Republic of Serbia, Serbia (DOB 1945) (individual) [FRYK]
JAT (a.k.a. JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ; a.k.a. JUGOSLOVENSKI AEROTRANSPORT; a.k.a. YUGOSLAV AIRLINES), Belgrade, Serbia (All offices worldwide) [FRYK]
JAVNO PREDUZECE PTT SRBIJE (a.k.a. PUBLIC ENTERPRISE OF POST, TELEGRAPH, AND TELEPHONE OF SERBIA), Serbia [FRYK]
JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ (a.k.a. JAT; a.k.a. JUGOSLOVENSKI AEROTRANSPORT; a.k.a. YUGOSLAV AIRLINES), Belgrade, Serbia (All offices worldwide) [FRYK]
JB INTERNATIONAL SHIPPING AND COMMERCIAL GMBH, Alter Wall 36, 2000 Hamburg 11, Germany [FRYK]
JIK BANKA D.D. (a.k.a. JUGOSLOVENSKA IZVOZNA I KREDITNA BANKA D.D.; a.k.a. YUGOSLAV EXPORT AND CREDIT BANK INC.), P.O. Box 234, Knez Mihailova 42, 11000 Belgrade, Serbia (All offices worldwide) [FRYK]
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JOINT REPRESENTATIVE OFFICE OF YUGOSLAV BANKS, Ta Yuan Cun–Dipl. Office bldg. 2–8–1, Beijing, People's Republic of China [FRYK]
JOVANOVIC, Perisa, Secretary for Legislation, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1946) (individual) [FRYK]
JOVANOVIC, Zivadin, Vice President, Socialist party of Serbia; Minister of Foreign Affairs (a.k.a. Federal Secretary for Foreign Affairs), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 14 Nov 1938; POB Oparic, the commune of Rekovac, Serbia) (individual) [FRYK]
JRB — YUGOSLAV RIVER SHIPING COMPANY, Belgrade, Serbia [FRYK]
JUBANKA A.D., Belgrade, Serbia [FRYK]
JUBMES A.D., Belgrade, Serbia [FRYK]
JUGOAGENT, Belgrade, Serbia [FRYK]
JUGOAGENT, HAMBURG REPRESENTATIVE OFFICE, Hamburg, Germany [FRYK]
JUGOALAT, Novi Sad, Vojvodina (Serbia) [FRYK]
JUGOAUTO, Belgrade, Serbia [FRYK]
JUGOAZBEST, Milanovac, Serbia [FRYK]
JUGOBANKA (a.k.a. BANK FOR FOREIGN TRADE AD; a.k.a. JUGOBANKA D.D.; a.k.a. YUGOBANKA) (All offices worldwide) [FRYK]
JUGOBANKA D.D. (a.k.a. BANK FOR FOREIGN TRADE AD; a.k.a. JUGOBANKA; a.k.a. YUGOBANKA) (All offices worldwide) [FRYK]
JUGOBROD, Belgrade, Serbia [FRYK]
JUGODRVO, Belgrade, Serbia [FRYK]
JUGODUVAN, Nis, Serbia [FRYK]
JUGOELEKTRO, Belgrade, Serbia [FRYK]
JUGOELEKTRO, BERLIN BRANCH OFFICE, Berlin, Germany [FRYK]
JUGOEXPORT GMBH, Bronnerstrasse 17, 6000 Frankfurt am Main 1, Germany [FRYK]
JUGOEXPORT, Belgrade, Serbia [FRYK]
JUGOHEMIJA, Belgrade, Serbia [FRYK]
JUGOINSPEKT (CYPRUS) LTD. (a.k.a. J.I.B. INSPECTION LTD.; a.k.a. JUGOINSPEKT LTD.), 57 Ledra St, No. 7, Nicosia, Cyprus [FRYK]
JUGOINSPEKT LTD. (a.k.a. J.I.B. INSPECTION LTD.; a.k.a. JUGOINSPEKT (CYPRUS) LTD.), 57 Ledra St, No. 7, Nicosia, Cyprus [FRYK]
JUGOINSPEKT, Serbia [FRYK]
JUGOLABORATORIJA, Belgrade, Serbia [FRYK]
JUGOLEK, Belgrade, Serbia [FRYK]
JUGOMETAL, 92 Archbishop Makarios III Avenue, Nicosia, Cyprus [FRYK]
JUGOMETAL, Belgrade, Serbia [FRYK]
JUGOPAPIR, Belgrade, Serbia [FRYK]
JUGOPETROL, Belgrade, Serbia [FRYK]
JUGOPREVOZ, Belgrade, Serbia [FRYK]
JUGOSKANDIA A.B., Noerrebrogade 26, 2200 Copenhagen N, Denmark [FRYK]
JUGOSKANDIA AB, Raadhusgt 17, 0158 Oslo 1, Norway [FRYK]
JUGOSKANDIA AB, Sveavagen 59, 113 59 Stockholm, Sweden [FRYK]
JUGOSKANDIA AB, Topeliuksenkatu 3b, A5, 00260 Helsinki 26, Finland [FRYK]
JUGOSKANDIK D.D. (All offices worldwide) [FRYK]
JUGOSLOVENSKA BANKA ZA MEDJUNARODNU EKONOMSKU SARADNJU (a.k.a. YUBMES; a.k.a. YUGOSLAV BANK FOR INTERNATIONAL ECONOMIC COOPERATION) (All offices worldwide) [FRYK]
JUGOSLOVENSKA IZVOZNA I KREDITNA BANKA D.D. (a.k.a. JIK BANKA D.D.; a.k.a. YUGOSLAV EXPORT AND CREDIT BANK INC.), P.O. Box 234, Knez Mihailova 42, 11000 Belgrade, Serbia (All offices worldwide) [FRYK]
JUGOSLOVENSKA NARODNA ARMIJA (a.k.a. JNA; a.k.a. YUGOSLAV NATIONAL ARMY), Belgrade, Serbia [FRYK]
JUGOSLOVENSKA POMORSKA AGENCIJA (a.k.a. YUGOSLAV SHIPPING AGENCY), Belgrade, Serbia [FRYK]
JUGOSLOVENSKI AEROTRANSPORT (a.k.a. JAT; a.k.a. JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ; a.k.a. YUGOSLAV AIRLINES), Belgrade, Serbia (All offices worldwide) [FRYK]
JUGOTEHNA, Belgrade, Serbia [FRYK]
JUMCO, Vranje, Serbia [FRYK]
KAPITAL BANKA A.D., Belgrade, Serbia [FRYK]
KARIC BANKA CYPRUS OFFSHORE BANKING UNIT, 66 Makarios III Avenue, Cronos Court, 2nd Floor, Nicosia, Cyprus [FRYK]
KARIC BANKA, Palmira Toljatija 3, 11070 Novi Beograd, Serbia [FRYK]
KARIC, Palmira Bogoljub, Minister without Portfolio, Republic of Serbia, Toljatija 3, 11070, Novi Beograd, Serbia (DOB 17 Jan 1954; POB Pec, Kosovo) (individual) [FRYK]
KERTES, Mihalj, Customs Director, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 29 AUG 1947; POB Palanka, Vojvodina, Serbia) (individual) [FRYK]
KIKIC, Zlatan, Director, MFA Europe (a.k.a. Director, European Department), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1940) (individual) [FRYK]
KLUZ, Belgrade, Serbia [FRYK]
KMG TRUDBENIK, Belgrade, Serbia [FRYK]
KNEZEVIC, Zoran, Minister of Justice, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1948) (individual) [FRYK]

KOIMPEX, Novi Sad, Vojvodina (Serbia) [FRYK]
KOMERCIJALNA BANKA A.D., Belgrade, Serbia [FRYK]
KOMGRAP (a.k.a. KOMGRAP–GRO), Terazije 4, P.O. Box 468, 11001 Belgrade, Serbia [FRYK]
KOMGRAP–GRO (a.k.a. KOMGRAP), Terazije 4, P.O. Box 468, 11001 Belgrade, Serbia [FRYK]
KOMNENIC, Milan, Minister for Information, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1940) (individual) [FRYK]
KONSTRUKTOR, Pancevo, Vojvodina (Serbia) [FRYK]
KOOPERATIVA, Novi Sad, Vojvodina (Serbia) [FRYK]
KOPAONIK, Belgrade, Serbia [FRYK]
KOPRODUCT LTD., 2 Albion Place, King's Terrace, Galena Road, London W6 0QT, England [FRYK]
KOPRODUKT (a.k.a. KOPRODUKT ZA UNUTRASNJU I SPOLJNU TRGOVINU I ZASTUPANJE STRANIH PREDUZECA), Bulevar Marsala Tita 6, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
KOPRODUKT ZA UNUTRASNJU I SPOLJNU TRGOVINU I ZASTUPANJE STRANIH PREDUZECA (a.k.a. KOPRODUKT), Bulevar Marsala Tita 6, 21000 Novi Sad, Vojvodina (Serbia) [FRYK]
KOSOVO ELECTRIC POWER COMPANY (a.k.a. ELEKTROPRIVREDA KOSOVA), Pristina, Kosovo (Serbia) [FRYK]
KOSOVO EXPORT IMPORT GMBH (a.k.a. EXIMKOS; a.k.a. KOSOVO GMBH; a.k.a. OMEGA GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
KOSOVO GMBH (a.k.a. EXIMKOS; a.k.a. KOSOVO EXPORT IMPORT GMBH; a.k.a. OMEGA GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
KOSOVSKA BANKA (All offices. Bank is headquartered in Pristina, Kosovo (Serbia)) [FRYK]
KOSTIC, Jugoslav, Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1939) (individual) [FRYK]
KOVAC, Dr. Miodrag, Minister of Labor, Health and Social Work, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1948) (individual) [FRYK]
KOVACEVIC, Dejan, Minister of Construction Industries (a.k.a Minister of Civil Engineering), Republic of Serbia, Serbia (DOB 1937) (individual) [FRYK]
KRAJISKA BANKA A.D., Zemun, Serbia [FRYK]
KRASIC, Zoran (a.k.a. KRASNIC, Zoran), Minister of Trade, Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
KRASNIC, Zoran (a.k.a. KRASIC, Zoran), Minister of Trade, Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
KREDITNA BANKA BEOGRAD (All offices worldwide) [FRYK]
KREDITNA BANKA BEOGRAD CYPRUS OFFSHORE BANKING UNIT, Nicosia, Cyprus [FRYK]
KREDITNA BANKA PRISTINA (All offices worldwide) [FRYK]
KREDITNA BANKA SUBOTICA (All offices worldwide) [FRYK]
KRGA, Branko, Chief, Intelligence Department (a.k.a. Head of Second Department, Intelligence), Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 18 FEB 1945) (individual) [FRYK]
KRUSEVAC PROMET, Krusevac, Serbia [FRYK]
KRUSIK, Valjevo, Serbia [FRYK]
KUGLEX, Belgrade, Serbia [FRYK]
KULSKA BANKA A.D., Kula, Serbia [FRYK]
KUTLESIC, Dr. Vladan, Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1955; POB Belgrade, Serbia) (individual) [FRYK]
LAMEDON TRADING LTD., Evagoras Papachristouforou Street, Themis Court Bldg, 1st Floor, P.O. Box 561, Limassol, Cyprus [FRYK]
LAZIC, Djura, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1953) (individual) [FRYK]
LETEKS — LESKOVAC (a.k.a. WOOL AND TEXTILE INDUSTRY OF LESKOVAC), Leskovac, Serbia [FRYK]
LILIC, Zoran, Vice President, Socialist party of Serbia; Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 27 Aug 1953; POB Brza Palanka, Serbia) (individual) [FRYK]
LIRIJA, Prizren, Kosovo (Serbia) [FRYK]
LITALIA SHIPPING S.A., Panama City, Panama; c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
LIVNICA, Kikinda, Vojvodina (Serbia) [FRYK]
LZTK, Kikinda, Vojvodina (Serbia) [FRYK]
MACHINE INDUSTRY OF NIS (a.k.a. MIN — MASINSKA INDUSTRIJA), Nis, Serbia [FRYK]
MACHINES AND TRACTORS INDUSTRY (a.k.a. IMT — INDUSTRIJA MASINA I TRAKTORA), Belgrade, Serbia [FRYK]
MAG INTERTRADE, Serbia [FRYK]
MAG PETROL, Belgrade, Serbia [FRYK]
MAGNOHROM, Kraljevo, Serbia [FRYK]
MARJANOVIC, Mirko, Prime Minister, Republic of Serbia, Serbia (DOB 27 Jul 1937; POB Knin, Croatia) (individual) [FRYK]
MARKONIZONI, Serbia [FRYK]
MARKOVIC, Ratko, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 1944) (individual) [FRYK]
MASINOKOMERC, Belgrade, Serbia [FRYK]
MASINOKOMERC, Knez Mihajlova 1–3, P. Fah 232, 11000 Belgrade, Serbia [FRYK]
MATIC, Goran, Minister without Portfolio, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1959) (individual) [FRYK]
MATKOVIC, Dusko, Vice President, Socialist party of Serbia; Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 10 Apr 1956; POB Bitolj, F.Y.R.O.M.) (individual) [FRYK]
MATROZ — CELLULOSE AND PAPER INDUSTRY (a.k.a. MATROZ SREMSKA MITROVICA), Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
MATROZ SREMSKA MITROVICA (a.k.a. MATROZ — CELLULOSE AND PAPER INDUSTRY), Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
MB BANKA A.D., Nis, Serbia [FRYK]
MEDCHOICE HOLIDAYS LTD. (a.k.a. YUGOTOURS LTD.), Chesham House, 150 Regent Street, London WIR 6BB, England [FRYK]
MEDIFARM, Belgrade, Serbia [FRYK]
MEDIFINANCE BANK (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
MEDISA SARAJEVO, Sarajevo, Bosnia–Herzegovina [FRYK]
MERIMA, Krusevac, Serbia [FRYK]
MESOVITA BANKA D.D. (a.k.a. PKB BANKA; a.k.a. POLJOPRIVREDNI KREDITNA BEOGRAD BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
METAL AND PLASTIC COMPONENTS PRODUCTION (a.k.a. PROGRES PRIZREN), Prizren, Kosovo (Serbia) [FRYK]
METAL UND STAHL HANDELS GMBH, Seilergasse 14, 1010 Vienna, Austria [FRYK]
METAL UND STAHL HANDELS GMBH, Strase Lutherana Corp. D–2, Bucharest, Romania [FRYK]
METALAC, Suboticka 23, 11050 Belgrade, Serbia [FRYK]
METALCHEM BOMBAY, Yugoslav Trade Commission Office, Vaswani Mansion 1st Floor, 120/4 Dinsha Caccha Road, Bombay 400020, India [FRYK]
METALCHEM DIS TICARET LTD, Iskele Cadd., Iskele Arkasi, Sokak No 13 (Cami Yani), Uskudar–Salacak, Istanbul, Turkey [FRYK]
METALCHEM FRANCE S.A.R.L., 16 Avenue Franklin Roosevelt, 75008 Paris, France [FRYK]
METALCHEM INTERNATIONAL LTD., 79/83 Great Portland Street, London W1N 5FA, England [FRYK]
METALCHEMICAL COMMERCIAL CORPORATION, New York, New York, U.S.A. [FRYK]
METALIA S.R.L., Via Vittor Pisani 14, 20124 Milan, Italy [FRYK]
METALLIA HANDELS GMBH, Berliner Allee 61, Postf. 20 05 20, 4000 Dusseldorf 1, Germany [FRYK]
METALLIA MADRID, Plaza Castillia 3/1702, 28046 Madrid, Spain [FRYK]
METALLURGICAL COOPERATIVE OF SMEDEREVO (a.k.a. MKS — METALURSKI KOMBINAT SMEDEREVO), Smederevo, Serbia [FRYK]
METALOPLASTIKA, Jevrenova br 111, 15000 Sabac, Serbia [FRYK]
METALS–BANKA A.D., Novi Sad, Serbia [FRYK]
METALSERVIS, Belgrade, Serbia [FRYK]
METALWORKING MACHINES AND COMPONENTS INDUSTRY 14 OCTOBER (a.k.a. IMK 14 OKTOBAR), Krusevac, Serbia [FRYK]
METTA TRADING LTD., 79–83 Great Portland Street, London WIN 5FA, England [FRYK]
MG NORD TRADING COMPANY, Belgrade, Serbia [FRYK]

MILACIC, Borislav, Minister of Finances, Republic of Serbia, Serbia (DOB 1953) (individual) [FRYK]
MILENKOVIC, Tomislav, Minister of Labor, and Veteran and Public Welfare Issues, Republic of Serbia, Serbia (DOB 1950) (individual) [FRYK]
MILICEVIC, Leposava, Minister of Public Health (a.k.a. Minister of Health), Republic of Serbia, Serbia (DOB 1950) (individual) [FRYK]
MILOSEVIC, Slobodan, President, Federal Republic of Yugoslavia; President, Socialist party of Serbia (DOB 20 AUG 1941; POB Pozarevac, Serbia) (individual) [FRYK]
MILUTINOVIC, Milan, President, Republic of Serbia (DOB 19 DEC 1942; POB Belgrade, Serbia) (individual) [FRYK]
MIN — MASINSKA INDUSTRIJA (a.k.a. MACHINE INDUSTRY OF NIS), Nis, Serbia [FRYK]
MINEL, Belgrade, Serbia [FRYK]
MINEX AD. CO., 33 Vsegradska Street, Nis, Serbia [FRYK]
MINING METALLURGY–CHEMICAL COMBINATION OF LEAD AND ZINC (a.k.a. TREPCA–KOSOVSKA MITROVICA), Kosovska Mitrovica, Kosovo (Serbia) [FRYK]
MIRCIC, Miroslav, Minister for Liaison with Serbs Living Outside Serbia (a.k.a. Minister of Relations with Serbs Outside of Serbia) Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
MITROVIC, Luka, Minister of Industry, Republic of Serbia, Serbia (DOB 1951) (individual) [FRYK]
MKS — METALURSKI KOMBINAT SMEDEREVO (a.k.a. METALLURGICAL COOPERATIVE OF SMEDEREVO), Smederevo, Serbia [FRYK]
MOMCILOV, Paja, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1948) (individual) [FRYK]
MONTE ROYAL BANK A.D., Belgrade, Serbia [FRYK]
MONTENEGRO EXPORT NIKSIC, 1052 Vaci u 19/21, Budapest, Hungary [FRYK]
MONTENEGRO EXPORT YUGOSLAVIA, Kuruclesi ut 19/b, Budapest II, Hungary [FRYK]
MONTEX BANKA D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
MONTINVEST, Bulevar Revolucije 84, P.O.Box 821, 11001 Belgrade, Serbia [FRYK]
MONTINVEST, Wilhelm–Leuschner Strasse 68, 6000 Frankfurt am Main 1, Germany [FRYK]
MORAVA, Serbia [FRYK]
MOSTOGRADNJA–GRADJEVNO PREDUZECE, Vlajkoviceva 19A, 11000 Belgrade, Serbia [FRYK]
MOTOR INDUSTRY OF RAKOVICA (a.k.a. IMR — INDUSTRIJA MOTORA RAKOVICA), Belgrade, Serbia [FRYK]
NACIONAL SHOP, Belgrade, Serbia [FRYK]
NACIONAL, Serbia [FRYK]
NAFTAGAS–PROMET, Novi Sad, Vojvodina (Serbia) [FRYK]
NAFTAGAS–REFINERIJA, Pancevo, Vojvodina (Serbia) [FRYK]
NAFTAGAS, Novi Sad, Vojvodina (Serbia) [FRYK]
NAP–COMBICK OEL GMBH, Windmuehlstrasse 1, 6000 Frankfurt am Main 1, Germany [FRYK]
NARODNA BANKA JUGOSLAVIJE (a.k.a. BANQUE NATIONALE DE YOUGOSLAVIE; a.k.a. NATIONAL BANK OF YUGOSLAVIA), Belgrade, Serbia [FRYK]
NARODNA BANKA SRBIJE (a.k.a. NATIONAL BANK OF SERBIA), Belgrade, Serbia [FRYK]
NATIONAL BANK OF SERBIA (a.k.a. NARODNA BANKA SRBIJE), Belgrade, Serbia [FRYK]
NATIONAL BANK OF YUGOSLAVIA (a.k.a. BANQUE NATIONALE DE YOUGOSLAVIE; a.k.a. NARODNA BANKA JUGOSLAVIJE), Belgrade, Serbia [FRYK]
NEDELJKOVIC, Dr. Miroslav, Minister of Family Care (a.k.a. Minister of Welfare), Republic of Serbia, Serbia (DOB 1955; POB Gornji Milanovac, Serbia) (individual) [FRYK]
NENADOVIC, Slobodan, Minister for Domestic Trade, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1963) (individual) [FRYK]
NEOPLANTA, Novi Sad, Serbia [FRYK]
NIGERIAN ENGINEERING AND CONSTRUCTION CO. LTD., Ebute–Metta, Lagos, Nigeria [FRYK]
NIKOLIC, Tomislav, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 15 Feb 1952; POB Kragujevac, Serbia) (individual) [FRYK]
NIKSA BANKA (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
NIS–NAFTA INDUSTRIJA SRBIJE (a.k.a. SERBIAN PETROLEUM INDUSTRY), Novi Sad, Vojvodina (Serbia) [FRYK]
NISSAL, Bulevar Veljka Vlahovica bb, 18000 Nis, Serbia [FRYK]
NOLIVEL, Belgrade, Serbia [FRYK]
NOVAKOVIC, Zoran, Deputy Minister for Foreign Affairs, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 20 SEP 1950; POB Cetinje, Montenegro, Federal Republic of Yugoslavia) (individual) [FRYK]
NOVI DOM, Belgrade, Serbia [FRYK]
NOVI SAD FAIR, Novi Sad, Serbia [FRYK]
NOVI SAD RAILROAD TRANSPORTATION ORGANIZATION (a.k.a. ZELEZNICKO TRANSPORTNO PREDUZECE NOVI SAD), Novi Sad, Vojvodina (Serbia) [FRYK]
NOVI SHIPPING COMPANY S.A., Panama City, Panama, c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
NOVINSKA AGENCIJA TANJUG (a.k.a. TANJUG), Belgrade, Serbia [FRYK]
NOVKABEL, Novi Sad, Vojvodina (Serbia) [FRYK]
NOVOSADSKA BANKA D.D. (All offices. Bank is headquartered in Novi Sad, Vojvodina (Serbia)) [FRYK]
NOVOSADSKA FABRIKA KABELA, Novi Sad, Vojvodina (Serbia) [FRYK]
OBUCA, Belgrade, Serbia [FRYK]
OJDANIC, Dragoljub, Chief of the General Staff, The Armed Forces of the Federal Republic of Yugoslavia (DOB 1 JUN 1941; POB Ravni, Serbia) (individual) [FRYK]
OMEGA GMBH (a.k.a. EXIMKOS; a.k.a. KOSOVO EXPORT IMPORT GMBH; a.k.a. KOSOVO GMBH), Maillingerstrasse 34, 8000 Munich 2, Germany [FRYK]
OMNIAUTO, Belgrade, Serbia [FRYK]
OMNIKOMERC, Belgrade, Serbia [FRYK]
OPTIKA — BEOGRAD, Belgrade, Serbia [FRYK]
OSA CHARTERING, Belgrade, Serbia [FRYK]
OSA CHARTERING, Cyprus [FRYK]
OSBORNE TRADING COMPANY LTD., Berengaria Bldg., 25 Spyrou Araouzou Street, Limassol, Cyprus [FRYK]
OSNOVNA BANKA POLJOPRIVEDNA BANKA, Novi Sad, Vojvodina (Serbia) [FRYK]
OSNOVNA PRIVREDNO–INVESTICIONA BANKA (a.k.a. INVESTBANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
PALOMA WEST HANDELS GMBH, Frankfurt am Main, Germany [FRYK]
PAMUCNI KOMBINAT YUMKO, Vranje, Serbia [FRYK]
PANCEVO HEMIJSKA INDUSTRIJA, Spoljnostarcevacka 80, 26000 Pancevo, Serbia [FRYK]
PANONSKA BANKA D.D. (All offices. Bank is headquartered in Novi Sad, Vojvodina (Serbia)) [FRYK]
PAVKOVIC, Nebojsa, Commander, VJ 3rd Army, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 10 APR 1946; POB Senjski Rudnik, Despotovac Municipality, Pozarevac, Serbia) (individual) [FRYK]
PCL PELCAM TRADE LTD. (a.k.a. UBB INVESTMENTS & FINANCE), 2 Sofoules Street, Chanteclair Bldg., 2nd Floor, No. 205, Nicosia, Cyprus [FRYK]
PEKABETA, Belgrade, Serbia [FRYK]
PESIC, Dragisa, Minister of Finances, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1954) (individual) [FRYK]
PIK BECEJ, Becej, Vojvodina (Serbia) [FRYK]
PIK POZAREVAC, Pozarevac, Serbia [FRYK]
PIK SIRMIUM, Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
PIK SOMBOR, Sombor, Vojvodina (Serbia) [FRYK]
PIK TAKOVO, Gornji Milanovac, Serbia [FRYK]
PIK TAMIS, Pancevo, Vojvodina (Serbia) [FRYK]
PKB (a.k.a. POLJOPRIVREDNI KOMBINAT BEOGRAD), Padinska Skela, Serbia [FRYK]
PKB BANKA (a.k.a. MESOVITA BANKA D.D.; a.k.a. POLJOPRIVREDNI KREDITNA BEOGRAD BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
PKB COMMERCE, Belgrade, Serbia [FRYK]
POLJOPRIVREDNA BANKA OSNOVNA BANKA (All offices worldwide) [FRYK]
POLJOPRIVREDNI KOMBINAT BEOGRAD (a.k.a. PKB), Padinska Skela, Serbia [FRYK]

POLJOPRIVREDNI KREDITNA BEOGRAD BANKA (a.k.a. MESOVITA BANKA D.D.; a.k.a. PKB BANKA) (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
POP–LAZIC, Gordana, Minister of Local Government (a.k.a. Minister of Local Self–Administration; a.k.a. Minister of Civil Engineering), Republic of Serbia, Serbia (DOB 1956) (individual) [FRYK]
POPOVIC, Ljubisa, Secretary–General of the Federal Government, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1952) (individual) [FRYK]
PORT DUNAV, Pancevo, Serbia [FRYK]
PORT OF BELGRADE, Belgrade, Serbia [FRYK]
PORT OF NOVI SAD, Novi Sad, Serbia [FRYK]
PREDUZECE ZA GAZDOVANJE SUMAMA — SRBIJASUME (a.k.a. PUBLIC FORESTRY ENTERPRISE — SRBIJASUME), Serbia [FRYK]
PREDUZETNICKA BANKA D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
PRISTINSKA BANKA D.D. (All offices. Bank is headquartered in Pristina, Kosovo (Serbia)) [FRYK]
PRIVREDNA BANKA BEOGRAD D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
PRIVREDNA BANKA NOVI SAD D.D. (All offices. Bank is headquartered in Novi Sad, Vojvodina (Serbia)) [FRYK]
PRIVREDNA KOMORA JUGOSLAVIJE (a.k.a. CHAMBER OF ECONOMY OF YUGOSLAVIA), Belgrade, Serbia [FRYK]
PRIVREDNA KOMORA SRBIJE (a.k.a. CHAMBER OF ECONOMY OF SERBIA), Belgrade, Serbia [FRYK]
PROGRES BAGHDAD BRANCH OFFICE, Section 929 Street, 12 House 35/9/35, Baghdad, Iraq [FRYK]
PROGRES BUCHAREST (a.k.a. PROGRES BUCUREST), B–Dul Balcesku No 32–34/I, Bucharest, Romania [FRYK]
PROGRES BUCUREST (a.k.a. PROGRES BUCHAREST), B–Dul Balcesku No 32–34/I, Bucharest, Romania [FRYK]
PROGRES INTERAGRAR, Belgrade, Serbia [FRYK]
PROGRES PRIZREN (a.k.a. METAL AND PLASTIC COMPONENTS PRODUCTION), Prizren, Kosovo (Serbia) [FRYK]
PROGRES TRADE REPRESENTATION IN IRAN, Ayattolah Teleghani Ave No. 202/V, Teheran, Iran [FRYK]
PROGRES, Belgrade, Serbia [FRYK]
PROGRESGAS TRADING, Belgrade, Serbia [FRYK]
PROGRESS BEOGRAD (a.k.a. PROGRESS BEOGRAD PREDSTAVITELYSTVO VSSSR), St. Gorkog 56 kv 112, 12 50 47 Moscow, Russia [FRYK]
PROGRESS BEOGRAD PREDSTAVITELYSTVO VSSSR (a.k.a. PROGRESS BEOGRAD), St. Gorkog 56 kv 112, 12 50 47 Moscow, Russia [FRYK]
PROGRESS BUDAPEST, Kepviselet 6, Ferenczi Istvan 12/I, 1053 Budapest, Hungary [FRYK]
PROGRESS REPRESENTATION OFFICE, Sipka No. 7, Sofia 7, Bulgaria [FRYK]
PROGRESS REPRESENTATIVE OFFICE, Szpitalna 6, Przedstawicielstvo w Warszawie, Warsaw, Poland [FRYK]
PROITAL S.R.L., Filiale Di Trieste, 34122 Trieste, Italy [FRYK]
PROITAL S.R.L., Via napo Torriani 3L/I, Milan, Italy [FRYK]
PROMIMPRO EXPORTS AND IMPORTS LTD., 70 Archbishop Makarios III Avenue, Afemia Bldg., 3rd Floor, Nicosia, Cyprus [FRYK]
PRVA JUGOSLOV.–SVAJCARSKA BANKA A.D., Belgrade, Serbia [FRYK]
PRVA PETROLETKA, Trstenik, Serbia [FRYK]
PRVA SRPSKA KOMERCIALJNA BANKA (All offices. Bank is headquartered in Nis, Serbia) [FRYK]
PRVI MAJ, 18300 Pirot, Serbia [FRYK]
PRZEDSTAWICIELSTWO JUGOSLOWIANSKIEJ HANDLU ZAGRANICZNEGO HEMPRO, Szpitalna 6 m 16, Warsaw, Poland [FRYK]
PTT JUGOSLAVIJE (a.k.a. YUGOSLAV POST, TELEGRAPH AND TELEPHONE), Belgrade, Serbia (Including all affiliates) [FRYK]
PTT SRBIJA (a.k.a. SERBIA POST, TELEGRAPH AND TELEPHONE), Belgrade, Serbia [FRYK]
PUBLIC ENTERPRISE OF POST, TELEGRAPH, AND TELEPHONE OF SERBIA (a.k.a. JAVNO PREDUZECE PTT SRBIJE), Serbia [FRYK]
PUBLIC FORESTRY ENTERPRISE — SRBIJASUME (a.k.a. PREDUZECE ZA GAZDOVANJE SUMAMA — SRBIJASUME), Serbia [FRYK]
PUTNIK, Belgrade, Serbia [FRYK]
RAD GRADJEVINSKO PREDUZECE, Belgrade, Serbia [FRYK]
RAD, Belgrade, Serbia [FRYK]
RADIO TELEVIZIJA BEOGRAD (a.k.a. RTB), Belgrade, Serbia [FRYK]
RADIO TELEVIZIJA NOVI SAD (a.k.a. RTV NOVI SAD), Novi Sad, Vojvodina (Serbia) [FRYK]
RADIO TELEVIZIJA PRISTINA (a.k.a. RTV PRISTINA), Pristina, Kosovo (Serbia) [FRYK]
RADIO TELEVIZIJA SRBIJE (a.k.a. RTV SRBIJE), Belgrade, Serbia (Including all affiliates) [FRYK]
RADOJEVIC, Dojcilo, Minister for Telecommunications, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 9 Feb 1942) (individual) [FRYK]
RADOVANOVIC, Milovan, Minister of the Religions (a.k.a. Minister of Religious Affairs), Republic of Serbia, Serbia (DOB 1954) (individual) [FRYK]
RAFINERIJA, Novi Sad, Vojvodina (Serbia) [FRYK]
RAJ BANKA A.D., Pec, Serbia [FRYK]
RANK XEROX YU, Belgrade, Serbia [FRYK]
RAPID CO, Studentski trg 4, 11000 Belgrade, Serbia [FRYK]
RAPID, Belgrade, Serbia [FRYK]
RAS BANKA A.D., Belgrade, Serbia [FRYK]
RATKO MITROVIC — BEOGRAD, Belgrade, Serbia [FRYK]
REKORD, Belgrade, Serbia [FRYK]
RESAVSKA BANKA A.D., Despotovac, Serbia [FRYK]
ROBNE KUCE BEOGRAD, Belgrade, Serbia [FRYK]
ROZAJE, Polimlje, Serbia [FRYK]
RTB (a.k.a. RADIO TELEVIZIJA BEOGRAD), Belgrade, Serbia [FRYK]
RTB BOR, Bor, Serbia [FRYK]
RTV NOVI SAD (a.k.a. RADIO TELEVIZIJA NOVI SAD), Novi Sad, Vojvodina (Serbia) [FRYK]
RTV PRISTINA (a.k.a. RADIO TELEVIZIJA PRISTINA), Pristina, Kosovo (Serbia) [FRYK]
RTV SRBIJE (a.k.a. RADIO TELEVIZIJA SRBIJE), Belgrade, Serbia (Including all affiliates) [FRYK]
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RUDIMEX GMBH, Landstrasse Hauptstrasse 1/3–25, 1030 Vienna, Austria [FRYK]
RUDNAP DD (a.k.a. RUDNAP EXPORT–IMPORT), 10 Ul. Vuka Karadzica–Strasse, 11001 Belgrade, Serbia (All offices worldwide) [FRYK]
RUDNAP EXPORT–IMPORT (a.k.a. RUDNAP DD), 10 Ul. Vuka Karadzica–Strasse, 11001 Belgrade, Serbia (All offices worldwide) [FRYK]
RUDNICI BAKRA I NEMETALA, Bor, Serbia (Including all affiliates) [FRYK]
RUDNIK — GORNJI MILANOVAC, Gornji Milanovac, Serbia (Including all affiliates) [FRYK]
RUDNIK BAKRA, Majdanpek, Serbia [FRYK]
RUL — LESKOVAC, Leskovac, Serbia [FRYK]
S.A.V. MUENCHEN (a.k.a. SAV SYSTEM AGROVOJVODINA VERTRIEBS GMBH; a.k.a. SEVER–AGROVOJVODINA GMBH), Germany (All offices) [FRYK]
SAINOVIC, M.S., Nikola, Deputy Prime Minister, Federal Republic of Yugoslavia (DOB 7 DEC 1948; POB Bor, Serbia) (individual) [FRYK]
SAMARDZIC, Dusan, Chief of Military Readiness Inspectorate, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 30 APR 1939; POB Kralice (a.k.a Srbica), Kosovo, Serbia) (individual) [FRYK]
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SAVA, Serbia [FRYK]
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SECERANA ≥DIMITRIJE TUCOVIC≥, Belgrade, Serbia [FRYK]
SEDLAK, Ivan, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1951) (individual) [FRYK]
SEME, Belgrade, Serbia [FRYK]
SERB BANKA A.D., Belgrade, Serbia [FRYK]
SERBIA ELECTRIC POWER INDUSTRY (a.k.a. ELEKTROPRIVREDA SRBIJE), Belgrade, Serbia [FRYK]
SERBIA POST, TELEGRAPH AND TELEPHONE (a.k.a. PTT SRBIJA), Belgrade, Serbia [FRYK]
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SIAF SA, 11, rue du C Beaux, Casablanca, Morocco [FRYK]
SIMA POGACAREVIC–SIMPO (a.k.a. SIMPO), Vranje, Serbia (All offices worldwide) [FRYK]
SIMIC, Zeljko, Minister of Culture, Republic of Serbia, Serbia (DOB 21 May 1958) (individual) [FRYK]
SIMPO (a.k.a. SIMA POGACAREVIC–SIMPO), Vranje, Serbia (All offices worldwide) [FRYK]
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SIMPO BRD, Moll–Strasse 10, 1020 Berlin, Germany [FRYK]
SIMPO FRANCE (f.k.a. BINGO FRANCE), 28 Rue du Puits Dixmes Sennia 606, 94320 Thiais–CEDEX, France [FRYK]
SIMPO FURNITURE (CYPRUS) LTD., 1 Myklas Street, Flat 303, Nicosia, Cyprus [FRYK]
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SIMPO INTERNATIONAL, London, England [FRYK]
SIMPO SPOL GMBH, Prague, Czech Republic [FRYK]
SIMPO SRL, Bassano Del Vialle Dele Fosse 30, Grappa, Italy [FRYK]
SINTELON, Bela Palanka, Serbia [FRYK]
SIPOVAC, Nedeljko, Minister of Agriculture, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1942) (individual) [FRYK]
SIRMIUM BANKA A.D., S. Mitrovica, Serbia [FRYK]
SLAVIJA BANKA (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
SLUZBA DRUSTVENOG KNJIGOVODSTVA (a.k.a. SDK; a.k.a. SOCIAL ACCOUNTING SERVICE), Belgrade, Serbia [FRYK]
SMEDEREVSKA BANKA D.D. (All offices. Bank is headquartered in Belgrade, Serbia) [FRYK]
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SOKO — NADA STARK, Belgrade, Serbia [FRYK]
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SOMBORSKA BANKA A.D., Sombor, Serbia [FRYK]
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SRBIJATURIST, Nis, Serbia [FRYK]
SRBOCOOP, Belgrade, Serbia [FRYK]
SRPSKA FABRIKA STAKLA, Paracin, Serbia [FRYK]
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SUKO, Pirot, Serbia [FRYK]
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SUNBOW MARITIME S.A., Panama City, Panama, c/o Beogradska Plovidba, Lenjinov Bulevar 165A, 11070 Novi Beograd, Serbia [FRYK]
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TABAKOVIC, Jorgovanka, Minister of Economic and Ownership Transformation (a.k.a. Minister of Economic and Property Transformation), Republic of Serbia, Serbia (DOB 1960) (individual) [FRYK]
TACON GROUP, Serbia [FRYK]
TAKOVO, Belgrade, Serbia [FRYK]
TAMIS BANKA A.D., Pancevo, Serbia [FRYK]
TANJUG (a.k.a. NOVINSKA AGENCIJA TANJUG), Belgrade, Serbia [FRYK]
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TEHNOGAS, Kraljevo, Serbia [FRYK]
TEHNOHEMIJA, Belgrade, Serbia [FRYK]
TEHNOPROMET, Belgrade, Serbia [FRYK]
TEHNOSERVIS, Belgrade, Serbia [FRYK]
TEKING–INVEST, Belgrade, Serbia [FRYK]
TEKNOX, Belgrade, Serbia [FRYK]
TEKSTILNI KOMBINAT RASKA, Novi Pazar, Serbia [FRYK]
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TEXTILE INDUSTRY OF GRDELICA (a.k.a. TIG — TEKSTILNA INDUSTRIJA GRDELICA), Grdelica, Serbia [FRYK]
TIG — TEKSTILNA INDUSTRIJA GRDELICA (a.k.a. TEXTILE INDUSTRY OF GRDELICA), Grdelica, Serbia [FRYK]
TIGAR AMERICA, Jacksonville, Florida, U.S.A. [FRYK]
TIGAR, Pirot, Serbia [FRYK]
TIPOPLASTIKA, Gornji Milanovac, Serbia [FRYK]
TK BANK A.D., Kraljevo, Serbia [FRYK]
TODOROVIC, Dragan, Minister of Transport and Communications (a.k.a. Minister of Transport), Republic of Serbia, Serbia (DOB 1953) (individual) [FRYK]
TODOROVIC, Jovo, Minister of Education, Republic of Serbia, Serbia (DOB 1937) (individual) [FRYK]
TOMIC, Dragan, Speaker, Serbian Assembly, Serbia (DOB 9 DEC 1935; POB Gornja Bukovica, Bosnia and Herzegovina) (individual) [FRYK]
TOMIC, Dragomir, Deputy Prime Minister, Republic of Serbia, Serbia (DOB 1937) (individual) [FRYK]
TOMOVIC, Slobodan, Minister without Portfolio, Republic of Serbia, Serbia (DOB 1946) (individual) [FRYK]
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TRGOPRODUKT, Pancevo, Vojvodina (Serbia) [FRYK]
TRGOVACKA BANKA D.D., Belgrade, Serbia [FRYK]
TRGOVINA KOSOVO, Prizren, Kosovo (Serbia) [FRYK]
TRSTENICKA BANKA A.D., Trstenik, Serbia [FRYK]
TRYAL, Krusevac, Serbia [FRYK]
TURIST BANKA A.D., Belgrade, Serbia [FRYK]
TURISTICKI SAVEZ JUGOSLAVIJE (a.k.a. TOURIST ASSOCIATION OF YUGOSLAVIA), Belgrade, Serbia [FRYK]
TWEPICO LTD., 209 Archbishop Makarios III Avenue, Fytides Bldg., Apt. 102, Limassol, Cyprus [FRYK]
UBB INVESTMENTS & FINANCE (a.k.a. PCL PELCAM TRADE LTD.), 2 Sofoules Street, Chanteclair Bldg., 2nd Floor, No. 205, Nicosia, Cyprus [FRYK]
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UDRUZENA KOSOVSKA BANKA (a.k.a. ASSOCIATED BANK OF KOSOVO) (All offices worldwide) [FRYK]
UDRUZENJE YU VISA, Belgrade, Serbia [FRYK]
UNION BANKA D.D., Belgrade, Serbia [FRYK]
UNIONPROMET, Novi Sad, Vojvodina (Serbia) [FRYK]
UNITED CONSULTING CO. LTD., Cester Ho, Third Fl., Lusaka, Zambia [FRYK]
UNIVERZAL, Belgrade, Serbia [FRYK]
UNIVERZAL, Mjevrosime 51, 11000 Belgrade, Serbia [FRYK]
UTVA, Pancevo, Vojvodina (Serbia) [FRYK]
VALJAONICA ALUMINIJUMA, Sevojno Uzice, Serbia [FRYK]
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VERIMPEX GMBH — IMPORT AND EXPORT, Bohmerstrasse 6, 6000 Frankfurt am Main 1, Germany [FRYK]
VETPROM, Belgrade, Serbia [FRYK]
VISCOSE AND CELLULOSE INDUSTRY OF LOZNICA (a.k.a. VISKOZA — LOZNICA), Loznica, Serbia [FRYK]
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VOCARCOOP — UNION, Belgrade, Serbia [FRYK]
VOJVODINA — SREMSKA MITROVICA, Sremska Mitrovica, Vojvodina (Serbia) [FRYK]
VOJVODINA BANK–ASSOCIATED BANK, NOVI SAD (a.k.a. BANK OF VOJVODINA; n.k.a. VOJVODJANSKA BANKA, D.D.), Serbia (All offices worldwide) [FRYK]
VOJVODINA TOURS, Novi Sad, Vojvodina (Serbia) [FRYK]
VOJVODJANSKA BANKA, D.D. (a.k.a. BANK OF VOJVODINA; f.k.a. VOJVODINA BANK–ASSOCIATED BANK, NOVI SAD), Serbia (All offices worldwide) [FRYK]
VRSACKA BANKA D.D., Vrsac, Serbia [FRYK]
VUCIC, Aleksandar, Minister of Information, Republic of Serbia, Serbia (DOB 1970) (individual) [FRYK]
VUKOVIC, Borislav, Minister for Foreign Trade, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1951) (individual) [FRYK]
VUKSANOVIC, Danilo, Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1946) (individual) [FRYK]
WOOL AND TEXTILE INDUSTRY OF LESKOVAC (a.k.a. LETEKS — LESKOVAC), Leskovac, Serbia [FRYK]
YATZO Group, Serbia [FRYK]
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YUBMES (a.k.a. JUGOSLOVENSKA BANKA ZA MEDJUNARODNU EKONOMSKU SARADNJU; a.k.a. YUGOSLAV BANK FOR INTERNATIONAL ECONOMIC COOPERATION) (All offices worldwide) [FRYK]
YUCO–BANK A.D., Novi Sad, Serbia [FRYK]
YUEKIBANKA A.D., Belgrade, Serbia [FRYK]
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YUGOBANKA (a.k.a. BANK FOR FOREIGN TRADE AD; a.k.a. JUGOBANKA; a.k.a. JUGOBANKA D.D.) (All offices worldwide) [FRYK]
YUGOCANADA INC. TORONTO (a.k.a. YUGO CANADA INC.; a.k.a. YUGOTOURS OF CANADA), 100 Adelaide Street W. Ste. 1350, Toronto, Ontario M5H 1S3, Canada [FRYK]
YUGOEXPORT, New York, New York, U.S.A. [FRYK]
YUGOSLAV AIRLINES (a.k.a. JAT; a.k.a. JAVNO PREDUZECE ZA VAZDUSNI SAOBRACAJ; a.k.a. JUGOSLOVENSKI AEROTRANSPORT), Belgrade, Serbia (All offices worldwide) [FRYK]
YUGOSLAV BANK FOR INTERNATIONAL ECONOMIC COOPERATION (a.k.a. JUGOSLOVENSKA BANKA ZA MEDJUNARODNU EKONOMSKU SARADNJU; a.k.a. YUBMES) (All offices worldwide) [FRYK]
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YUGOSLAV POST, TELEGRAPH AND TELEPHONE (a.k.a. PTT JUGOSLAVIJE), Belgrade, Serbia (Including all affiliates) [FRYK]
YUGOSLAV SHIPPING AGENCY (a.k.a. JUGOSLOVENSKA POMORSKA AGENCIJA), Belgrade, Serbia [FRYK]
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ZAJEDNICA JUGOSLOVENSKIH ZELEZNICA (a.k.a. ASSOCIATION OF YUGOSLAV RAILWAYS), Belgrade, Serbia [FRYK]
ZAMBIA ENGINEERING AND CONTRACTING CO., Zecco Bldg. Mukwa Road, Lusaka, Zambia [FRYK]
ZASTAVA (a.k.a. AUTOMOBILE INDUSTRY — CRVENA ZASTAVA; a.k.a. ZAVODI CRVENA ZASTAVA — KRAGUJEVAC), Kragujevac, Serbia [FRYK]
ZASTAVA (GB) LTD. (a.k.a. YUGO CARS), Gloucester House, Basingstoke Road, Reading, Berkshire, RG2 OQW, England [FRYK]
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ZASTAVA JUGO AUTOMOBILI, Kragujevac, Serbia [FRYK]
ZASTAVA–PRIVREDNA VOZILA, Kragujevac, Serbia [FRYK]
ZASTAVA PROMET, Kragujevac, Serbia [FRYK]
ZAVOD ZA E. EKSP., Belgrade, Serbia [FRYK]
ZAVODI CRVENA ZASTAVA — KRAGUJEVAC (a.k.a. AUTOMOBILE INDUSTRY — CRVENA ZASTAVA; a.k.a. ZASTAVA), Kragujevac, Serbia [FRYK]
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ZDRAVLJE, Leskovac, Serbia [FRYK]
ZEBIC, Jovan, Deputy Prime Minister, Federal Republic of Yugoslavia, Federal Republic of Yugoslavia (DOB 1939; POB Runjani, Loznica, Serbia) (individual) [FRYK]
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ZELVOZ, Smederevo, Serbia [FRYK]
ZEPTER BANKA A.D., Belgrade, Serbia [FRYK]
ZORKA, Sabac, Serbia [FRYK]
ZTP BELGRADE, Belgrade, Serbia (Including all affiliates) [FRYK]
ZUPA — KRUSEVAC, Krusevac, Serbia [FRYK]

## Appendix B [Amended]

3. Appendix B to 31 CFR chapter V is amended by removing all entries with the column two program designation ''FRY S&M''.

Dated: November 1, 1999.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: November 1, 1999.

**Elisabeth A. Bresee,**

*Assistant Secretary (Enforcement), Department of the Treasury.*

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 1999

**RIN 0720–AA37**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Reimbursement

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule, correction.

**SUMMARY:** This final rule makes an administrative correction to the final rule published in the **Federal Register** on Thursday, September 10, 1998 (63 FR 48439). The second set of amendatory instructions for §199.14 did not include the word ''revised''. Therefore, the Department of Defense is republishing amendments to § 199.14 which were unable to be incorporated into the CFR because of the missing word. All other amendments remain unchanged.

**EFFECTIVE DATE:** This rule is effective October 13, 1998, except amendments to § 199.14(h) introductory text, which are effective January 1, 1999.

**ADDRESSES:** Tricare Management Activity, (TMA), Program Development Branch, Aurora, CO 80045–6900.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–3628.

### Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule was submitted to OMB for review under 3507(d) of the Act.

### List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disability, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 Part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

2. Section 199.14 is amended by revising paragraph (a)(1)(iii)(B), paragraph (a)(1)(iii)(D)(*1*) first sentence and paragraph (a)(1)(iii)(D)(*5*), paragraph (a)(1)(iii)(E)(*1*)(*i*)(*A*) and paragraph (a)(1)(iii)(E)(*1*)(*i*)(*B*), paragraph (a)(1)(iii)(E)(*1*)(*ii*)(*A*) and (a)(1)(iii)(E)(*1*)(*ii*)(*B*), paragraph (a)(1)(iii)(G)(*3*) introductory text, paragraph (d)(3)(iv), and paragraph (h) introductory text to read as follows:

**§ 199.14 Provider reimbursement methods.**

(a) * * *

(1) * * *

(iii) * * *

(B) *Empty and low-volume DRGs.* For any DRG with less than ten (10) occurrences in the CHAMPUS database, the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DRG categories.

* * * * *

(D) * * *

(*1*) Differentiate large urban and other area charges. All charges in the database shall be sorted into large urban and other area groups (using the same definitions for these categories used in the Medicare program. * * *

* * * * *

(*5*) Preliminary base year standardized amount. A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban or other area group and dividing by the total number of discharges in the respective group.

* * * * *

(E) * * *

(*1*) * * *

(*i*) * * *

(*A*) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's arithmetic LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the arithmetic mean length-of-stay for the DRG.

(*B*) *Long-stay outliers.* Any discharge (except for neonatal services and services in children's hospitals) which has a length-of-stay (LOS) exceeding a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.82 shall be classified as a long-stay outlier. Any discharge for neonatal services or for services in a children's hospital which has a LOS exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's arithmetic mean LOS also shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The per diem rate shall equal the DRG amount divided by the arithmetic mean LOS for the DRG. For admissions on or after October 1, 1997, the long stay

outlier has been eliminated for all cases except children's hospitals and neonates. For admissions on or after October 1, 1998, the long stay outlier has been eliminated for children's hospitals and neonates.

(*ii*) * * *

(*A*) Cost outliers except those in children's hospitals or for neonatal services. Any discharge which has standardized costs that exceed a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.84 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in paragraph (a)(1)(iii)(D)(*4*) of this section and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1997, the standardized costs are no longer adjusted for indirect medical education costs.

(*B*) Cost outliers in children's hospitals for neonatal services. Any discharge for services in a children's hospital or for neonatal services which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,500 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in paragraph (a)(1) (iii) (D) (*4*) of this section (adjusted to include average capital and direct medical education costs) and adjusting this amount for indirect medical education costs. Cost outliers for services in children's hospitals and for neonatal services shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1998, standardized costs are no longer adjusted for indirect medical education costs. In addition, CHAMPUS will calculate the outlier payments that would have occurred at each of the 59 Children's hospitals under the FY99 outlier policy for all cases that would have been outliers under the FY94 policies using the most accurate data available in September 1998. A ratio will be calculated which equals the level of outlier payments that would have been made under the FY94 outlier policies and the outlier payments that would be made if the FY99 outlier policies had applied to each of these potential outlier cases for these hospitals. The ratio will be calculated across all outlier claims for the 59 hospitals and will not be hospital specific. The ratio will be used to increase cost outlier payments in FY 1999 and FY 2000, unless the hospital has a negotiated agreement with a managed care support contractor which would affect this payment. For hospitals with managed care support agreements which affect these payments, CHAMPUS will apply these payments if the increased payments would be consistent with the agreements. In FY 2000 the ratio of outlier payments (long stay and cost) that would have occurred under the FY 94 policy and actual cost outlier payments made under the FY 99 policy will be recalculated. If the ratio has changed significantly, the ratio will be revised for use in FY 2001 and thereafter. In FY 2002, the actual cost outlier cases in FY 2000 and 2001 will be reexamined. The ratio of outlier payments that would have occurred under the FY94 policy and the actual cost outlier payments made under the FY 2000 and FY 2001 policies. If the ratio has changed significantly, the ratio will be revised for use in FY 2003.

* * * * *

(G) * * *

(*3*) Information necessary for payment of capital and direct medical education costs. All hospitals subject to the CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Beginning October 1, 1998, such request shall be filed with CHAMPUS on or before the last day of the twelfth month following the close of the hospitals' cost reporting period, and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. An extension of the due date for filing the request may only be granted if an extension has been granted by HCFA due to a provider's operations being significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change). The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(d) * * *

(3) * * *

(iv) *Step 4*: standard payment amount per group. The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group. For cases in which the standard payment amount per group exceeds the CHAMPUS-determined inpatient allowable amount, the Director, TSO or his designee, may make adjustments.

* * * * *

(h) Reimbursement of individual health care professionals and other non-institutional, non-professional provers. The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the service of an individual health care professional or other non-institutional, non-professional provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

* * * * *

Dated: October 9, 1999.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 99–29093 Filed 11–5–99; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–99–024]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations: Kennebunk River, ME

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations governing the Dock Square Drawbridge mile 1.0, across the Kennebunk River between Kennebunk and Kennebunkport, Maine. The bridge owner has asked the Coast Guard to change the regulations to allow the draw

to not open for vessel traffic because the bridge has not had a request to open since 1985. This final rule is expected to relieve the bridge owner of the requirement to open the bridge and still meet the needs of navigation.

**DATES:** This final rule is effective December 8, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On August 25, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Kennebunk River, Maine, in the **Federal Register** (64 FR 46322). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

### Background

The Dock Square Drawbridge has a vertical clearance at mean high water of 5 feet and 14 feet at mean low water. The existing regulations listed at 33 CFR 117.527, require the bridge to open on signal from April 15 through October 15; except that, from 5 p.m. to 7 a.m., the draw shall open if notice is given to the drawtender during his shift, from 7 a.m. to 5 p.m. At all other times the draw shall open after 24 hours advance notice is given.

The bridge owner, Maine Department of Transportation, asked the Coast Guard to change the regulations governing the Dock Square Drawbridge to allow that the drawbridge need not open for vessel traffic because the bridge has not opened since 1985.

### Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had a request to open since 1985.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

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 13132 and has determined that this final rule does not have federalism implications under that order.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.527 is revised to read as follows:

**§ 117.527 Kennebunk River.**

The Dock Square drawbridge at mile 1.0, across the Kennebunk River, between Kennebunk and Kennebunkport, Maine, need not open for vessel traffic. The owners of the bridge shall provide and keep in good legible condition, two board gages in accordance with 33 CFR 118.160, of this chapter.

Dated: October 28, 1999.

**Robert F. Duncan,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 99–29147 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–99–085]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations: Housatonic River, CT

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations governing the US 1 Bridge, mile 3.5, across the Housatonic River in Stratford, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six-hour advance notice for openings at night during the winter months because there have been few requests to open the bridge during that time period. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

**DATES:** This final rule is effective December 8, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for

inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On August 13, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Housatonic River, Connecticut, in the **Federal Register** (64 FR 44147). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

### Background

The US 1 Bridge, mile 3.5, across the Housatonic River, in Stratford, Connecticut, has a vertical clearance of 32 feet at mean high water and 37 feet at mean low water.

The existing operating regulations listed at 33 CFR 117.207(a) for the bridge require it to open on signal; except that, from 7 a.m. to 9 a.m., Monday through Friday and 4 p.m. to 5:45 p.m. daily, the draw need not be opened for the passage of vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT) has asked the Coast Guard to change the regulations to require a six-hour advance notice for openings from, 8 p.m. to 4 a.m., December 1 through March 31. The bridge opening log data for 1998, and 1999, December 1 through March 31, from 8 p.m. to 4 a.m., indicate the following number of openings: December 1, N/A, January 5, 6, February 4, 3, March 0, 3, respectively.

### Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open at night during the winter months. Mariners will still be able to obtain bridge openings at night during the winter months provided they give a six-hour notice.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

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 13132 and has determined that this final rule does not have federalism implications under that order.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.207(a) is revised to read as follows:

**§ 117.207 Housatonic River**

(a) The draw of the US 1 Bridge, mile 3.5, at Stratford, shall open on signal; except that, from 7 a.m. to 9 a.m., Monday through Friday, and 4 p.m. to 5:45 p.m. daily, the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: October 28, 1999.

**Robert F. Duncan,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 99–29148 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–99–079]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations: Mystic River, CT

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations governing the US 1 Bridge, mile 2.8, across the Mystic River in Mystic, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six-hour advance notice for openings in the evening during the winter months because there have been no requests to open the bridge during that time period. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

**DATES:** This final rule is effective December 8, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On August 13, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Mystic River, Connecticut, in the **Federal Register** (64 FR 44145). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested and none was held.

### Background

The US 1 Bridge, mile 2.8, across the Mystic River, has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water.

The existing operating regulations for the bridge listed at 33 CFR 117.211(b) require it to open on signal with a maximum delay of 20 minutes; except, from May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour, and from November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight-hours advance notice.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT), asked the Coast Guard to change the regulations to require a six-hour advance notice for openings from November 1 through April 30, 8 p.m. to 4 a.m. This change is less restrictive than the existing regulations which require eight-hours advance notice. The bridge opening log data for 1998, and 1999, November through April, indicate no requests to open the bridge during the time period 8 p.m. to 4 a.m.

### Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had any requests to open in the evening during the winter months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

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 13132 and has determined that this final rule does not have federalism implications under that order.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.211(b)(2) is revised to read as follows:

**§ 117.211 Mystic River**

* * * * *

(b) * * *

(2) From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hours notice is given by calling the number posted at the bridge.

Dated: October 28, 1999.

**Robert F. Duncan,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 99–29149 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Part 211

**RIN 0596–AB63**

## Administration; Cooperative Funding

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department is amending current regulations to establish minimum requirements applicable to written agreements between the Forest Service and cooperators, such as individuals, States and local governments, and other non-Federal entities. This rulemaking implements amendments to the Act of June 30, 1914, which expand the basis for accepting contributions for cooperative work, allow reimbursable payments by cooperators, and adequately protect the Government's interest. The intended effect is to fully implement the new statutory provisions to facilitate cooperative ventures.

**EFFECTIVE DATE:** This rule is effective December 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Debbie Pressman, Wildlife, Fish and Rare Plants Staff, 202–205–1205.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 18, 1998, the Forest Service published a proposed rule (63 FR 27245) that would implement recent amendments to the Act of June 30, 1914 (16 U.S.C. 498). This Act authorizes the Secretary of Agriculture to receive and subsequently use money as contributions toward cooperative work in forest investigations or for the protection and improvement of the national forests. The proposed rule would implement amendments to the Act of June 30, 1914, ( 16 U.S.C. 498) by: (1) Providing for the use of contributions for cooperative work on the entire National Forest System; (2) Adding ''management'' to the list of activities for which contributions for cooperative work may be accepted; and (3) Providing specific authority to accomplish cooperative work using Forest Service funds prior to reimbursement by the cooperator pursuant to a written agreement.

## Response to Comments Received

Public comment on the proposed rule was invited. The comment period closed on July, 17, 1998. Seven respondents provided comments on the proposed rule: 4 national conservation organizations, 1 State fish and wildlife agency, 1 utility company, and 1 Member of Congress. All respondents expressed support of the agency's effort to enhance cooperative partnerships on National Forest System lands by removing administrative barriers requiring cooperators to contribute funds in advance of any work to be accomplished.

A summary of specific comments by broad subject and the Department's response to these comments follows.

*Comment: Interpretation of Allowable Management Activities.* One respondent suggested adding the word ''evaluation'' to the list of management activities proposed at § 211.6(a), Purpose and scope, that can be cooperatively funded.

*Response:* The word ''management'' is a broad term that would include ''such work as planning, analysis, related studies and evaluations, as well as resource activities.'' The examples provided in the rule are added for clarity and are not intended to be inclusive of all potential ''management'' activities. Therefore, this suggestion has not been adopted in the final rule.

*Comment: Use of Cooperator Contributions for Administrative Support.* At § 211.6(a), Purpose and scope, the proposed rule described National Forest management activities which may be cooperatively funded as including such work as planning, analysis, and related studies, as well as resource activities. One respondent raised the issue of whether this language is inconsistent with the intent of the law. This respondent also expressed concern that cooperator funds could be used for administration, planning, and research, instead of field work and that the proposed rule lacked safeguards limiting the amount that the Forest Service can use from contributed funds for non-field work.

*Response:* The Department interprets the management of National Forest System lands to include field resource work, administrative studies, project planning, and all related tasks necessary to carry out the mission of the Forest Service. The development of cooperative projects and associated cooperative agreements requires the full disclosure of all costs associated with the project. Negotiations and joint discussions between the Forest Service and cooperators afford cooperators the opportunity to fund as much or as little of the project cost as they deem appropriate. Cooperators must agree on how their funds will be expended. Given that cooperative project costs are fully disclosed and mutually agreed upon, the Department is of the opinion that the proposed rule was consistent with the Act of June 30, 1914, as amended, and that additional language prohibiting non-field work is not necessary in the final rule.

*Comment: Reimbursements to the Forest Service.* One respondent suggested that a cooperator be permitted to provide the required reimbursement payments within the first 60 days of the fiscal year immediately following the fiscal year in which the expenditure of Forest Service funds was completed, if such expenditures by the Forest Service occur within the last 60 days of a fiscal year.

*Response:* The Department agrees with this suggestion but does not believe that a change in rule text is necessary. Forest Service Manual § 6533.3 already instructs employees on how to handle such situations. Moreover, Forest Service bills for collection specify the time period in which payment is due.

*Comment: In-Kind Contributions.* One respondent recommended that in-kind contributions, such as goods and services, contributed by cooperators in conjunction with cooperative agreements, not be subject to the bonding provisions required in § 211.6(b), Reimbursements and bonding, of the proposed rule.

*Response:* In-kind contributions are not affected by this rule. The Act of June 30, 1914, as amended, addresses only those situations in which monies are received by the Forest Service as contributions toward cooperative work. If a cooperator is making in-kind contributions rather than financial contributions, the bonding provisions specified in § 211.6(c), Bonding, of the final rule would not be applicable.

*Comment: Application of Bonding Threshold.* One respondent expressed support for protecting the government's interest by requiring bonds for project costs exceeding $25,000, but expressed concern that the provision should apply to the cost of individual projects, rather than to total cooperative funds provided by partners on an annual basis.

*Response:* Paragraph § 211.6(b), Reimbursements and bonding, of the proposed rule would require a payment bond for agreements of $25,000 or more to guarantee the cooperator's reimbursement, thereby ensuring that the public interests are protected. This requirement applies to individual cooperative agreements, rather than to individual cooperative projects. The distinction is that a particular cooperative agreement may encompass more than one cooperative project. The text of § 211.6(c), Bonding, of the final rule has been revised to clarify this distinction.

*Comment: Payment Assurances and Creditworthiness.* One respondent suggested that, on a case-by-case basis, assurances of payment, other than the payment bonds required in § 211.6(b), Reimbursements and bonding, of the proposed rule should be acceptable, and further, that the payment bond requirement should be waived where the cooperator has a significant history of successfully completing payments in accordance with other agreements or provides some other reliable assurance that payment will be provided.

*Response:* The Department has carefully considered this comment but remains convinced that the bonding requirement (§ 211.6(b), Reimbursement and bonding, of the proposed rule) is necessary to protect the interests of the public and should not be waived or otherwise modified on a case-by-case basis. As specified in the proposed rule, the bonding requirement would be consistently applied throughout the agency whenever a non-Government cooperator agrees to contribute $25,000 or more to the Forest Service on a reimbursable basis. By providing a consistent mechanism for handling the bonding requirement, all cooperators are

assured of equitable treatment across administrative units, thus eliminating the potential for conflicting ''creditworthy determinations'' for cooperative agreements at similar funding levels. Accordingly, the Department has decided to retain the payment assurance requirements set out in § 211.6(b) of the proposed rule in a separate paragraph § 211.6(c), Bonding, of the final rule as the more appropriate mechanism for protecting government interests as required by the statute.

*Comment: Effect of Rule on Existing Memorandums of Understanding.* One respondent asked if cooperators operating under existing Memorandums of Understanding (MOUs) would be required to enter into new MOUs to clarify the fiscal relationship between the cooperator and the Forest Service.

*Response:* Memorandums of Understanding (MOUs) are viewed as agreements documenting cooperation in those circumstances where nothing of value transfers between parties or documenting a common understanding of the nature of a relationship between parties. Therefore, MOUs are not affected by this rule.

However, a written cooperative agreement, completed in accordance with specific cooperative authority, must be executed prior to: (1) The agency's receipt of contributions for cooperative work; or (2) The expenditure of agency funds on a reimbursable basis. While the final rule does not require revision of existing cooperative agreements, any party to existing cooperative agreements may request changes in payment terms or any other aspect of the agreement at any time.

**Additional Modification**

In the course of considering the comments on the proposed rule, the agency became aware of the need to clarify the meaning of ''non-Government cooperator.'' This has been addressed by adding a new sentence to paragraph § 211.6(c) in the final rule.

**Conclusion**

Having considered the comments received, the Department is adopting a final rule implementing the recent statutory amendments to the Act of June 30, 1914, which expand the basis for accepting contributions for cooperative work between the Forest Service and cooperators. The final rule provides for the planning and completion of projects using Forest Service funds with reimbursement from cooperators. The Government's interests are protected by securing reimbursement payments from non-Government cooperators with payment bonds when payments due under a cooperative agreement are $25,000 or more.

**Regulatory Impact**

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act.

**Unfunded Mandates Reform**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel any expenditure of funds by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

**Environmental Impact**

This final rule affects the administrative requirements for reimbursement payments to the agency by cooperators. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.'' Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

**No Takings Implications**

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the final rule does not pose the risk of a taking of constitutionally-protected private property since it sets forth administrative requirements regarding the deposit of cooperator funds for forest investigations or the protection, management, and improvement of the National Forest System.

**Civil Justice Reform Act**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this final rule, (1) All State and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) No retroactive effect would be given to this final rule; and (3) It would not require administrative proceedings before parties may file suite in court challenging its provisions.

**Controlling Paperwork Burdens on the Public**

This final rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

**List of Subjects in 36 CFR Part 211**

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), and National forests.

Therefore, for the reasons set forth in the preamble, Part 211 of Title 36 of the Code of Federal Regulations is amended as follows:

## PART 211—ADMINISTRATION

1. The authority citation for part 211 is revised to read as follows:

**Authority:** 16 U.S.C. 472, 498, 551.

### Subpart A—Cooperation

2. Revise the heading for subpart A to read as set out above.

3. Add a new § 211.6 to read as follows:

**§ 211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.**

(a) *Purpose and scope.* Forest Service officers, when engaged in cooperative activities otherwise authorized, may receive monies from cooperators only for cooperative work in forest investigations or for the protection, management, and improvement of the National Forest System and only in accordance with written cooperative agreements. Management of the National Forest System may include such work as planning, analysis, and related studies, as well as resource activities.

(b) *Reimbursements.* Agency expenditures for work undertaken in accordance with this section may be made from Forest Service appropriations available for such work, with subsequent reimbursement from the cooperator, in accordance with established written agreements. Forest Service officers shall issue written bills for collection for cooperator reimbursement payments within the same fiscal year as Forest Service expenditures.

(c) *Bonding.* Each written agreement involving a non-Government cooperator's total contribution of $25,000 or more to the Forest Service on a reimbursable basis, must include a provision requiring a payment bond to guarantee the cooperator's reimbursement payment. Acceptable security for a payment bond includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable letters of credit. For the purposes of this section, a non-Government cooperator is an entity that is not a member, division, or affiliate of a Federal, State, or local government.

(d) *Avoiding conflict of interest.* Forest Service officers shall avoid acceptance of contributions from cooperators when such contributions would reflect unfavorably upon the ability of the Forest Service to carry out its responsibilities and duties. Forest Service officers shall be guided by the provisions of 18 U.S.C. parts 201–209, 5 CFR part 2635, and applicable Department of Agriculture regulations, in determining if a conflict of interest or potential conflict of interest exists in a proposed cooperative effort. Forest Service ethics officials or the designated Department of Agriculture ethics official should be consulted on conflict of interest issues.

Dated: October 26, 1999.

**Anne Kennedy,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 99–29083 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–11–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[AZ 086–0018a; FRL–6468–6]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the Arizona State Implementation Plan. The revisions concern rules from Maricopa County (Maricopa). The rules control particulate matter (PM) emissions from residential wood combustion. This final approval action will incorporate these rules into the federally approved SIP. In addition, this action will serve as a final determination that deficiencies in the rules (identified by EPA in a final limited approval/limited disapproval action on March 31, 1998) have been corrected and that any sanctions or Federal Implementation Plan (FIP) clocks are permanently stopped. An Interim Final Determination published in today's **Federal Register** will stay the imposition of sanctions until the effective date of this action. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these rules into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

**DATES:** This rule is effective on January 7, 2000 without further notice, unless EPA receives relevant adverse comments by December 8, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

**FOR FURTHER INFORMATION CONTACT:** Patricia Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:**

### I. Applicability

The rules being approved into the Arizona SIP are Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 4, 1999.

### II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Maricopa Association of Governments (MAG) Urban Planning Area (43 FR 8964; 40 CFR 81.303). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On

[1] On July 18, 1997 EPA promulgated revised PM–10 standards (62 FR 38651). On May 14, 1999, the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, No. 97–1440 issued an opinion that, among other things, vacated the 1997 standards for PM–10. The PM–10 standards promulgated on July 1, 1987, however, were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards. Codification of the 1987 PM–10 standards continues to be recorded at 40 CFR 50.6. In the document promulgating the 1997 PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to

November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). The Phoenix Planning Area was among the areas designated non-attainment. On June 10, 1996 EPA reclassified Phoenix Planning Area from moderate to serious nonattainment pursuant to section 188(b)(2). See 61 FR 21372 (May 10, 1996).

Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to adopt reasonably available control measures (RACM) for PM–10 and to submit these measures by November 15, 1991. Section 189(b) requires serious non-attainment areas to adopt best available control measures (BACM) rules and to submit these rules within 18 months of reclassification.

In response to section 110(a) and Part D of the Act, the State of Arizona submitted many PM–10 rules for incorporation into the Arizona SIP on August 4, 1999, including the rules being acted on in this document. This document addresses EPA's direct-final action for Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). Maricopa adopted Rule 318 and the Woodburning Ordinance on April 21, 1999. These submitted rules were found to be complete on August 25, 1999 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[2] and are being finalized for approval into the SIP.

Rule 318 and the Woodburning Ordinance control PM emissions from residential wood combustion. PM emissions can harm human health and the environment. The rules were originally adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for PM–10 and in response to the CAA section 189(a) RACM requirement. The following is EPA's evaluation and final action for these rules.

## III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

The statutory provisions relating to RACM are discussed in EPA's ''General Preamble'', which gives the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). For the purpose of assisting state and local agencies in developing RACM rules, EPA prepared a series of technical guidance documents on PM–10 source categories (See CAA section 190). The RACM guidance applicable to this rule is entitled, ''Guidance Document for Residential Wood Combustion Emission Control Measures'' (EPA–450/2–89–015, September 1989). In this rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

On March 31, 1998, EPA published a limited approval and a limited disapproval of Rule 318, Approval of Residential Woodburning Devices, and Residential Woodburning Restriction Ordinance, which had been adopted by Maricopa on October 5, 1994 (63 FR 15303). The limited approval action incorporated these rules into the SIP despite deficiencies in the rules that precluded full approval. The SIP rules contain director's discretion in the approval of woodburning devices.

Maricopa's submitted Rule 318 and the Woodburning Ordinance, which were revised on April 21, 1999, correct the deficiencies in the current SIP rules by requiring EPA approval of woodburning devices that are determined by the Maricopa director to be equivalent to EPA-certifed wood heaters.

EPA has evaluated the submitted rules and has determined that they fulfill the RACM requirements of CAA section 189(a). In subsequent action on the Maricopa PM–10 BACM Plan, EPA will determine if the submitted rules also fulfill the BACM requirements of CAA section 189(b). Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance are consistent with the CAA, EPA regulations, and EPA PM–10 RACM policy. Therefore, the rules are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. A more detailed evaluation can be found in EPA's evaluation report for these rules.

This approval action will incorporate these rules into the federally approved SIP and also stop the sanctions and Federal Implementation Plan clocks that were started by EPA's limited disapproval action published on March 31, 1998 (63 FR 15303).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 7, 2000 without further notice unless the Agency receives relevant adverse comments by December 8, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 7, 2000 and no further action will be taken on the proposed rule.

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

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

### *B. 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

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the 1987 PM–10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for this area. Today's proposed action relates only to the CAA requirements concerning the PM–10 standards as originally promulgated in 1987.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*D. 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Dated: October 25, 1999

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(94)(i)(B) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(94) * * *

(i) * * *

(B) Rule 318 and Residential Woodburning Restriction Ordinance, revised on April 21, 1999.

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[FR Doc. 99–28881 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[AZ 086–0018c; FRL–6468–8]**

## Interim Final Determination That State Has Corrected Deficiencies; State of Arizona; Maricopa County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final determination.

**SUMMARY:** Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the Arizona State Implementation Plan (SIP). EPA has also published a proposed rulemaking on the same subject. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's SIP revisions. Based on the full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on April 30, 1998. This action will stay both the imposition of the offset sanction and the imposition of the highway sanction. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's SIP revisions, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval EPA with publish a timely withdrawal of the direct final rule. If comments are received on this interim final action, EPA will publish a final determination taking into consideration any comments received.

**DATES:** *Effective Date:* November 8, 1999.

*Comments:* Comments must be received by December 8, 1999.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the SIP revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

**FOR FURTHER INFORMATION CONTACT:** Patricia Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 31, 1995, the State of Arizona submitted Maricopa County Rule 318, Approval of Residential Woodburning Devices, and the Maricopa County Residential Woodburning Restriction Ordinance which EPA disapproved in part on March 31, 1998. 63 FR 15303. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised rules on August 4, 1999. EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of Arizona's SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's revision.

Based on the direct final full approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's direct final full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will withdraw the direct final rule and either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on April 30, 1998. However, this action will stay the imposition of the offset sanction and will stay the imposition of the highway sanction. See 59 FR 39832 (Aug. 4, 1994). If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed, or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, codified at 40 CFR 52.31.

### II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be stayed until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part

the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this document is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

## III. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

### *B. 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, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

### *D. 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: October 27, 1999.

**Debbie Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 99–28882 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[OK–3–1–5201a; FRL–6470–4]**

## Approval and Promulgation of Implementation, Plans Oklahoma; Visibility Protection

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action approving a revision to the Oklahoma State Implementation Plan (SIP) involving the Oklahoma Visibility Protection Plan for the Federal Class I area. This action approves the general plan revisions and the long-term strategy and removes the disapproval of the Oklahoma SIP and resultant Federal Implementation Plan (FIP) for failure to meet the Federal requirements. This action does not apply to areas of ''Indian Country'' over which the State of Oklahoma has not demonstrated authority.

**DATES:** This rule is effective on January 7, 2000, without further notice, unless EPA receives adverse comment by December 8, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' and ''our'' is used, we mean EPA.

### I. What Is the Purpose of This Action?

This action approves the Oklahoma Visibility Protection Plan submitted by the Governor of Oklahoma on June 18, 1990, as a revision to the Oklahoma SIP. This plan includes revisions to sections 1.4.4(b), 1.4.4(f), and 1.4.4(g) of the Prevention of Significant Deterioration (PSD) rules in the Oklahoma Air Quality Control Regulations. This action removes the EPA disapproval of the Oklahoma visibility plan and resultant FIPs published in the **Federal Register** on June 24, 1986 (51 FR 22937), and November 24, 1987 (52 FR 45137), and codified in 40 CFR 52.1933.

### II. Why Is EPA Taking This Action?

Section 169A of the Federal Clean Air Act (the Act) requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. Mandatory Class I Federal areas are defined as certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act. Mandatory Class I Federal areas in each State are listed in 40 CFR part 81, subpart D—Identification of Mandatory Class I Federal Areas Where Visibility is an Important Value.

Section 169A of the Act specifically required EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection. These regulations have been promulgated in 40 CFR part 51, subpart P, Visibility Protection. *See* 45 FR 80089, December 2, 1980.

### III. Does Oklahoma Have Any Federal Class I Areas?

Oklahoma has one mandatory Class I area. It is the Wichita Mountains National Wildlife Refuge in Comanche County near Fort Sill Military Reservation.

### IV. What Is Meant by Part I and Part II Visibility SIPs?

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. We were required to promulgate FIPs for visibility in States where SIPs were deficient with respect to the visibility regulations. Specifically, the first part of the agreement required us to propose and promulgate FIPs which cover the visibility monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307, respectively. These requirements became known as the Part I Visibility SIP requirements. However the settlement allowed a State an opportunity to avoid Federal promulgation if it submitted an approvable part I SIP by May 6, 1985. Oklahoma was one of the States listed as having an inadequate NSR and monitoring plan for visibility protection.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations and to propose and promulgate FIPs for states with deficient

SIPs. These remaining provisions cover the general plan provisions including visibility implementation control strategy (40 CFR 51.302) and long-term strategies (section 51.306). These provisions became known as the part II visibility SIP requirements. However, the settlement agreement allowed a State an opportunity to avoid Federal promulgation if it submitted an approvable part II visibility SIP by August 31, 1987. Oklahoma was one of the States listed as having an inadequate part II visibility protection SIP.

For more information on details of the provisions of the settlement agreement, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

## V. Why Did EPA Disapprove the Oklahoma Visibility SIP?

On October 23, 1984 (49 FR 42670), we proposed to disapprove the SIPs of 34 states, including Oklahoma, for failure to meet the visibility monitoring and visibility NSR requirements and proposed to incorporate Federal visibility regulations into the State plans.

On July 12, 1985, to avoid the national disapproval action, the Governor of Oklahoma submitted to us the Oklahoma Visibility Protection Plan (1985 Plan). On April 7, 1986 (51 FR 13029), we proposed to disapprove the 1985 Plan because it did not include an approvable part I visibility monitoring strategy required in 40 CFR 51.305 and the plan did not include an approvable NSR portion required in 40 CFR 51.307. The 1985 Plan incorporated existing Oklahoma Air Pollution Control Regulation, section 1.4.4(f)(7), Post-construction Monitoring, stating that the permit application would be reviewed for compliance with all current and applicable Oklahoma Air Pollution Control Regulations. However, the State failed to adopt additional regulations to meet the requirements in 40 CFR 51.307, Visibility NSR. A review of the existing Oklahoma section 1.4.4(g), Source Impacting Class I Areas, did not meet these NSR requirements.

On June 24, 1986 (51 FR 22937), we published a final disapproval of the Oklahoma Visibility Protection Plan submitted on June 12, 1985, and promulgated a FIP. The disapproval and the FIP promulgation, codified at 40 CFR 52.1933(a) and (b), incorporated into the Oklahoma SIP the Federal requirements in 40 CFR 52.26, Visibility monitoring strategy; § 52.27, Protection of visibility from sources in attainment areas; and § 52.28, Protection of visibility from sources in nonattainment areas.

On March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIPs of States (including Oklahoma) which failed to comply with the provisions of 40 CFR 51.302 and 51.306. The EPA was required by the EDF settlement agreement to promulgate visibility SIPs on a specific schedule. For States (including Oklahoma) which failed to submit a part II visibility protection SIP by August 31, 1987, EPA was required to promulgate a part II FIP. These FIPs were promulgated in the **Federal Register** on November 24, 1987 (52 FR 45137). The disapproval of the Oklahoma SIP and the FIP promulgation, codified in 40 CFR 52.1933(c), incorporated into the Oklahoma SIP the requirements of 40 CFR 52.29, Visibility long-term strategy.

## VI. Review of the 1990 Oklahoma Visibility Plan

On June 18, 1990, the Governor of Oklahoma submitted to EPA a revised Oklahoma visibility protection plan to meet the part I and part II requirements of 40 CFR part 51, subpart P, Visibility Protection. The plan, entitled ''Visibility Protection Plan'' (1990 Plan), was developed by the Air Quality Service of the Oklahoma State Department of Health.

The EPA has reviewed the State's submittal and developed an evaluation report entitled ''Evaluation Report for the Oklahoma Visibility Protection Plan.''

The text of the 1990 Plan is similar to the text of the 1985 Plan. The major difference in the plans is that the 1990 Plan includes section 1.4.4(b) and revised sections 1.4.4(f) and 1.4.4(g) of the PSD regulations in Oklahoma Air Quality Control Regulations. The revisions to sections 1.4.4(f) and 1.4.4(g) are as amended by the Oklahoma State Department of Health on July 9, 1987, effective August 10, 1987.

All definitions in section 1.4.4(b), Definitions, in the June 18, 1990, submittal have already been approved by EPA or have been superceded by revisions submitted after June 18, 1990.

Section 1.4.4(f), Air Quality Impact Evaluation, was revised to include visibility impact evaluation requirements and gives the Commissioner authority to require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification.

Section 1.4.4(g), Sources Impacting Class I Areas, was revised to require the Commissioner to notify the Federal Land Manager (FLM) of the receipt of any analysis of the anticipated impacts on visibility in any Federal Class I area, and include a complete copy of the permit application of any proposed new major stationary source or major modification that may effect visibility in any Federal Class I area. The Commissioner is required to consider any timely analysis performed by the FLM that he receives. Where the Commissioner finds that such an analysis does not demonstrate to the satisfaction of the State that an adverse impact will result in the Federal Class I area, the Commissioner will, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained. The revisions also added to section 1.4.4(g) the definitions of ''Adverse impact on visibility,'' ''Natural conditions,'' ''Visibility impairment,'' ''Federal land manager,'' and ''Installation.''

As stated above, the Wichita Mountains National Wildlife Refuge in Comanche County near Fort Sill Military Reservation is the only mandatory Class I area in Oklahoma. The refuge is managed by the U.S. Fish and Wildlife Service. The 1990 Plan commits the State to visibility protection within the refuge boundary consistent with the Act and EPA's regulatory requirements. In addition, the SIP is to be reviewed every three years consistent with the requirements of 40 CFR 51.306(c) and revised as necessary. The strategy which the State plan adopted includes a determination that there is no existing visibility impairment in the one mandatory Class I Federal area in Oklahoma that is reasonably attributable to specific sources. Currently, there are no integral vistas in Oklahoma.

States do not have jurisdiction over ''Indian Country'' (as defined in 18 U.S.C. 1151, and referenced in 40 CFR 51.1(i)) unless specifically granted by Congress. Since the State of Oklahoma has not submitted a demonstration of authority over ''Indian Country,'' we are limiting our approval to those areas that do not constitute Indian Country. For a more detailed discussion of Tribal authority under the Act, see 59 FR 43956 (August 25, 1994) and 63 FR 7254 (February 12, 1998).

Based on our review, we find that the approval of sections 1.4.4(f) and 1.4.4(g) will result in the Oklahoma SIP regulations meeting all of the Federal NSR requirements of 40 CFR part 51, subpart P, Visibility Protection. Section 8, Visibility Monitoring Program, of the 1990 Plan, provides that the Oklahoma State Department of Health will monitor the background visibility conditions in the mandatory Class I Federal area by monthly review of local airport visibility data as collected by the

National Weather Service in Lawton, Oklahoma, airport located 22 miles southeast of the Wichita Mountains Wilderness and the Fort Sill Military Reservation airport located 19 miles southeast of the Wilderness in almost flat terrain. The airport visibility data should be representative of the conditions in the Class I area. The 1990 Plan includes an emission inventory of sources within 55 kilometers radius from the Wichita Mountains Refuge. The Oklahoma State Department of Health determined that there are no existing sources with a 55 kilometer radius from the Refuge with emissions that would significantly impact upon the Federal Class I area.

The Department will consider any available visibility data for use in making its decisions. The Department will coordinate with the FLM in conducting any monitoring of visibility in the mandatory Federal Class I area.

Our review also finds that the State of Oklahoma has satisfied the visibility general plan requirements of 40 CFR 51.302 and 51.306. These are the part II requirements for visibility long-term strategy and for implementation control strategies. The FLM has been afforded the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. Comments by the FLM were submitted to the State during the State's public notice period, and they were considered by the State and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The 1990 Plan contains the following provisions of the part II Visibility Protection Plan requirements:

(1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources,

(2) A discussion of the SIP elements and how each element of the plan relates to the national goal, and

(3) A long-term (10–15 years) strategy.

Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. The part II revision consists of a narrative only, no regulatory revisions. Currently, there are no integral vistas in Oklahoma.

The Oklahoma visibility long-term strategy section included the following:

(1) Coordination with the FLM;

(2) Consideration of the six required factors for a long-term strategy;

(3) A provision for the review of the impact of new sources, and discussion of current visibility monitoring efforts; and

(4) Provisions for periodic review (*i.e.*, every three years) of the plan, which review must include consultation with the FLM and a report to the public and to EPA on progress toward the national goal.

## VII. Final Action

We are approving the Oklahoma ''Visibility Protection Plan'' submitted by the Governor on June 18, 1990. We are approving revisions to sections 1.4.4(f) and 1.4.4(g) of the Oklahoma Air Pollution Control Regulations in the Oklahoma SIP submitted with the plan. We are removing and reserving 40 CFR 52.1933, Visibility Protection, because the Oklahoma SIP meets the requirements of section 169A of the Act and EPA's regulatory requirements.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on January 7, 2000, without further notice unless we receive adverse comment by December 8, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## VIII. Administrative Requirements

### *A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

### *B. Executive Orders on Federalism*

Under E.O. 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 by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

### *C. Executive Order 13045*

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required

under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

*D. Executive Order 13084*

Under E.O. 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 by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. 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 the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective January 7, 2000.

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 27, 1999.

**Myron O. Knudson,**

*Acting Regional Administrator, Region 6.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart SS—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(49) to read as follows:

### § 52.1920 Identification of plan.

* * * * *

(c) * * *

(49) Oklahoma visibility protection plan submitted by the Governor of Oklahoma on June 18, 1990.

(i) Incorporation by reference. Oklahoma Air Pollution Control Regulations, Sections 1.4.4(f)(2), 1.4.4(f)(7), 1.4.4(f)(11), and 1.4.4(g), as amended by the Oklahoma State Department of Health on July 9, 1987, effective August 10, 1987.

(ii) Additional information. ''Oklahoma Visibility Protection Plan,'' submitted by the Governor of Oklahoma on June 18, 1990.

2. Section 52.1933 is removed and reserved.

**§ 52.1933 [Reserved]**

[FR Doc. 99–29069 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 034–0181; FRL–6470–6]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing full approval of a revision to the California State Implementation Plan (SIP) for the South Coast Air Basin (SCAB) proposed in the **Federal Register** on April 12, 1999. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate particulate matter (PM–10) emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule regulates PM–10 emissions from open burning. Thus, EPA is finalizing the approval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority.

**EFFECTIVE DATE:** This action is effective on December 8, 1999.

**ADDRESSES:** Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1135.

**SUPPLEMENTARY INFORMATION:**

### I. Applicability

The rule being approved into the California SIP is the South Coast Air Quality Management District (SCAQMD) Rule 208, Permit for Open Burning (adopted on January 5, 1990). This rule was submitted by the California Air Resources Board (CARB) to EPA on May 13, 1991.

### II. Background

On April 12, 1999 at 64 FR 17589, EPA proposed granting full approval of the following rule into the California SIP for the SCAB: SCAQMD Rule 208, adopted on January 5, 1990 and submitted by the CARB to EPA on May 13, 1991. This PM–10 rule was submitted by the State of California in response to section 110(a) and part D of the CAA for incorporation into the California SIP. A detailed discussion of the background of the above rule and the nonattainment area in which it applies is provided in the proposed rule cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and EPA's interpretation of these requirements as expressed in various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the full approval of SCAQMD Rule 208, because it strengthens the SIP by requiring that a written permit for any open outdoor fires be obtained from the Executive Officer of the SCAQMD. EPA has determined that SCAQMD Rule 208 meets the RACM requirements of part D of the CAA.

### III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 17589. EPA did not receive any comment letters on SCAQMD Rule 208.

### IV. EPA Action

EPA has evaluated submitted SCAQMD Rule 208, Permit for Open Burning, and has determined that it is consistent with the CAA, EPA regulations, and meets RACM requirements. EPA is finalizing full approval of SCAQMD Rule 208 into the California SIP.

### V. Administrative Requirements

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

*B. 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, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*D. 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

*List of Subjects in 40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Particulate matter.

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

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 20, 1999.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(184)(i)(B)(*8*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*8*) Rule 208, adopted on January 5, 1990.

* * * * *

[FR Doc. 99–29075 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 172–0188–FRL–6462–9]**

## California State Implementation Plan Revision, Kern County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Due to an adverse comment, EPA is removing the addition of a paragraph included in a direct final rule approving revisions to the California State Implementation Plan. EPA

published the direct final rule on August 19, 1999 (64 FR 45178), approving rule revisions from the Kern County Air Pollution Control District (KCAPCD). As stated in that **Federal Register** document, if adverse or critical comments were received by September 20, 1999, notice of timely withdrawal would be published in the **Federal Register**. However, because the effective date has passed, EPA is removing one amendment. EPA has received adverse comments on that amendment in the direct final rule and will address these comments in a final action within the near future. EPA will not institute a second comment period on this future final action.

**DATES:** This rule is effective November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

**SUPPLEMENTARY INFORMATION:** Please see the information provided in the direct final rule located in the final rules section of the August 19, 1999 **Federal Register** (64 FR 45178), and in the proposed rule published in the proposed rule section of the August 19, 1999 **Federal Register** (64 FR 45216).

EPA received an adverse comment concerning KCAPCD Rule 410.4—Surface Coating of Metal Parts and Products and the addition of 40 CFR 52.220(c)(231)(i)(B)(6). Consequently, we are removing that amendment. All other amendments in this August 19, 1999 direct final rule concerning Bay Area Air Quality Management District Rule 8–26—Magnet Wire Coating, Monterey Bay Unified Air Pollution Control District Rule 434—Coating of Metal Parts and Products, and South Coast Air Quality Management District Rule 1107—Coating of Metal Parts and Products are unaffected by this action.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 8, 1999.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart F—California

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

**Authority:** 42 U.S.C. 7401–7671q.

**§ 52.220 [Amended]**

2. Section 52.220 is amended by removing paragraph (c)(231)(i)(B)(6).

[FR Doc. 99–27797 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[AD–FRL–6469–8]**

**RIN 2060–AI50**

## Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action EPA is promulgating (adopting) a Federal plan to implement emission guideline requirements for existing municipal solid waste (MSW) landfills located in States and Indian country where State plans or Tribal plans are not currently in effect. For most areas, the Federal plan is an interim action because, on the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to MSW landfills covered by the State or Tribal plan. This MSW landfills Federal plan includes the same required elements specified in 40 CFR part 60, subparts B, Cc, and WWW for a State plan: identification of legal authority and mechanisms for implementation; inventory of affected facilities; emissions inventory; emission limits; compliance schedules; a process for EPA or State review of design plans for site-specific gas collection and control systems; testing, monitoring, reporting and recordkeeping requirements; public hearing requirements; and progress reporting requirements. This Federal plan will most likely affect the industry sectors Air and Water Resource and Solid Waste Management, and Refuse Systems—Solid Waste Landfills, which are North American Industrial Classification System Codes 92411 and 562212 and Standard Industrial Classification Codes 9511 and 4953.

**EFFECTIVE DATE:** The effective date of this MSW landfills Federal plan is January 7, 2000.

**ADDRESSES:** *Docket.* Docket numbers A–98–03 and A–88–09 contain the supporting information for this promulgated rule and EPA's promulgation of standards of performance for new MSW landfills and emission guidelines for existing MSW landfills, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–7548. The fax number for the Center is (202) 260–4000 and the e-mail address is ''A-and-R-Docket@epamail.epa.gov''. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For procedural and implementation information regarding this Federal plan, contact Ms. Mary Ann Warner at (919) 541–1192, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information, contact Ms. Michele Laur at (919) 541–5256, Waste & Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 3) as shown in section J of Supplementary Information.

**SUPPLEMENTARY INFORMATION:**

*Judicial Review.* The EPA proposed this section 111(d) rule for MSW landfills on December 16, 1998 (63 FR 69364). This action adopting a rule for MSW landfills constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 7, 2000. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal

proceeding brought by the EPA to enforce these requirements.

*Electronic Copy.* In addition to being available in the docket, an electronic copy of today's document that includes the regulatory text is available through the EPA Technology Transfer Network Website (TTN Web) recent actions page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/ramain.html). The TTN Web provides information and technology exchange in various areas of air pollution control. For TTN help information, call the TTN Web helpline at (919) 541–5384.

*Regulated Entities.* Entities regulated by this action are all existing MSW landfills unless the landfill is covered by an EPA-approved section 111(d) State or Tribal plan that is currently effective. Existing landfills are those that:

(i) commenced construction, modification, or reconstruction prior to May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have additional capacity for future waste deposition.

Regulated categories and entities include the following North American Industrial Classification System (NAICS) and Standard Industrial Classification System (SIC) codes:

| Category | NAICS code | SIC code | Examples of potentially regulated entities |
|---|---|---|---|
| Industry: Air and water resource and solid waste management. | 92411 | 9511 | Municipal solid waste landfills that commenced construction, modification, or reconstruction before May 30, 1991. |
| Industry: Refuse systems—solid waste landfills ..... | 562212 | 4953 | |
| State, local, and Tribal government agencies. | | | |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether a facility, company, or business organization is regulated by this action, carefully examine the applicability criteria in §§ 62.14350 and 62.14352 of subpart GGG.

Based on the status of State plans as of June 14, 1999 (A–98–03, IV–J–20) and the MSW landfills inventory (A–98–03, IV–B–3), EPA projects that the MSW landfills Federal plan could initially affect more than 3,800 MSW landfills in approximately 28 States, protectorates, and municipalities. However, EPA expects many State plans to be approved and become effective in the next few months; therefore, the number of landfills affected by this Federal plan will continue to decrease as State and Tribal plans are approved and become effective.[1]

*Outline.* The following outline shows the organization of the remainder of the **SUPPLEMENTARY INFORMATION** section of this preamble.

I. Background of Landfills Regulations and Affected Facilities
A. Background of MSW Landfills Regulations
B. MSW Landfills Federal Plan and Affected Facilities
C. MSW Landfills Federal Plan and Negative Declaration Letters
D. MSW Landfills Federal Plan and the New Source Performance Standards
E. Implementing Authority
F. MSW Landfills Federal Plan and Indian Country
G. MSW Landfills Federal Plan and Compliance Schedules
H. MSW Landfills Excluded From Federal Plan Applicability
I. Status of State Plan Submittals
J. Regional Office Contacts
II. Required Elements of this Municipal Solid Waste Landfills Federal Plan
III. Summary of Comments and Changes Since Proposal
A. State Plan Interim Approval
B. Design Capacity Estimates and Reports
C. Inventory of Landfills
D. Calculating Emissions Rate for Control Applicability
E. Final Control Plan
F. Increments of Progress
G. Delegation
IV. Implementation of Federal Plan and Delegation
A. Background of Authority
B. Delegation of the Federal Plan and Retained Authorities
C. Mechanisms for Transferring Authority
V. Title V Operating Permits
VI. Summary of Federal Plan
VII. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Executive Orders on Federalism
E. Executive Order 13045
F. Executive Order 13084
G. Unfunded Mandates Reform Act
H. Regulatory Flexibility Act
I. Submission to Congress and the General Accounting Office
J. National Technology Transfer and Advancement Act

[1] While the inventory was completed June 14, 1999, table 2 in the preamble and tables 1 and 2 in the regulation were updated as of October 19, 1999 and reflect more current information.

## I. Background of Landfills Regulation and Affected Facilities

### *A. Background of MSW Landfills Regulations*

On March 12, 1996 the EPA promulgated in the **Federal Register** emission guidelines (61 FR 9905) for existing MSW landfills (40 CFR part 60, subpart Cc) under authority of section 111 of the Act. The guidelines apply to existing MSW landfills, i.e., those that:

(i) commenced construction, modification, or reconstruction before May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have additional capacity for future waste deposition.

On June 16, 1998 and February 24, 1999, EPA published notices to amend, correct errors, and clarify regulatory text for 40 CFR part 60, subpart Cc (63 FR 32743 and 64 FR 9258). These clarifications and amendments did not affect the due date or the required content of State plans for existing MSW landfills which were originally due on December 12, 1996. They did, however, trigger a requirement under 40 CFR 60.23(a)(2) for States, territories, localities, and Tribes to submit proposed revisions to State or Tribal plans to EPA. These plans would incorporate the requirements of the clarifications and amendments.

To make the guidelines enforceable, States with existing MSW landfills subject to the guidelines were required to submit to EPA a State plan that implements and enforces the emission guidelines within 9 months of promulgation of the guidelines (December 12, 1996). States without existing landfills or without existing

landfills that require control must submit a negative declaration letter. Following receipt of the State plan, EPA has up to 4 months to approve or disapprove the plan. In appropriate circumstances, case-by-case extensions can be granted (40 CFR 60.27(a)). In some cases, local agencies or protectorates of the United States submit plans for landfills in their jurisdictions. As discussed in section I.F. of this preamble, Indian Tribes may, but are not required to, submit Tribal plans.

If a State does not have an approved State plan, section 111 of the Act and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan for existing MSW landfills located in that State. In addition, section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for this MSW landfill requirement. (See section 49.3 of ''Indian Tribes: Air Quality Planning and Management,'' hereafter ''Tribal Authority Rule,'' 63 FR 7254, February 12, 1998.) For Indian tribes that do not have an approved MSW landfills Tribal plan, EPA must develop, implement and enforce a Federal plan for them.

Today's action, which will be codified as subpart GGG of 40 CFR part 62, adopts a MSW landfills Federal plan that includes the elements described in section II of this preamble.

*B. MSW Landfills Federal Plan and Affected Facilities*

This final MSW landfills Federal plan affects existing MSW landfills that:

(i) commenced construction, reconstruction or modification prior to May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have capacity for future waste deposition.

The MSW landfills Federal plan applies to existing MSW landfills located in: (1) Any State or portion of Indian country for which a State or Tribal plan has not become effective; (2) Any State or portion of Indian country for which the State or Tribe submitted a negative declaration; (3) Any State or portion of Indian country with an effective State or Tribal plan that subsequently is vacated in whole or in part; or (4) Any State or portion of Indian country with an effective plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the State or Tribal plan is no longer as stringent as the emission guidelines. A landfill that meets any of these criteria is covered by the Federal plan until an applicable State or Tribal plan is approved and becomes effective. An approved State or Tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. The State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

The effective date of this Federal plan is January 7, 2000. The effective date is 60 days after the date of this publication, rather than 30 days after publication as proposed. This extra 30 days will allow EPA to approve additional State plans. The EPA does not expect the delay to affect the environmental benefits of this regulation.

*C. MSW Landfills Federal Plan and Negative Declaration Letters*

A negative declaration is a letter to EPA declaring that either there are no existing MSW landfills in the State or portion of Indian country or there are no existing MSW landfills in the State or portion of Indian country that must install collection and control systems according to the requirements of the emission guidelines. States or Indian tribes that submit negative declarations are not expected to submit State or Tribal plans, but existing MSW landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters ($m^3$) in the State or portion of Indian country are subject to the MSW landfills Federal plan. Existing MSW landfills with a design capacity less than 2.5 million Mg or 2.5 million $m^3$ that are located in States or portion of Indian country that submitted a negative declaration letter are not required to submit an initial design capacity report if the negative declaration letter includes the design capacity for the landfills.

The preamble to the proposed rule incorrectly indicated that submission of the initial design capacity report was the only requirement applicable to a MSW landfill with a design capacity below 2.5 million Mg and 2.5 million $m^3$. Such MSW landfills, however, continue to be subject to the requirements in the definition of design capacity in § 62.14351 to recalculate the site-specific density annually and in § 62.14355 to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million $m^3$. Section 62.14355 as proposed and as finalized herein, accurately states that these landfills are only exempt from the requirement to submit an initial design capacity report. The EPA has added language to § 62.14352(c) to make it clearer that a MSW landfill located in a State, locality or portion of Indian country that submitted a negative declaration remains subject to the requirements to recalculate site-specific density annually and to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million $m^3$.

Existing MSW landfills overlooked by a State or Indian tribe that submitted a negative declaration letter and existing landfills not included in a State or Tribal plan are subject to the Federal plan until a State or Tribal plan that includes these sources is approved and effective. For instance, in the event that an existing MSW landfill that must install a collection and control system according to the emission guidelines is subsequently identified where a negative declaration has been submitted, the Federal plan requirement to install a collection and control system would apply. As discussed in section I.F. of this preamble, the Federal plan applies throughout Indian country until an approved State or Tribal plan becomes effective. As discussed in section I.H. of this preamble, the Federal plan, by its own terms, no longer applies to a MSW landfill appropriately covered by an approved State or Tribal plan that becomes effective after promulgation of the Federal plan. The specific applicability of this plan is described in §§ 62.14350 and 62.14352 of subpart GGG.

*D. MSW Landfills Federal Plan and the New Source Performance Standards*

An existing MSW landfill that increases its permitted volume design capacity through vertical or horizontal expansion (i.e., is modified) on or after May 30, 1991, is subject to the New Source Performance Standards (NSPS), 40 CFR part 60, subpart WWW (see 63 FR 32743, June 16, 1998). Existing MSW landfills that make operational changes without increasing the horizontal or vertical dimensions of the landfill continue to be subject to the Federal or State plan that implements the emission guidelines, rather than the NSPS. Examples of such operational changes at a MSW landfill include changing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of the daily cover, and changing baling or compaction practices. This interpretation is consistent with the amendments to the

landfills emission guidelines and NSPS, which are consistent with the landfill litigation settlement agreement. A MSW landfill that has been reconstructed on or after May 30, 1991 would also be subject to the NSPS, not the Federal or State plan that implements the emission guidelines. Reconstructions are unlikely for landfills. As specified in the NSPS General Provisions, reconstructions are ''the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill].'' The EPA knows of no situation where this would occur at a landfill.

*E. Implementing Authority*

The EPA Regional Administrators are the delegated authority for implementing the MSW landfills Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Administrator. Table 1 lists the States located in each region and the addresses of the EPA Regional Administrators.

TABLE 1.—EPA REGIONAL ADMINISTRATORS

| Regional contact | State or protectorate |
|---|---|
| EPA Region I, One Congress Street, John F. Kennedy Federal Bldg., Boston, MA 02203–0001 | CT, MA, ME, NH, RI, VT. |
| EPA Region II, 290 Broadway, New York, NY 10007–1866 | NJ, NY, PR, VI. |
| EPA Region III, 1650 Arch Street, Philadelphia, PA 19106 | DC, DE, MD, PA, VA, WV. |
| EPA Region IV, 61 Forsyth Street, SW, Atlanta, GA 30303 | AL, FL, GA, KY, MS, NC, SC, TN. |
| EPA Region V, 77 W. Jackson Blvd., Chicago, IL 60604–3507 | IL, IN, MI, MN, OH, WI. |
| EPA Region VI, Fountain Place, 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733 | AR, LA, NM, OK, TX. |
| EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 | IA, KS, MO, NE. |
| EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466 | CO, MT, ND, SD, UT, WY. |
| EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105 | AS, AZ, CA, GU, HI, NMI, NV. |
| EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101 | AK, ID, OR, WA. |

*F. MSW Landfills Federal Plan and Indian Country*

The MSW landfills Federal plan applies throughout Indian country to ensure that there is not a regulatory gap for existing MSW landfills in Indian country. The EPA requested comments, but received none, on its proposed approach to applying the landfills Federal plan in Indian country; therefore, the proposed approach, which is repeated here, is final.

Indian tribes have the authority under the Act to develop Tribal plans in the same manner States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the Act for which EPA is authorized to treat Tribes in the same manner as States (see 63 FR 7254, Tribal Authority Rule; codified at 40 CFR part 49). Upon the effective date of the Tribal Authority Rule, March 16, 1998, EPA has the authority to approve Tribal programs, such as Tribal plans or programs to implement and enforce MSW landfill emission guidelines, under the Act. Section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for the Clean Air Act provisions identified in 40 CFR section 49.3 if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgement, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations (see section 49.6 of the Tribal Authority Rule, 63 FR 7272). In addition, if a Tribe meets these criteria, the EPA can delegate authority to implement the Federal plan to an Indian tribe the same way it can delegate authority to the State.

In addition to giving Indian tribes authority to develop Tribal plans, the Act also provides EPA with the authority to administer Federal programs in Indian country. This interpretation of EPA's authority under the Act is based in part on the general purpose of the Act, which is national in scope. In addition, section 301(a) of the Act provides EPA broad authority to issue regulations that are necessary to carry out the functions of the Act. The EPA believes that Congress intended for EPA to have the authority to operate a Federal program in instances when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the Act. Finally, section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act to achieve the appropriate purpose, where Tribal implementation of those provisions is not appropriate or administratively feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian county is discussed in more detail in the final Federal Operating Permits Program, 64 FR 8247, (February 19, 1999) and in the Tribal Authority Rule.

Many Tribes may have delayed development of air quality regulations and programs pending promulgation of the Tribal Authority Rule. As mentioned previously, Tribes may, but are not required to, submit a MSW landfills plan or negative declaration letter under section 111(d) of the Act. The EPA is not aware of any Tribes that have developed plans to implement the MSW emission guidelines or submitted negative declaration letters.

The impact of this Federal plan on Indian tribes is not expected to be significant. There are very few existing MSW landfills in Indian country large enough to require the installation of a collection and control system. For most existing MSW landfills in Indian country, the only requirements this Federal plan imposes are to submit an initial design capacity report and to recalculate the site-specific density and design capacity annually and to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million $m^3$.

The Federal plan will apply throughout Indian country except where a State or Tribal plan has been explicitly approved by EPA to cover an area of Indian country. The EPA will administer the plan in Indian country

without requiring any jurisdictional showing on the part of the Tribe. To assure there are no gaps in coverage, EPA will treat disputed areas, i.e., areas for which EPA believes the Indian country status may be in question, as Indian country. The EPA will continue to implement the Federal plan in these areas until a Tribal plan covering an area of Indian country becomes effective, or the area is determined not to be Indian country and the source is subject to an effective State plan. This approach is consistent with the final Federal Operating Permits Program cited above.

The term ''Indian country,'' as used in this MSW landfills Federal plan, means (a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition is consistent with the final Federal Operating Permits Program.

*G. MSW Landfills Federal Plan and Compliance Schedules*

The emission guidelines require the owner or operator of a MSW landfill to submit a design capacity report within 90 days after the effective date of the State or Tribal plan (or within 90 days after the effective date of the promulgated Federal plan). An emission rate report showing nonmethane organic compounds (NMOC) emissions from the landfill must also be submitted within the same time period if the landfill has a design capacity of 2.5 million Mg and 2.5 million $m^3$ or more. Both of the requirements have been incorporated in the Federal plan. The emission guidelines and this Federal plan further require the owner or operator of a MSW landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million $m^3$ to submit a collection and control system design plan within 1 year of first reporting NMOC emissions of 50 Mg per year or more. The collection and control system must be installed and operating within 30 months of first reporting NMOC emissions of 50 Mg per year or more. The compliance schedule in this Federal plan also sets the dates for awarding contracts and beginning construction, however, States, Tribes, and owners or operators have the option of setting these two dates (see option 3 below), which are not specifically defined in the emission guidelines. (See the discussion in section II.E of the proposal preamble (63 FR 69373).)

As discussed in the proposal preamble, the EPA believes that it would be inappropriate for the owner or operator of a MSW landfill who is subject to the requirements of this Federal plan to install a collection and control system to obtain additional time for achieving final compliance by virtue of the subsequent approval of a State or Tribal plan. The EPA did not receive any adverse comments regarding this interpretation. Therefore, to guard against this occurring, the EPA has added a sentence to § 62.14356(c)(1) to make it clear that once the Federal plan becomes effective, any designated facility to which the Federal plan applies will remain subject to the schedule in the Federal plan if a subsequently approved State or Tribal plan contains a less stringent schedule (i.e., a schedule that provides more time to comply with increments 1, 4 and/or 5 as specified in § 62.14356(a) than does this Federal plan).

Also discussed in the proposal preamble were three options for establishing dates for the increments of progress that make up the compliance schedule. They are: (1) Comply with the generic compliance schedule in the landfill Federal plan (table 2 of subpart GGG of the proposed Federal plan and table 3 of subpart GGG of this final Federal plan), (2) States or Tribes submit compliance schedules to the EPA before the end of the comment period of the proposed Federal plan, and (3) Landfill owners or operators or the State or Tribe submit a compliance schedule for increments 2 and 3 to the EPA at the time the final control plan is due. The EPA requested and received no comments on these options. Although the time period for submitting increments of progress under option 2 has passed, options 1 and 3 will remain available in this final Federal plan. This will allow for increased regulatory efficiency and flexibility.

*H. MSW Landfills Excluded From Federal Plan Applicability*

The MSW landfills Federal plan does not apply to landfills appropriately covered by an approved and effective State or Tribal plan or to landfills in a State or portion of Indian country that has submitted a negative declaration as long as the landfills in fact have a design capacity less than 2.5 million Mg or 2.5 million $m^3$. If a State or Tribal plan becomes effective before this Federal plan becomes effective, this Federal plan will not apply to landfills appropriately covered by that State or Tribal plan. Promulgation of this MSW landfills Federal plan does not preclude a State or Tribe from submitting a plan later. If a State or Tribe submits a plan after the effective date of this Federal plan, EPA will review and approve or disapprove the plan. Upon the effective date of the State or Tribal plan, the Federal plan no longer applies. States are, therefore, encouraged to continue their efforts to develop and submit State plans to EPA for approval. Similarly, EPA encourages Tribes to develop and submit Tribal plans.

*I. Status of State Plan Submittals*

The following States have EPA approved and effective State plans: Alabama, Allegheny County (Pennsylvania), Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nashville (Tennessee), Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wyoming.

The following States have EPA approved State plans that are approved but not yet effective: Arizona,[2] California,[3] Delaware,[4] Maryland,[5] Nevada,[6] South Carolina,[7] and Tennessee.[8] States that have approved or approved and effective State plans are listed in table 1 of subpart GGG. (MSW landfills located in those States would become subject to the Federal plan in the event that the State plan is subsequently disapproved, in whole or in part.) States that submitted negative declaration letters are listed in table 2 of subpart GGG.

States without approved plans are making significant progress on their State plans and EPA expects many State plans to be approved in the next few

[2] The Arizona State plan is scheduled to become effective on November 19, 1999 (64 FR 50768, September 20, 1999).

[3] The California State plan is scheduled to become effective on November 22, 1999 (64 FR 51447, September 23, 1999).

[4] The Delaware State plan is scheduled to become effective on November 16, 1999 (64 FR 50453, September 17, 1999).

[5] The Maryland State plan is scheduled to become effective on November 8, 1999 (64 FR 48714, September 8, 1999).

[6] The Nevada State plan is scheduled to become effective on November 19, 1999 (64 FR 50764, September 20, 1999).

[7] The South Carolina State plan is scheduled to become effective on October 25, 1999 (64 FR 46148, August 24, 1999).

[8] The Tennessee State plan is scheduled to become effective on November 29, 1999 (64 FR 52660, September 30, 1999).

months. (The EPA is not aware of any Indian tribes that are developing Tribal plans.) Table 2 of this preamble summarizes the status of States without approved and effective State plans and those that have submitted negative declarations as of October 19, 1999. The table is based on information from EPA Regional Offices (Docket No. A–98–03, Item No. IV–J–23). Copies of **Federal Register** notices of approvals and negative declaration letters are located in Docket No. A–98–03.

TABLE 2.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN [a]

| State |
|---|
| I. Negative declaration submitted to EPA and no State plan is expected. (See discussion in section I.C of this preamble.) |
| Region I |
| New Hampshire |
| Rhode Island |
| Vermont |
| Region III |
| District of Columbia |
| Philadelphia, PA |
| II. State plan submitted and is being reviewed by EPA. The promulgated Federal plan will cover existing MSW landfills in these States until the State plan is approved and becomes effective. |
| Region III |
| Pennsylvania |
| West Virginia |
| Region IV |
| Knox County, Tennessee |
| North Carolina |
| III. State plan or negative declaration not submitted. The existing MSW landfills in these States will be subject to the promulgated Federal plan unless a State plan applicable to existing landfills is approved by EPA and becomes effective. |
| Region I |
| Connecticut |
| Maine |
| Massachusetts |
| Region II |
| New Jersey |
| Puerto Rico |
| Virgin Islands |
| Region III |
| Virginia |
| Region IV |
| Chattanooga, Tennessee |
| Mississippi |
| Region V |
| Indiana |
| Michigan |
| Wisconsin |
| Region VI |
| Albuquerque, New Mexico |
| Arkansas |
| Region IX |
| American Samoa |
| Clark County, Nevada |
| Guam |
| Hawaii |
| Northern Mariana Islands |
| Region X |
| Alaska |
| Idaho |
| Washington |

[a] Current as of October 19, 1999. See Docket No. A–98–03; Item No. IV–J–23.

To assist in identifying which MSW landfills are and are not covered by the Federal plan, table 1 of subpart GGG lists States and Indian tribes that have approved and effective plans as of October 19, 1999 that cover MSW landfills in the State or Indian country. MSW landfills not appropriately covered by an effective plan are covered by the Federal plan. For example, if a landfill is located in a State that is listed in table 1 of subpart GGG and the State plan does not apply to the landfill, then the landfill is subject to the Federal plan. As stated above, EPA expects additional State plans to become effective prior to the effective date of this Federal plan. The EPA will periodically amend table 1 of subpart GGG to identify States with approved and effective State plans. These amendments will be published in the **Federal Register** and codified in the CFR. The inclusion or the failure to include a State in table 1 of subpart GGG is not controlling in determining whether a MSW landfill is subject to the MSW landfill Federal plan. Any MSW landfill not covered by an approved and currently effective State or Tribal plan, or any MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million $m^3$ located in a State that submitted a negative declaration, is subject to the MSW landfill Federal plan.

The EPA will keep an up-to-date list of State plan submittals and approvals on the EPA TTN Web at http://www.epa.gov/ttn/oarpg and http://www.epa.gov/ttn/uatw/landfill/landflpg.html. The list will help landfill owners or operators determine whether their landfill is affected by a State or Tribal plan or the Federal plan.

*J. Regional Office Contacts*

For information regarding the implementation of the MSW landfills Federal plan, contact the appropriate EPA Regional Office as shown in table 3.

TABLE 3.—EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS

| Regional contact | Phone No. | Fax No. |
|---|---|---|
| **Region I (CT, MA, ME, NH, RI, VT)** | | |
| Jeanne Cosgrove, U.S. EPA/CAQ, John F. Kennedy Federal Bldg., Boston, MA 02203–0001 | (617) 918–1669 | (617) 918–1505 |
| **Region II (NJ, NY, PR, VI)** | | |
| Craig Flamm, U.S. EPA/25th Floor, 290 Broadway, New York, NY 10007–1866 | (212) 637–4021 | (212) 637–3901 |
| **Region III (DC, DE, MD, PA, VA, WV)** | | |
| James B. Topsale, U.S. EPA/Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029 | (215) 814–2190 | (215) 814–2114 |
| **Region IV (AL, FL, GA, KY, MS, NC, SC, TN)** | | |
| Scott Davis, U.S. EPA/APTMD, 61 Forsyth Street, SW, Atlanta, GA 30303 | (404) 562–9127 | (404) 562–9095 |
| **Region V (IL, IN, MI, MN, OH, WI)** | | |
| Charles Hatten, U.S. EPA, 77 W. Jackson Blvd., Chicago, IL 60604 | (312) 886–6031 | (312) 886–0617 |

TABLE 3.—EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS—Continued

| Regional contact | Phone No. | Fax No. |
|---|---|---|
| **Region VI (AR, LA, NM, OK, TX)** | | |
| Mick Cote, U.S. EPA, 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733 | (214) 665–7219 | (214) 665–7263 |
| **Region VII (IA, KS, MO, NE)** | | |
| Ward Burns, U.S. EPA/RME, 726 Minnesota Ave./ARTDAPCO, Kansas City, KS 66101–2728 | (913) 551–7960 | (913) 551–7065 |
| **Region VIII (CO, MT, ND, SD, UT, WY)** | | |
| Martin Hestmark, U.S. EPA/8ENF–T, 999 18th Street, Suite 500, Denver, CO 80202–2466 | (303) 312–6776 | (303) 312–6409 |
| **Region IX (AS, AZ, CA, GU, HI, NMI, NV)** | | |
| Patricia Bowlin, U.S. EPA/RM HAW/17211, 75 Hawthorne Street/AIR–4, San Francisco, CA 94105 | (415) 744–1188 | (415) 744–1076 |
| **Region X (AK, ID, OR, WA)** | | |
| Catherine Woo, U.S. EPA, 1200 Sixth Ave., Seattle, WA 98101 | (206) 553–1814 | (206) 553–0404 |

## II. Required Elements of This Municipal Solid Waste Landfills Federal Plan

Section 111(d) of the Act, 42 U.S.C. 7411(d), requires States to develop and implement State plans for MSW landfills that implement and enforce the published emission guidelines. Subparts B and Cc of 40 CFR part 60 require States to submit State plans that include specified elements. Because the Federal plan is being adopted for areas where State plans are not yet in effect, the Federal plan includes the same essential elements as required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) Inventory of affected facilities, (3) Emissions inventory, (4) Emission limits, (5) Compliance schedules, (6) A process for EPA or State review of design plans for site-specific gas collection and control systems, (7) Testing, monitoring, reporting and recordkeeping requirements, (8) Public hearing requirements, and (9) Progress reporting requirements. Each State plan element was discussed in detail as it relates to the MSW landfills Federal plan in the preamble to the proposed rule (63 FR 69370–69375). Table 4 identifies each element and indicates where it is located or codified.

TABLE 4.—REQUIRED ELEMENTS AND LOCATION

| Required element of the landfills federal plan | Where located or codified |
|---|---|
| 1. Identification of legal authority and mechanisms for implementation | Section 111(d)(2) of the Act and Sections II.A and III.A of the proposal preamble (63 FR 69370). |
| 2. Inventory of affected facilities | Docket No. A–98–03, Item No. IV–B–3. |
| 3. Emission inventory | Docket No. A–98–03, Item No. IV–B–3. |
| 4. Emission limits | 40 CFR 62.14353. |
| 5. Compliance schedules | 40 CFR 62.14356. |
| 6. Process for review of site-specific gas collection and control system design plans. | Section II.F of the proposal preamble (63 FR 69375). |
| 7. Testing, monitoring, reporting and recordkeeping requirements | 40 CFR 62.14354 and 62.14355. |
| 8. Public hearing requirements | Section II.I of the proposal preamble (63 FR 69375). |
| 9. Progress reports | Section II.H of proposal preamble (63 FR 69375). |

## III. Summary of Comments and Changes Since Proposal

In this section of the preamble, the EPA presents a brief summary of its responses to the public comments it received on the MSW landfills Federal plan. The full comment summaries and responses are documented in the promulgation background information document (EPA–456/R–99–001, Docket No. A–98–03, item III–B–1). The document addresses additional comments that are not summarized in this preamble.

The EPA requested comments on the proposed options for establishing the incremental compliance dates. The EPA received no comments on the proposed options for establishing the incremental compliance dates, nor did it receive site-specific compliance schedules to be included in the final rule. The EPA did receive comments on its approval of State plans, design capacity estimates and reports, the inventory, calculating the emissions rate for control applicability, the final control plan, and delegation. The EPA also received one comment on the Information Collection Request. That comment is discussed in section VII.B of this preamble.

### *A. State Plan Interim Approval*

Commenters suggested that EPA issue a final rulemaking to provide interim approval of State plans that have been submitted to EPA but have not yet been approved or disapproved. These commenters suggested that if EPA approved State plans on an interim basis, the landfill owner or operator would be subject to only the State regulations without duplication of Federal requirements. One commenter suggested that EPA should defer to the provisions of State plans that have been submitted in order to avoid the costs and other burdens of duplicate or inconsistent regulation during the review period.

The EPA will not approve State plans on an interim basis for two reasons: (1) There is no legal basis for interim approval and (2) Overlapping

requirements are not likely. The EPA only has the authority to approve or disapprove a State plan, or any portion thereof, based on whether it is consistent with 40 CFR part 60, subparts B and Cc. While section 502 of the Act and 40 CFR 70.4(d) specifically authorize interim approval for title V permit programs, neither subpart B nor section 111(d) of the Act authorizes EPA to grant similar interim approval of State or Tribal plans. The EPA will continue to accept and review State plans according to the criteria for State plans that are described in ''Municipal Solid Waste Landfill, Volume 2: Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Emission Guidelines'' (guidance document).

In addition, the EPA does not expect landfill owners or operators to be subject to duplicate or inconsistent regulation. The EPA expects that State plans that were submitted by December 1998 (when the Federal plan was proposed) will be approved or disapproved before the landfills Federal plan becomes effective. Once the State plan is approved and becomes effective, the owner or operator of a landfill covered by the State plan will not be subject to the Federal plan. If, as expected, State plans become effective prior to promulgation of the Federal plan, landfill owners or operators of landfills covered in those State plans will have to comply only with the State plans and will not be subject to two different time lines or other inconsistent requirements.

*B. Design Capacity Estimates and Reports*

One commenter contended that it is a meaningless task for towns (the owners or operators of the landfills) to create design capacity reports based on uncertain data and where the landfills are no longer operating. According to the commenter, many of the small towns in the State do not know and cannot determine the design capacity of their landfills. The height and density, which would be used to calculate the design capacity, are not available. The commenter further stated that there is no way to recreate the history needed to get the height or density. Many of the State's landfills have been closed and have no additional capacity for future waste disposal. The commenter also stated that most of the landfills in the State are much smaller than the design capacity cutoff.

The emission guidelines require owners and operators subject to the Federal plan to submit design capacity reports regardless of the size of the landfill. The Federal plan must be as stringent as the emission guidelines, therefore, the requirement to submit a design capacity report remains in the final Federal plan. The purpose of the design capacity report is to help determine which landfills may be subject to the requirement to install a collection and control system. Closed landfills that accepted waste since 1987 are included because landfills continue to emit nonmethane organic compounds (NMOC) years after they have closed and they are subject to the emission guidelines that are implemented by the Federal plan.

If data are not available on waste acceptance rates, then owners and operators should estimate their landfill's design capacity based on the best information available. For example, if owners or operators know the acreage of their landfills (the commenter provided the acreage for 396 landfills in the State), they could estimate the depth of waste based on available information, and document their assumption on depth. Then they could calculate the approximate volumetric design capacity of the landfill and submit the report. If capacity is clearly below 2.5 million cubic meters (or 2.5 million megagrams) no further action is required.

*C. Inventory of Landfills*

One commenter stated that one purpose of the Federal plan appears to be to create a database of MSW landfills in order to estimate emissions. The commenter stated that the vast majority of small, closed landfills will never be able to be assessed due to lack of information. Two commenters provided information on landfills in their States. The information was submitted in response to EPA's request for supplemental information on the landfills inventory that EPA prepared as part of the Federal plan (Docket no. A–98–03, Item no. II–B–2). The EPA appreciates the commenters' information on landfills. The information provided by the commenters is a useful supplement to EPA's inventory and will help in determining which landfills may be affected by the landfills Federal plan.

The EPA revised the Federal plan inventory since proposal to remove States that it no longer expects to be covered by the landfills Federal plan. The updated inventory can be found in Docket No. A–98–03, Item No. IV–B–3.

The EPA will continue to require States that develop State plans to submit an inventory of existing landfills that accepted waste after November 8, 1987, consistent with 40 CFR 60.25. The purpose of the inventory is to provide a record to the public of existing MSW landfills in a State or Indian country. The EPA is encouraging States to continue work on State plans, including inventories. Where inventory data is lacking, States should use whatever information is available to develop a reasonable estimate of emissions.

*D. Calculating Emissions Rate For Control Applicability*

One commenter recommended that the landfills Federal plan defer to alternative emission estimation methods, particularly State-approved methods. This would ensure that consistent and accurate emissions estimates are used in determining actions under the emission guidelines and new source performance standards (40 CFR part 60, subparts Cc and WWW) and related State programs, such as Title V permitting and New Source Review. The commenter stated that facilities should be allowed to employ the most accurate emissions estimates. The commenter also expressed concern that EPA may rely on default estimates based on AP–42 estimation methodology while States are using more recent and sophisticated emission methods that are proving more accurate.

The emission guidelines do not allow the use of AP–42 emission factors to determine whether a landfill must install controls; they require the MSW landfill owner or operator to use the tiered calculation procedure described in 40 CFR 60.754 of subpart WWW to determine the eventual need for controls. The Federal plan implements the emission guidelines and must, therefore, require the use of the same procedure. (The appropriate time to comment on the procedure was during the public comment periods for these regulations.) The procedure involves the calculation of the NMOC emission rate from a landfill. If the emission rate equals or exceeds a specified threshold (50 Mg NMOC/yr), the landfill owner or operator must install a gas collection and control system.

The first tier of the tiered calculation procedure is purposefully conservative to ensure that landfill emissions are controlled. Tiers 2 and 3 allow site-specific measurements to determine emissions more accurately. However, if the landfill owner or operator wants to use an alternative more accurate method, they can seek approval from the Administrator. Section 60.754(b)(3) of subpart WWW (which is cross-referenced to § 62.14354 of subpart GGG) allows landfill owners or operators to use another method to determine landfill gas flow rate and

NMOC concentration if the method has been approved by the Administrator. The landfill owner or operator can use the approved alternative methods to provide a better estimate of emissions for a particular landfill.

To ensure national consistency, the Administrator is retaining the authority to approve alternative methods to determine site-specific NMOC concentrations and methane generation rate constants and is not transferring this authority to the State or Tribe upon delegation of authority to implement and enforce the Federal plan. The EPA will review and consider any applications for site-specific methods that it receives.

To estimate emissions for State inventories and related State programs such as Title V permitting and New Source Review, a State may use its own procedures. Tier 1 default values are not recommended for inventories because they tend to overestimate emissions from many landfills. As mentioned previously, the default values are purposefully conservative because they serve as an indicator of the need to install a collection and control system. The Federal plan, the emission guidelines, and the guidance document recommend using AP–42 unless site-specific information is available or can be developed. AP–42 has values that are more typical than Tier 1 defaults, for permitting and inventories. Other procedures approved by the State may also be used for permitting and inventory purposes.

*E. Final Control Plan*

One commenter suggested that the final control plan (design plan) should be consistent with the new source performance standards. The commenter noted that the last sentence of the definition of final control plan in § 62.14351 of subpart GGG could be deleted without consequence. That sentence reads: ''The final control plan also must include the same information that will be used to solicit bids to install the collection and control system.'' The commenter believes the requirement is more stringent than the new source performance standards' requirement and that bid information in the design plan would not be practical for sites that will install collection and control systems in multiple phases. The commenter contended that the purpose of the design plan is to demonstrate that the landfill gas collection system planned for the facility will meet the control requirements of the regulations, not as a tool for bidding purposes.

The EPA agrees that it is appropriate to delete the last sentence from the proposed definition of final control plan. This change makes the definition consistent with the emission guidelines and the guidance document. However, other requirements for submitting the final control plan remain the same. The owner or operator must submit the final control plan within 1 year after the NMOC emission rate first equals or exceeds 50 megagrams per year.

*F. Increments of Progress*

One commenter stated that the proposed Federal plan increments of progress are more stringent than the emission guidelines for existing landfills and the new source performance standards for new landfills. The commenter contended that the proposed Federal plan would impose a more burdensome regulatory requirement on existing landfills above and beyond that which is included in the emission guidelines. The commenter recommended eliminating the increments of progress and in their place requiring owners or operators to comply with the recordkeeping and reporting provisions of the new source performance standards. The commenter stated that existing landfills should be given the same flexibility for achieving compliance with Federal plan emission guidelines as are new landfills under the new source performance standards.

The requirements for existing landfills under the emission guidelines and the Federal plan are essentially the same as the requirements for new landfills under the new source performance standards. For existing MSW landfills, five increments of progress are required by 40 CFR part 60, subpart B. These five increments of progress are:

(1) Submit final control plan;
(2) Award contracts;
(3) Begin construction;
(4) Complete construction, and
(5) Reach final compliance.

Increments 1, 4, and 5 are also required by the emission guidelines for existing landfills. For new MSW landfills, three increments of progress are required by the new source performance standards. These three increments of progress are:

- Submit final control plan (collection and control system design plan),
- Complete construction (install collection and control system; and
- Reach final compliance.

Subpart B does not apply to new landfills, thus, the increments to award contracts and begin construction are not required for new landfills.[9] Although these two increments of progress do apply to existing landfills, there is flexibility in the dates for meeting them. Unlike the compliance time periods for increments 1, 4, and 5, which are specified in the emission guidelines, no time periods are specified for increments 2 and 3 in either subpart B or the emission guidelines. Thus, the Federal plan allows the State, local or Tribal authority, or the landfill owner or operator, to request different time periods for these increments versus the generic time periods specified in the Federal plan.

*G. Delegation*

One commenter from a State environmental protection agency recommended that States should not be the enforcement agent under the Federal plan. The commenter noted that it did not want to take delegation of the Federal plan, especially if it requires collection of design capacity reports from hundreds of rural towns with small, closed landfills.

Although a State is not obligated to take delegation of the Federal plan, the EPA believes that the State, Tribal, and local agencies are in the best position to design, adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan in their jurisdictions. This is consistent with Congress' overarching intent that the primary responsibility for air pollution control rests with State and local agencies. See 63 FR 69375, December 16, 1998 and the Act section 101(a)(3).

The EPA continues to strongly encourage States, Tribes, and local agencies to submit approvable State plans. For States that are unable to submit plans, the EPA strongly encourages them to request delegation of the Federal plan, if feasible.

## IV. Implementation of Federal Plan and Delegation

The EPA designed the landfills Federal plan to facilitate the transfer of authority from EPA to States, Tribes, and local agencies. The EPA believes that it is advantageous and the best use of resources for State, local, or Tribal agencies to undertake roles in implementing this Federal plan. Such roles could include development of a process for reviewing collection and

[9] While subpart B does not apply to new MSW landfills, the general provisions (40 CFR 60.7) do and they require that owners or operators of affected facilities (which include new MSW landfills) provide notification to EPA of certain actions they plan to take or have taken. One of these actions is when they begin construction. This notification requirement for new MSW landfills is not altered by EPA's promulgation of the MSW landfills Federal plan.

control system design plans, administrating reporting and recordkeeping requirements, and conducting source inspections.

*A. Background of Authority*

The EPA is required to adopt emission guidelines that are applicable to existing MSW landfills under section 111(d) of the Act. The emission guidelines are not enforceable, however, until EPA approves a State or Tribal plan or adopts a Federal plan. In cases where a State or Tribe does not have an EPA approved plan, the EPA must adopt a Federal plan for MSW landfills in the State or in Indian country as an interim measure to implement the emission guidelines until the State or Tribal plan is approved. A few States may not submit a State plan and EPA is not aware of any Tribes that are developing Tribal plans.

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. *See* the Act 101(a)(3). Consistent with that overall determination, Congress established section 111 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Congress explicitly required that EPA establish procedures under section 111(d) that are similar to those under section 110 for State Implementation Plans. The section 110 procedures are based on States having the primary responsibility. Congress has shown a consistent intent for the States and local agencies to have the primary responsibility, but also included the requirement for EPA to promulgate a Federal plan for States that fail to submit approvable State plans. Accordingly, EPA has strongly encouraged the States to submit approvable State plans, and for those States that are unable to submit approvable State plans, EPA is strongly encouraging them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian country. See EPA's Indian Policy (''Policy for Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA dated November 4, 1984), which was reaffirmed by EPA Administrator Browner in 1994 (memorandum entitled, ''EPA Indian Policy'' signed by Carol M. Browner, Administrator of EPA on March 14, 1994).

The EPA believes, more specifically, that the State, Tribal and local agencies have the responsibility to design, adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan. The EPA also believes that if these agencies have appropriate enforcement resources, they can achieve the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State, Tribal and local agencies, where requests for delegations can be granted. For example, EPA encouraged States to help determine compliance schedules for this MSW landfills Federal plan.

*B. Delegation of the Federal Plan and Retained Authorities*

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit a letter to EPA stating their intent on behalf of the State or Tribe. In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State (see section I.F of the preamble). The letter requesting delegation of authority to implement the Federal plan must, at a minimum, demonstrate that the State or Tribe has adequate resources and the legal and enforcement authority to administer and enforce the program. If the State or Tribe makes such a demonstration, EPA will approve the delegation of the Federal plan. A memorandum of agreement between the State or Tribe and the EPA setting forth the terms and conditions of the delegation, including the effective date of the agreement, would be used to transfer authority. The EPA will publish an approval notice in the **Federal Register** and incorporate it into 40 CFR part 62. The EPA will, in conjunction with the State or Tribe, make additional efforts to ensure that affected sources are aware that the State or Tribe has assumed responsibility for implementation.

The EPA will keep an up-to-date list of State and Tribal plan submittals on the EPA TTN Web (http://www.epa.gov/ttn/oarpg). The list will also show whether the State or Tribe has taken delegation of the Federal plan. It is important to note, however, that while the EPA will endeavor to keep the listing updated, the list is not controlling regarding whether a State or Tribal plan has been approved or whether authority to implement and enforce the MSW landfills Federal plan has been delegated.

The EPA will implement the Federal plan unless authority to implement the Federal plan is delegated to a State or Indian tribe. If a State or Tribe fails to implement the delegated portion of the Federal plan, EPA will assume direct implementation.

In delegating implementation and enforcement authority to a State or Tribe under sections 101(a)(3) and 111 of the Act, the EPA Administrator will retain the authority to approve the following items and not transfer them to a State or Tribe:

- Alternative site-specific NMOC concentration (NMOC) or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate,
- Alternative emission standard,
- Major alternatives [1] to test methods,
- Major alternatives [1] to monitoring, or
- Waivers of recordkeeping.

If landfill owners or operators would like to avail themselves of the items listed above and specified in this Federal plan, they should submit a request to the Regional Office Administrator with a copy to the State. It should be noted that the EPA does not relinquish enforcement authority even when a State or Tribe has received delegation.

*C. Mechanisms for Transferring Authority*

There are two mechanisms for transferring implementation responsibility to States, Tribes, and local agencies: (1) If EPA approves a State or Tribal plan submitted to EPA after the Federal plan is promulgated, the State or Tribe would have authority to enforce and implement the State or Tribal plan upon the effective date of EPA's approval; and (2) if a State or Tribe does not submit or obtain approval of a State or Tribal plan, EPA can delegate the authority to the State, Tribe, or local agencies to perform certain implementation responsibilities for this Federal plan to the extent appropriate and allowed by State or Tribal law.

1. A State or Tribal Plan Is Submitted After Landfills Are Subject to the Federal Plan

After a landfill in a State or in a portion of Indian country becomes

[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

subject to the Federal plan, the State, Tribe or local agency may still adopt and submit to EPA for approval a plan (i.e., a plan containing a State or Tribal rule or other enforceable mechanism, inventories, records of public hearings, and all other required elements of a State plan). The EPA will determine if the State or Tribal plan is as stringent as the emission guidelines. If EPA determines that the State or Tribal plan is as stringent as the emission guidelines, EPA will approve the State or Tribal plan. If, however, EPA determines that the State or Tribal plan is not as stringent as the guidelines, EPA will disapprove the plan. MSW landfills covered by State or Tribal plans that become effective after the Federal plan is in place are subject to the compliance schedule of the Federal plan if the compliance schedule of the State or Tribal plan is less stringent.

Note that 40 CFR 60.24(f) allows some flexibility on a case-by-case basis for a less stringent rule or compliance schedule if specific criteria are met, sufficient justification is provided by the State or Tribe, and EPA approves the plan. States and Tribes may make their plans more stringent than the emission guidelines.

Landfills covered in the State or Tribal plan are subject to the Federal plan until the State or Tribal plan is approved and becomes effective. Upon the effective date of the State or Tribal plan, the Federal plan no longer applies to landfills covered by the State or Tribal plan and the State, Tribe or local agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. (The EPA will periodically amend the Federal plan to identify States or Tribes that have State or Tribal plans covering landfills in their jurisdiction. Such landfills are not subject to the Federal plan.) Making the State or Tribal plan effective in this manner expedites a State's or Tribe's responsibility for implementing the emission guidelines as intended by Congress.

2. State Takes Delegation of the Federal Plan

The State, Tribal or local agency may request Federal implementation responsibilities even if there is no State or Tribal plan in effect. The EPA believes that it is advantageous and the best use of resources for State, Tribal or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the Federal plan, to the extent appropriate and where authorized by State or Tribal law. These roles could include as a minimum: development of a process for review of site-specific gas collection and control system design plans, administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. As stated previously, the EPA does not relinquish the authority to bring enforcement actions against sources violating Federal plan provisions.

**V. Title V Operating Permits**

Title V of the Clean Air Act and EPA's implementing regulations set minimum standards for State and local air pollution control agencies to adopt and submit for EPA approval a regulatory program for issuing operating permits to specific sources. These sources include, but are not limited to the following: major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; and sources subject to standards under section 111 or 112 of the Act that are not area sources exempted or deferred from permitting requirements under title V.

As clarified in the landfill amendments (63 FR 32743), all existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million $m^3$ must have a title V operating permit. Existing landfills with design capacities less than 2.5 million megagrams or 2.5 million $m^3$ are not required to have a title V operating permit, unless they are a major source or are subject to title V for some other reason (e.g., subject to a section 112 National Emission Standard for Hazardous Air Pollutants (NESHAP) or to another section 111 NSPS).

The owner or operator of an existing MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million $m^3$ is subject to this MSW landfills Federal plan, and as a result, must obtain a title V operating permit (40 CFR part 70 or part 71). Such sources, if not already subject to title V permitting for another reason or reasons (see sections 70.3 and 71.3), become subject to the requirement to obtain an operating permit ninety days after the effective date of this Federal plan, even if the design capacity report is submitted prior to that date. The requirement to apply for a title V permit is triggered ninety days after the effective date of the MSW landfills Federal plan as this is the date that MSW landfills are required to submit design capacity reports (if they have not already been submitted). For more information on title V permitting requirements, please see the preamble discussion entitled ''Clarification of Title V Permitting Requirements'' in the June 16, 1998 direct final rule (63 FR 32743, 32746) for NSPS and emission guidelines for MSW landfills.

Sources subject to the title V permitting program under part 70 or 71 are required to file title V applications within 12 months after becoming subject to the program. To be timely, the owner or operator of a MSW landfill, which is subject to title V as a result of this landfills Federal plan, must submit an application for an operating permit not later than one year and ninety days after the effective date of the MSW landfills Federal plan. If a source submits a timely and complete application within this time frame, the permitting authority may grant the source a permit application shield which, if maintained by the source, would allow the source to operate without a permit until its final title V permit is issued.

Existing MSW landfills that are not currently subject to title V because their design capacity is less than 2.5 million Mg or 2.5 million $m^3$ may trigger the requirement to apply for a title V permit in the future if the design capacity subsequently increases to equal or exceed 2.5 million Mg and 2.5 million $m^3$. The only circumstance under which this could occur is if the increase in design capacity is a change that is not a modification, i.e., it is not based on an increase in permitted design capacity by either vertical or horizontal expansion. For example, an increase in the compaction of waste where the rate of compaction can be increased without a modification to the permit issued by the State, local or Tribal agency that is responsible for regulating the landfill. An amended design capacity report must be submitted within 90 days of the design capacity increase. (See 40 CFR 60.35c which incorporates the requirement in 40 CFR 60.757(a)(3).) Such sources would be required to file title V applications (if the sources are not already subject to title V) within 12 months of the date that the amended design capacity reports are required to be submitted. The proposal preamble accurately reflected this fact. Unfortunately, § 62.14352(d) of the proposed regulatory text incorrectly indicated that the 12-month period for submitting a title V application commenced 90 days after the amended design capacity report is due. This would be contrary to title V of the Act and the requirements of 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). The EPA is correcting this error in promulgating the Federal plan. Section 62.14352(e)

(section number revised in final Federal plan) now correctly indicates that a MSW landfill becomes subject to the requirement of section 70.5(a)(1)(i) or section 71.5(a)(1)(i) on the date the amended design capacity report is due.

Existing MSW landfills that increase the permitted design capacity (via modification of the permit issued by the State, local or Tribal agency that regulates the landfill) to 2.5 million Mg and 2.5 million $m^3$ or more will, upon commencing construction on the vertical or horizontal expansion, have undergone either a modification or reconstruction and will, therefore, not be subject to the landfills Federal plan, but rather will be subject to the NSPS.

As noted above, a landfill could be subject to title V for another reason or reasons. MSW landfills, for example, may be subject to title V permitting as a result of being a major source under one or more of three major source definitions in title V: (1) section 112, (2) section 302, or (3) part D of title I of the Act. If a landfill is subject to title V for more than one reason, then the 12 month time frame for filing a title V application will be triggered by the criterion in section 70.3 or 71.3 which first caused the landfill to be subject to title V. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines (earlier than the 12 months allowed) for submitting title V applications.

A MSW landfill that is closed and is no longer subject to title V as a result of this landfills Federal plan (see 40 CFR 62.14352(e)) may remain subject to title V permitting requirements for another reason or reasons as discussed above. In such circumstances, the landfill would be required to continue operating in compliance with a title V permit.

Title V operating permits issued to MSW landfills subject to this Federal plan must include all applicable requirements of this Federal plan (see 40 CFR 70.2 and 71.2). These permits must also contain all necessary terms and conditions to assure compliance with these applicable requirements. If a source is subject to both State and Federal plan requirements due to a State taking delegation of part of the Federal plan, then the landfill's permit must contain the applicable provisions from each plan. Given that a title V permit for a MSW landfill may contain both State and Federal provisions, it is especially important that each title V permit issued to a MSW landfill clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

## VI. Summary of Federal Plan

The MSW landfills Federal rule (40 CFR part 62, subpart GGG) includes applicability criteria, emission standards, design criteria, monitoring and performance testing requirements, and recordkeeping and reporting requirements. These emission standards and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cc), as revised in 1998 and 1999. The requirements are summarized in section V of the proposal preamble (63 FR 69377). However, the EPA has determined that the summary in the proposal preamble is deficient in its discussion of the requirements applicable to MSW landfills with a capacity of less than 2.5 million Mg or 2.5 million $m^3$. In addition to the requirement to submit an initial design capacity report, the owner or operator of such a MSW landfill who converts design capacity from volume to mass or mass to volume to demonstrate that the landfill's design capacity is less than 2.5 million Mg or 2.5 million $m^3$, as provided in the definition of ''design capacity'', has an ongoing obligation to recalculate site-specific density annually and to keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity and the supporting documentation. The owner or operator of such a MSW landfill is also required to submit an amended design capacity report within 90 days of the annual recalculation of site-specific density and design capacity indicating that the landfill now has a design capacity of equal to or greater than 2.5 million Mg and 2.5 million $m^3$. The EPA has added language to § 62.14353(a) to make it clearer that the owner or operator of such a MSW landfill is subject to these requirements. For purposes of consistency, EPA has added the same language to § 62.14353(b).

## VII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Order 12866, Executive Orders on Federalism, Executive Orders 13045 and 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Submission to Congress and the General Accounting Office, and National Technology Transfer and Advancement Act. Since today's adopted rule merely implements the emission guidelines promulgated on March 12, 1996 (codified at 40 part 60, subpart Cc) as they apply to MSW landfills and does not impose any new requirements, much of the following discussion of administrative requirements refers to the discussion of the administrative requirements contained in the preamble to the 1996 rule (61 FR 65404–65413, March 12, 1996).

### *A. Docket*

The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. Material is added to the docket throughout the rule development process. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)) except for interagency review material. Docket number A–88–09 contains the technical support for the March 12, 1996 emission guidelines. Additional technical support specific to this rule is contained in Docket No. A–98–03.

### *B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1893.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be accessed on the internet at http://www.epa.gov/icr and in Docket No. A–98–03, Item No. IV–B–4. The information requirements are not effective until OMB approves them.

The information will be used by the Agency to ensure that the MSW landfill Federal plan requirements are implemented and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify MSW landfills that may not be in compliance with the MSW landfill Federal plan requirements. Based on reported information, EPA will decide which landfills should be inspected and what records or processes should be inspected. The records that owners and operators of MSW landfills maintain will indicate to EPA whether personnel are operating and maintaining control equipment properly.

Based on 1992 and 1996 Office of Solid Waste reports, a national survey of landfills, and recent information from States, this Federal plan is projected to

affect approximately 3,837 MSW landfills in 28 States, 5 territories, and 1 municipality. The EPA prepared the ICR in June 1999 and based the calculations on the status of State plans as of May 30, 1999. See Table 2 for the status of State plans as of October 19, 1999. A number of State plans are expected to be approved within the year following Federal plan promulgation. When a State plan is approved, the Federal plan, by its own terms, will no longer apply to MSW landfills covered in that State plan. Thus, the rule may affect fewer MSW landfills and States during the second and third years following promulgation, and the average annual burden may be less than the numbers presented here.

The estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan is 15,110 hours annually at a cost of $1,509,135 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annual burden, over the first 3 years, for the Agency is 7,401 hours at a cost of $336,341 (including travel expenses) per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

One commenter (IV–G–01) stated that 24 hours is not long enough for EPA to review the site-specific design plan. The commenter contended that EPA's estimate may be too low for an adequate and comprehensive review, particularly where alternatives are proposed. The EPA did further analysis and determined that it would be appropriate to increase the time allocated for reviewing and approving the design plan, thus the EPA has increased the estimate to review site-specific design plans to 30 hours. The EPA based this estimate on a survey of EPA Regional Offices and several States.

*C. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considered the 1996 guidelines and standards to be significant and the rules were reviewed by OMB in 1996 (see 61 FR 9913, March 12, 1996). The Federal plan adopted today will simply implement the 1996 guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1996 guidelines; therefore, this regulatory action is considered ''not significant'' under Executive Order 12866.

*D. Executive Orders on Federalism*

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 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, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded mandate on State, local or tribal governments. The Federal plan adopted today does not impose any additional costs or result in any additional control requirements above those previously considered during promulgation of the 1996 guidelines. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. The EPA nonetheless has involved State and local governments in the development of this rule. During development of the MSW landfills Federal plan, EPA worked with the EPA Regional Offices to identify and address State issues. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. No such schedules have been received.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. This Federal plan affects owners and operators of existing municipal solid waste landfills for which a State or Tribal plan is not in effect. Most of these landfills are owned or operated by private industry or municipalities, not States. A State or Indian Tribe may request delegation to implement the Federal plan but is not required to do so. In addition, the Federal plan adopted today will simply implement the 1996 guidelines and does not result in any additional federalism issues above those previously considered during promulgation of the 1996 guidelines.

*E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O.

12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety affects 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 economically significant. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This MSW landfills Federal plan is not subject to E.O. 13045 because it merely implements the previously promulgated emission guidelines and thus does not involve decisions on environmental health risks or safety risk that may disproportionately affect children.

*F. Executive Order 13084: Consultation With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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.''

The MSW landfills Federal plan adopted today does not significantly or uniquely affect the communities of Indian tribal governments. There are very few existing landfills in Indian country large enough to require the installation of a collection and control system. For most existing landfills in Indian country, the only requirements this Federal plan imposes are to submit an initial design capacity report of landfills in Indian country and to recalculate their site-specific density and design capacity annually and submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million $m^3$. Further, the Federal plan adopted today does not impose any additional costs or result in any additional control requirements above those previously considered during promulgation of the 1996 guidelines.

*G. 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. An unfunded mandate statement was prepared and published in the March 12, 1996 promulgation notice for the final emission guidelines and new source performance standards (see 63 FR 9913 through 9918).

The EPA has determined that the adopted MSW landfills Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1996 guidelines. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this rule.

*H. Regulatory Flexibility Act*

Section 605 of the Regulatory Flexibility Act (RFA) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1996 rulemaking, EPA estimated that small entities would not be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 61 FR 9918). This adopted Federal plan does not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605 (b), EPA certifies that this MSW landfills Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

*I. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801, *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency adopting 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 this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The purpose of the NTTAA is to reduce the costs to the private and public sectors by requiring federal agencies to use existing technical standards used in commerce or industry. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply because the Federal plan implements an existing rule to which NTTAA did not apply. In addition, the emission guidelines, which the Federal plan is based on, do not impose technical standards.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 28, 1999.

**Carol M. Browner,**

*Administrator.*

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C 7401–7642.

2. Amend part 62 by adding subpart GGG consisting of §§ 62.14350 through 62.14356 as follows:

### Subpart GGG—Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

Sec.

62.14350 Scope and delegation of authority.
62.14351 Definitions.
62.14352 Designated facilities.
62.14353 Standards for municipal solid waste landfill emissions.
62.14354 Procedures, test methods, and monitoring.
62.14355 Reporting and recordkeeping requirements.
62.14356 Compliance schedules and increments of progress.
Table 1 of Subpart GGG—States That Have an Approved and Effective State Plan
Table 2 of Subpart GGG—States that Submitted a Negative Declaration Letter
Table 3 of Subpart GGG—Generic Compliance Schedule and Increments of Progress
Table 4 of Subpart GGG—Site-Specific Compliance Schedules and Increments of Progress [Reserved]

### Subpart GGG—Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

#### § 62.14350 Scope and delegation of authority.

(a) This subpart contains emission requirements and compliance schedules for the control of designated pollutants from certain municipal solid waste landfills in accordance with section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B. This municipal solid waste landfills Federal plan applies to each designated facility as defined in § 62.14352 of this subpart that is not covered by an EPA approved and currently effective State or Tribal plan.

(b) The following authorities shall be retained by the Administrator and not transferred to the State or Tribe upon delegation of authority to the State or Tribe to implement and enforce the Federal plan pursuant to sections 101(a)(3) and 111 of the Clean Air Act:

(1) Approval of alternative methods to determine site-specific NMOC concentration ($C_{NMOC}$) or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate (as provided in 40 CFR 60.754(a)(5) of subpart WWW),

(2) Alternative emission standards,

(3) Major alternatives [1] to test methods,

(4) Major alternatives to monitoring, or

(5) Waivers of recordkeeping.

#### § 62.14351 Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and 40 CFR part 60, subparts A, B, and WWW.

*Achieve final compliance* means to connect and operate the collection and control system as specified in the final control plan. Within 180 days after the date the landfill is required to achieve final compliance, the initial performance test must be conducted.

*Award contract* means the MSW landfill owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the MSW landfill owner or operator. The MSW landfill owner or operator may award a number of contracts to install the collection and control system. To meet this increment of progress, the MSW landfill owner or operator must award a contract or contracts to initiate on-site construction or installation of the collection and control system.

*Complete on-site construction* means that all necessary collection system components and air pollution control devices identified in the final control plan are on site, in place, and ready for operation.

*Design capacity* means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

*EPA approved State plan* means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

*Federal Indian Reservation* means for purposes of the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

*Final control plan (Collection and control system design plan)* means a plan that describes the collection and control system that will capture the gas generated within an MSW landfill. The collection and control system design plan must be prepared by a professional engineer and must describe a collection and control system that meets the requirements of 40 CFR 60.752(b)(2)(ii). The final control plan must contain engineering specifications and drawings of the collection and control system. The final control plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of 40 CFR 60.753 through 60.758 proposed by the owner or operator. The final control plan must either conform with the specifications for active collection systems in 40 CFR 60.759 or include a

[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

demonstration that shows that based on the size of the landfill and the amount of waste expected to be accepted, the system is sized properly to collect the gas, control emissions of NMOC to the required level and meet the operational standards for a landfill.

*Indian Country* means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

*Initiate on-site construction* means to begin any of the following: installation of the collection and control system to be used to comply with the emission limits as outlined in the final control plan; physical preparation necessary for the installation of the collection and control system to be used to comply with the final emission limits as outlined in the final control plan; or, alteration of an existing collection and control system to be used to comply with the final emission limits as outlined in the final control plan.

*Modification* means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

*Municipal solid waste landfill* or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned.

*Negative declaration* letter means a letter to EPA declaring that there are no existing MSW landfills in the State or that there are no existing MSW landfills in the State that must install collection and control systems according to the requirements of 40 CFR part 60, subpart Cc. The negative declaration letter must include the design capacities of any existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

*Protectorate* means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

*State* means any of the 50 United States and the protectorates of the United States.

*State plan* means a plan submitted pursuant to section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cc. State plans include plans developed by States, local agencies, and protectorates.

*Tribal plan* means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cc.

**§ 62.14352 Designated facilities.**

(a) The designated facility to which this subpart applies is each municipal solid waste landfill in all States, protectorates, and Indian Country that meets the conditions of paragraphs (a)(1) and (a)(2) of this section, except for landfills exempted by paragraphs (b) and (c) of this section.

(1) The municipal solid waste landfill commenced construction, reconstruction, or modification before May 30, 1991 (landfills that commence construction, modification, or reconstruction on or after May 30, 1991 are subject to 40 CFR part 60, subpart WWW), and

(2) The municipal solid waste landfill has accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition.

(b) A municipal solid waste landfill regulated by an EPA approved and currently effective State or Tribal plan is not subject to the requirements of this subpart. States that have an approved and effective State plan are listed in table 1 of this subpart. Notwithstanding the exclusions in table 1 of this subpart, any MSW landfill located in a State or portion of Indian country that does not have an EPA approved and currently effective State or Tribal plan is subject to the requirements of this subpart.

(c) A municipal solid waste landfill located in a State, locality, or portion of Indian country that submitted a negative declaration letter is not subject to the requirements of this subpart other than the requirements in the definition of design capacity to recalculate the site-specific density annually and in § 62.14355 to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million megagrams and 2.5 million cubic meters. However, if the existing municipal solid waste landfill already has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, then it is subject to the requirements of the Federal plan. States, localities, or portions of Indian country that submitted negative declaration letters are listed in table 2 of this subpart.

(d) Physical or operational changes made to an existing municipal solid waste landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing municipal solid waste landfill to the requirements of 40 CFR part 60, subpart WWW.

(e) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on January 7, 2,000 and not otherwise subject to either part 70 or 71, becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter April 6, 2000, even if the initial design capacity report is submitted earlier. In addition, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, and not otherwise subject to either part 70 or 71, but whose design capacity subsequently increases to equal or exceed 2.5 million megagrams and 2.5 million cubic meters by a change that is not a modification or reconstruction becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter upon the date the amended design capacity report is due.

(f) When a municipal solid waste landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the

requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under § 62.14353 of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in 40 CFR 60.752(b)(2)(v).

**§ 62.14353 Standards for municipal solid waste landfill emissions.**

(a) The owner or operator of a designated facility having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable reporting and recordkeeping requirements specified in this subpart.

(b) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable reporting and recordkeeping requirements specified in this subpart.

**§ 62.14354 Procedures, test methods, and monitoring.**

(a) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compounds emission rate using the procedures listed in 40 CFR 60.754, as applicable, to determine whether the landfill nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(b) The owner or operator of a designated facility with a gas collection and control system used to comply with § 62.14353(b) must comply with the operational standards in 40 CFR 60.753; the test procedures in 40 CFR 60.754(b) and (d); the compliance provisions in 40 CFR 60.755; and the monitoring provisions in 40 CFR 60.756, unless alternative procedures have been approved.

**§ 62.14355 Reporting and recordkeeping requirements.**

(a) The owner or operator of a designated facility must comply with the recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, except as provided for under paragraphs (a)(1) and (a)(2) of this section.

(1) The initial design capacity report for a designated facility is due within 90 days of the effective date of this subpart. Existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters that are located in States that submitted a negative declaration letter are not required to submit an initial design capacity report provided that the MSW landfill's design capacity was included in the negative declaration letter.

(2) The initial nonmethane organic compounds emission rate report for a designated facility is due within 90 days of the effective date of this subpart.

(b) The owner or operator of a designated facility must submit notification to the EPA Regional Office within 10 business days of completing each increment of progress. Each notification must indicate which increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart has been achieved. The notification must be signed by the owner or operator of the landfill.

(1) For the first increment of progress, the final control plan (collection and control system design plan) must be submitted in addition to the notification. A copy of the design plan must also be kept on site at the landfill.

(2) For the second increment of progress, a signed copy of the contract(s) awarded must be submitted in addition to the notification.

(c) The owner or operator of a designated facility who fails to meet any increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart according to the applicable schedule in § 62.14356 of this subpart must submit notification that the owner or operator failed to meet the increment to the EPA Regional Office within 10 business days of the applicable date in § 62.14356.

(d) The owner or operator (or the State or Tribal air pollution control authority) that is submitting alternative dates for increments 2 and 3 according to § 62.14356(d) of this subpart must do so by the date specified for submitting the final control plan. The date for submitting the final control plan is specified in § 62.14356(c)(1) and (c)(2) of this subpart, as applicable. The owner or operator (or the State or Tribal air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in table 3 of this subpart. In addition to submitting the alternative dates to the appropriate EPA Regional Office, the owner or operator must also submit the alternative dates to the State.

**§ 62.14356 Compliance schedules and increments of progress.**

(a) *Increments of progress.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section to install air pollution control devices to meet the emission standards specified in § 62.14353(b) of this subpart. (Refer to § 62.14351 for a definition of each increment of progress.)

(1) Submit control plan: Submit a final control plan (collection and control system design plan) according to the requirements of § 62.14353(b) of this subpart and 40 CFR 60.752(b)(2).

(2) Award contract(s): Award contract(s) to initiate on-site construction or initiate on-site installation of emission collection and/or control equipment.

(3) Initiate on-site construction: Initiate on-site construction or initiate on-site installation of emission collection and/or control equipment as described in the EPA-approved final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission collection and/or control equipment.

(5) Achieve final compliance: Complete construction in accordance with the design specified in the EPA-approved final control plan and connect the landfill gas collection system and air pollution control equipment such that they are fully operating. The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance.

(b) *Compliance date.* For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 Mg per year, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in § 62.14353(b) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows that the nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(c) *Compliance schedules.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through

(a)(5) of this section according to the schedule specified in paragraph (c)(1) or (c)(2) of this section, unless a site-specific schedule is approved by EPA.

(1) The owner or operator of a designated facility must achieve the increments of progress according to the schedule in table 3 of this subpart, except for those affected facilities specified in paragraph (c)(2) of this section. Once this subpart becomes effective on January 7, 2000, any designated facility to which this subpart applies will remain subject to the schedule in table 3 if a subsequently approved State or Tribal plan contains a less stringent schedule, (*i.e.*, a schedule that provides more time to comply with increments 1, 4 and/or 5 than does this Federal plan).

(2) The owner or operator of the specified designated facility in table 4 of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart.

(d) For designated facilities that are subject to the schedule requirements of paragraph (c)(1) of this section, the owner or operator (or the State or Tribal air pollution control authority) may submit to the appropriate EPA Regional Office for approval alternative dates for achieving increments 2 and 3.

**Tables to Subpart GGG**

TABLE 1 OF SUBPART GGG.—STATES THAT HAVE AN APPROVED AND EFFECTIVE STATE PLAN [a]

| State plan | Effective date of state plan [b] |
|---|---|
| Alabama | 12/07/98 |
| Allegheny County, Pennsylvania | 04/16/99 |
| Arizona | 11/19/99 |
| California | 11/22/99 |
| Colorado | 09/28/98 |
| Delaware | 11/16/99 |
| Florida | 08/03/99 |
| Georgia | 01/12/99 |
| Illinois | 01/22/99 |
| Iowa | 06/22/98 |
| Kansas | 05/19/98 |
| Kentucky | 06/21/99 |
| Louisiana | 10/28/97 |
| Maryland | 11/8/99 |
| Minnesota | 09/25/98 |
| Missouri | 06/23/98 |
| Montana | 09/08/98 |
| Nashville, Tennessee | 02/16/99 |
| Nebraska | 06/23/98 |
| Nevada | 11/19/99 |
| New Mexico | 02/10/98 |
| New York | 09/17/99 |
| North Dakota | 02/13/98 |
| Ohio | 10/06/98 |
| Oklahoma | 05/18/99 |
| Oregon | 08/25/98 |
| South Carolina | 10/25/99 |
| South Dakota | 08/02/99 |
| Tennessee | 11/29/99 |
| Texas | 08/16/99 |
| Utah | 03/16/98 |

TABLE 1 OF SUBPART GGG.—STATES THAT HAVE AN APPROVED AND EFFECTIVE STATE PLAN [a]—Continued

| State plan | Effective date of state plan [b] |
|---|---|
| Wyoming | 07/31/98 |

[a] This table is provided as a matter of convenience and is not controlling in determining whether a MSW landfill is subject to the Federal plan. A MSW landfill is subject to this Federal plan if it commenced construction before May 30, 1991 and has not been modified or reconstructed on or after that date and is not covered by an approved and currently effective State or Tribal plan.

[b] The State plan is expected to become effective on the date indicated. However, if the State plan does not become effective on the date indicated, the Federal plan applies until the State plan becomes effective.

TABLE 2 OF SUBPART GGG.—STATES THAT SUBMITTED A NEGATIVE DECLARATION LETTER [a]

| State, locality, or portion of Indian country | Date of negative declaration |
|---|---|
| District of Columbia | 09/11/97 |
| New Hampshire | 07/22/98 |
| Philadelphia, Pennsylvania | 02/27/96 |
| Rhode Island | 05/27/98 |
| Vermont | 08/20/96 |

[a] A MSW landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters located in an area for which a negative declaration letter was submitted is subject to the Federal plan, notwithstanding the negative declaration letter and this table 2.

TABLE 3 OF SUBPART GGG.—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS [a]

| Increment | Date |
|---|---|
| Increment 1—Submit final control plan | 1 year after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b] |
| Increment 2—Award Contracts | 20 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b] |
| Increment 3—Begin on-site construction | 24 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b] |
| Increment 4—Complete on-site construction | 30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b] |
| Increment 5—Final compliance | 30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b] |

[a] Table 3 of subpart GGG applies to landfills with design capacities ≥2.5 million megagrams and 2.5 million cubic meters that are subject to this subpart except those with site-specific compliance schedules shown in table 4 of subpart GGG.

[b] NMOC = nonmethane organic compounds Mg/yr = megagrams per year

Table 4 of Subpart GGG—Site-Specific Compliance Schedules and Increments of Progress [Reserved]

[FR Doc. 99–28726 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 65

**[Docket No. FEMA–7304]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

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

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

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

**National Environmental Policy Act.**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification.**

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism.**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform.**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alaska: Kenai Peninsula Borough. | City of Homer ..... | Sept. 21, 1999, Sept. 28, 1999, *Homer Tribune*. | The Honorable Jack Cushing, Mayor, City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603–7624. | Aug. 25, 1999 ..... | 020107 |
| Arizona: | | | | | |
| Greenlee ..... | Town of Clifton ... | Sept. 15, 1999, Sept. 22, 1999, *The Copper Era*. | Ms. Tonya L. Williams, Town Manager, Town of Clifton, P.O. Box 1415, Clifton, Arizona 85533. | Aug. 23, 1999 ..... | 040035 |
| Maricopa ..... | City of Peoria ..... | Aug. 13, 1999, Aug. 20, 1999, *Peoria Times*. | The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345. | Jul. 6, 1999 ..... | 040050 |
| Pima ..... | City of Tucson .... | Sept. 23, 1999, Sept. 30, 1999, *The Arizona Daily Star*. | The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726. | Sept. 2, 1999 ..... | 040076 |
| Arkansas: Pulaski | City of North Little Rock. | Sept. 10, 1999, Sept. 17, 1999, *Arkansas Democrat Gazette*. | The Honorable Patrick Henry Hays, Mayor, City of North Little Rock, P.O. Box 5757, North Little Rock, Arkansas 72119. | Aug. 13, 1999 ..... | 050182 |
| California: | | | | | |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Riverside ..... | City of Corona .... | Aug. 20, 1999, Aug. 27, 1999, *The Press-Enterprise*. | The Honorable Bill Franklin, Mayor, City of Corona, P.O. Box 940, Corona, California 91718. | Aug. 5, 1999 ..... | 060250 |
| Riverside ..... | City of Indian Wells. | Sept. 15, 1999, Sept. 22, 1999, *The News Review*. | The Honorable Phil Bostley, Jr., Mayor, City of Indian Wells, 44–950 El Dorado Drive, Indian Wells, California 92210. | Aug. 24, 1999 ..... | 060254 |
| Stanislaus ..... | City of Modesto .. | Sept. 9, 1999, Sept. 16, 1999, *The Modesto Bee*. | The Honorable Richard A. Lang, Mayor, City of Modesto, P.O. Box 642, Modesto, California 95353. | Dec. 15, 1999 ..... | 060387 |
| Riverside ..... | City of Norco ..... | Aug. 20, 1999, Aug. 27, 1999, *The Press-Enterprise*. | The Honorable Bill Vaughan, Mayor, City of Norco, P.O. Box 428, Norco, California 91760–0428. | Aug. 5, 1999 ..... | 060256 |
| Riverside ..... | Unincorporated Areas. | Sept. 15, 1999, Sept. 22, 1999, *The Press-Enterprise*. | The Honorable John Tavaglione, Chairman, Riverside County, Board of Supervisors, P.O. Box 1646, Riverside, California 95202–1359. | Aug. 24, 1999 ..... | 060245 |
| Ventura ..... | City of San Buenaventura. | Aug. 19, 1999, Aug. 26, 1999, *Ventura County Star*. | The Honorable James J. Friedman, Mayor, City of San Buenaventura, P.O. Box 99, Ventura, California 93002–0099. | Jul. 26, 1999 ..... | 060419 |
| Stanislaus ..... | Unincorporated Areas. | Sept. 9, 1999, Sept. 16, 1999, *The Modesto Bee*. | The Honorable Ray Simon, Chairman, Stanislaus County, Board of Supervisors, 1100 Eighth Street, Second Floor, Modesto, California 95353. | Dec. 15, 1999 ..... | 060384 |
| Ventura ..... | Unincorporated Areas. | Aug. 19, 1999, Aug. 26, 1999, *Ventura County Star*. | The Honorable Susan K. Lacey, Chairperson, Ventura County, Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009. | Jul. 26, 1999 ..... | 060413 |
| Colorado. | | | | | |
| Arapahoe ..... | Unincorporated Areas. | Aug. 19, 1999, Aug. 26, 1999, *The Villager*. | The Honorable Steve Ward, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060. | Aug. 15, 1999 ..... | 080011 |
| Arapahoe ..... | Unincorporated Areas. | Sept. 23, 1999, Sept. 30, 1999, *The Villager*. | The Honorable Steve Ward, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–00600. | Aug 26, 1999 ..... | 080011 |
| Kansas: Johnson | City of Olathe ..... | Sept. 21, 1999, Sept. 28, 1999, *The Olathe Daily News*. | The Honorable Larry L. Campbell, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 660510768. | Aug. 18, 1999 ..... | 200173 |
| Nebraska: Douglas. | City of Omaha .... | Aug. 18, 1999, Aug. 25, 1999, *The Daily Record*. | The Honorable Hal Daub, Mayor, City of Omaha, 1819 Farman Street, Suite 300, Omaha, Nebraska 68183. | Jul. 23, 1999 ..... | 315274 |
| New Mexico: Sandoval. | Unincorporated Areas. | Aug. 24, 1999, Aug. 31, 1999, *Santa Fe New Mexican*. | Ms. Debbie Hays, County Manager, Sandvol County, P.O. Box 40, Bernalillo, New Mexico 87004. | Nov 29, 1999 ..... | 350055 |
| Texas: | | | | | |
| Collin ..... | City of Allen ..... | Aug. 18, 1999, Aug. 25, 1999, *Allen American*. | The Honorable Kevin Lilly, Mayor, City of Allen, One Butler Circle, Allen, Texas, 75013. | Nov 23, 1999 ..... | 480131 |
| Bexar ..... | Unincorporated areas. | Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News*. | The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205–3036. | Aug. 9, 1999 ..... | 480035 |
| Cameron ..... | Unincorporated areas. | Aug. 13, 1999, Aug. 20, 1999, *Brownsville Herald*. | The Honorable Gilberton Hinojosa, Cameron County Judge, 964 East Harrison, Browsville, Texas 78520. | Jul. 26, 1999 ..... | 480101 |
| Bexar ..... | City of Castle Hills. | Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News*. | The Honorable Bob Anderson, Mayor, City of Castle Hills, 6919 West Avenue, San Antonio, Texas 78213–1822. | Aug, 1999 ..... | 480037 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Denton | City of Coppell | Aug. 13, 1999, Aug. 20, 1999, *Citizen's Advocate*. | The Honorable Candy Sheehan, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019. | Jul. 6, 1999 | 480170 |
| Denton | Town of Double Oak. | Aug. 20, 1999, Aug. 27, 1999, *Lewisville News*. | The Honorable Bill Wilkinson, Mayor, Town of Double Oak, City Hall, 100 Cross Timbers Drive, Double Oak, Texas 75067. | Jul. 27, 1999 | 481516 |
| El Paso | City of El Paso | Sept 23, 1999, Sept. 30 1999, *El Paso Times*. | The Honorable Charles M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196. | Aug. 30, 1999 | 480214 |
| Dallas | City of Farmers Branch. | Oct. 1, 1999, Oct. 8, 1999, *Metrocrest News*. | The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010. | Sept. 1, 1999 | 480174 |
| Denton | Town of Flower Mound. | Aug. 20, 1999, Aug. 27, 1999, *Lewisville News*. | The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028. | Jul. 27, 1999 | 480777 |
| Collin | City of Frisco | Aug. 13, 1999, Aug. 20, 1999, *Frisco Enterprise*. | The Honorable Kathy Seei, Mayor, City of Frisco, P.O. 1100, Frisco, Texas 75034. | Jul. 13, 1999 | 480134 |
| Tarrant | City of Hurst | Aug. 11, 1999, Aug. 18, 1999, *Dallas Morning News*. | The Honorable Bill Sounder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054. | Jul. 15, 1999 | 480601 |
| Denton | City of Lewisville | Aug. 18, 1999, Aug. 25, 1999, *Lewisville News*. | The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, *Lewisville, Texas 75029–9002*. | Jul. 22, 1999 | 480195 |
| Johnson | City of Overland Park. | Sept. 3, 1999, Sept. 10, 1999, *Overland Park Sun*. | The Honorable Ed Eiler, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212. | Aug. 16, 1999 | 200174 |
| Parker | Unincorporated Areas. | Aug. 20, 1999, Aug. 27, 1999, *Weatherford Democrat*. | The Honorable Mark Riley, County Judge, One Courthouse Square, Weatherford, Texas 76086. | Jul. 30, 1999 | 480520 |
| Bexar | City of San Antonio. | Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News*. | The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966. | Aug. 9, 1999 | 480045 |
| Bexar | City of Shavano Park. | Aug. 27, 1999, Sept. 3, 1999, *San Antonio Express-News*. | The Honorable Tommy Peyton, Mayor, City of Shavano Park, 99 Sandletree Road, San Antonio, Texas 78231. | Aug. 9, 1999 | 480047 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 99–29167 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 65

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

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

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

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

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

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation

determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: Pima (FEMA Docket No. 7292). | Unincorporated areas. | May 6, 1999, May 13, 1999, *Arizona Daily Star*. | The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor Tucson, Arizona 85701. | Apr. 8, 1999 ..... | 040073 |
| | | May 11, 1999, May 18, 1999, *Arizona Daily Star*. | The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701. | Apr. 6, 1999 ..... | 040073 |
| | City of Tucson .... | May 11, 1999, May 18, 1999, *Arizona Daily Star*. | The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, *Tucson, Arizona 85726*. | Apr. 6, 1999 ..... | 040076 |
| Arizona: Navajo (FEMA Docket No. 7292). | City of Winslow ... | May 19, 1999, May 26, 1999, *Winslow Mail*. | The Honorable James L. Boles, Mayor, City of Winslow, 21 Williamson Avenue, Winslow, Arizona 86047. | Apr. 28, 1999 ..... | 040072 |
| Arkansas: Craighead (FEMA Docket No. 7292). | City of Jonesboro | May 28, 1999, June 4, 1999, *Jonesboro Sun*. | The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845. | Apr. 22, 1999 ..... | 050048 |
| California: Sonoma (FEMA Docket No. 7292). | City of Cotati ..... | May 20, 1999, May 27, 1999, *Sonoma County Independent*. | The Honorable Harold Berkmeier, Mayor, City of Cotati, 201 West Sierra Avenue, Cotati, California 94931. | Apr. 21, 1999 ..... | 060377 |
| California: Riverside (FEMA Docket No. 7292). | City of Lake Elsinore. | May 21, 1999, May 28, 1999, *Lake Elsinore Valley Sun-Tribune*. | The Honorable Genie Kelley, Mayor, City of Lake Elsinore, 130 South Main Street, Lake Elsinore, California 92530. | Apr. 22, 1999 ..... | 060636 |
| | Unincorporated areas. | May 21, 1999, May 28, 1999, *Lake Elsinore Valley Sun-Tribune*. | The Honorable John Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646, Riverside, California 92502. | Apr. 22, 1999 ..... | 060245 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| California: San Diego (FEMA Docket No. 7292). | Unincorporated area. | May 21, 1999, May 28, 1999, *San Diego Daily Transcript*. | The Honorable Pam Slater, Chairperson, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101. | Apr. 30, 1999 ..... | 060284 |
| Colorado: Boulder (FEMA Docket No. 7292). | Unincorporated area. | June 4, 1999, June 11, 1999, *Daily Camera*. | The Honorable Ron Stewart, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471. | May 14, 1999 ..... | 080023 |
| | City of Longmont | June 4, 1999, June 11, 1999, *Longmont Daily Times Call*. | The Honorable Leona Stoecker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501. | May 14, 1999 ..... | 080027 |
| Colorado: Adams and Jefferson (FEMA Docket No. 7292). | City of Westminster. | May 20, 1999, May 27, 1999, *Westminster Window*. | The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030. | Apr. 23, 1999 ..... | 080008 |
| Kansas: Sedgwick (FEMA Docket No. 7292). | City of Wichita .... | May 13, 1999, May 20, 1999, *Wichita Eagle*. | The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202. | Apr. 8, 1999 ..... | 200328 |
| Louisiana: Catahoula Parish (FEMA Docket No. 7292). | Unincorporated Areas. | May 19, 1999, May 26, 1999, *Catahoula News Booster*. | The Honorable Emmitt Taylor, President, Catahoula Parish Police Jury, P.O. Box 258, Harrisonburg, Louisiana 71340. | Apr. 13, 1999 ..... | 220047 |
| Missouri: St. Louis (FEMA Docket No. 7292). | City of Florissant | May 12, 1999, May 28, 1999, *Watchman Advocate*. | The Honorable James J. Eagan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Florissant, Missouri 63031. | Apr. 16, 1999 ..... | 290352 |
| | Unincorporated Areas. | July 9, 1999, July 16, 1999, *St Louis Countian*. | The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, Clayton, Missouri 63105. | Apr. 16, 1999 ..... | 290327 |
| New Mexico: Bernalillo (FEMA Docket No. 7292). | City of Albuquerque. | May 12, 1999, May 28, 1999, *Albuquerque Journal*. | The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103. | Apr. 15, 1999 ..... | 350002 |
| Texas: Bell (FEMA Docket No. 7292). | City of Belton ..... | May 6, 1999, May 13, 1999, *The Belton Journal*. | The Honorable Charley Powell, Mayor, City of Belton, P.O. Box 120, Belton, Texas 76513. | Apr. 1, 1999 ..... | 480028 |
| Texas: Comal (FEMA Docket No. 7292). | Unincorporated Areas. | May 7, 1999, May 14, 1999, *The Herald Zeitung*. | The Honorable Danny Shell, County Judge, Comal County, 150 North Seguin Avenue, New Braunfels, Texas 78130. | Apr. 1, 1999 ..... | 485463 |
| Texs: Dallas (FEMA Docket No. 7292). | City of Dallas ..... | May 5, 1999, May 12, 1999, *Dallas Morning News*. | The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201. | Aug. 10, 1999 ..... | 48017 |
| Texas: Denton (FEMA Docket No. 7292). | Town of Flower Mound. | May 19, 1999, May 26, 1999, *Denton Record Chronicle*. | The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Drive, Flower Mound, Texas 75028. | Apr. 12, 1999 ..... | 480777 |
| Texas: Tarraant (FEMA Docket No. 7292). | City of Hurst ..... | June 3, 1999, June 10, 1999, *Fort Worth Star-Telegram*. | The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054. | Apr. 28, 1999 ..... | 480601 |
| Texas: Collin (FEMA Docket No. 7292). | City of Plano ..... | May 5, 1999, May 12, 1999, *Plano Star Courier*. | The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358. | Aug. 10, 1999 ..... | 480140 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 99–29166 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 67

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

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

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

## National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

## Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

## Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

## Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

## Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

## List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | # Depth in feet above ground. * Elevation in feet (NGVD) |
|---|---|
| **CALIFORNIA** | |
| **Alameda County (Unincorporated Areas) (FEMA Docket No. 7242)** | |
| *San Lorenzo Creek (Line B (Zone 2)):* | |
| Approximately 320 feet downstream of Southern Pacific Railroad | *12 |
| At upstream side of 14th Street | *34 |
| Approximately 320 feet downstream of Union Pacific Railroad | *12 |
| Approximately 140 feet downstream of confluence of Crow Creek | *170 |
| *San Leandro (Line A (Zone 2)):* | |
| Approximately 50 feet upstream of Connally Drive | *33 |
| Approximately 140 feet downstream of confluence of Crow Creek | *170 |
| Approximately 200 feet south of East 14th Street | *30 |
| At Union Pacific Railroad | *27 |
| **Maps are available for inspection** at the Alameda County Public Works Department, 399 Elmhurst Street, Hayward, California. | |
| **Avenal (City) Kings County (FEMA Docket No. 7294)** | |
| *Arroyo Del Camino:* | |
| Approximately 250 feet downstream of Shasta Street | *801 |
| Approximately 550 feet upstream of Skyline Boulevard | *861 |
| **Maps are available for inspection** at City Hall, 919 Skyline Boulevard, Avenal, California. | |
| **Hayward (City), Alameda County (FEMA Docket No. 7242)** | |
| *Alameda Creek—Line A (Zone 3A):* | |
| Approximately 1,350 feet downstream of tidal gate | *7 |
| At tidal gate | *8 |
| Approximately 150 feet upstream of Interstate 880 | *11 |
| *Ward Creek—Line B (Zone 3A):* | |
| Approximately 180 feet upstream of confluence of Line D (Zone 3A) and Alameda Creek—Line A (Zone 3A) | *10 |
| Approximately 400 feet upstream of confluence of Line D (Zone 3A) and Alameda Creek—Line A (Zone 3A) | *11 |
| Approximately 730 feet upstream of Southern Pacific Railroad | *47 |
| *San Lorenzo Creek—Line B (Zone 2):* | |
| Approximately 1,825 feet downstream of Hazel Avenue | *83 |
| Approximately 1,700 feet upstream of Second Street | *116 |
| *Line D—(Zone 3A):* | |
| At confluence with Line A (Zone 3A) | *10 |
| Approximately 350 feet upstream of Industrial Parkway West | *11 |
| Approximately 1,500 feet upstream of Union Pacific Railroad | *17 |
| *Sulphur Creek—Line K (Zone 2):* | |
| Approximately 3,500 feet downstream of Southern Pacific Railroad | *7 |

| Source of flooding and location | # Depth in feet above ground. * Elevation in feet (NGVD) |
|---|---|
| Approximately 2,100 feet downstream of Southern Pacific Railroad | *8 |
| Approximately 350 feet upstream of Interstate 80 | *56 |
| **Maps are available for inspection** at the City of Hayward Department of Public Works, 25151 Clawiter Road, Hayward, California. | |
| **Newark (City), Alameda County (FEMA Docket No. 7242)** | |
| *Line B:* | |
| Approximately 3,400 feet downstream of the Southern Pacific Railroad | *12 |
| At upstream corporate limit, approximately 415 feet upstream of Cedar Boulevard | *29 |
| *Line F–1:* | |
| At downstream corporate limit, at confluence with Plummer Creek | *8 |
| Just upstream of Elm Street | *11 |
| Approximately 1,250 feet upstream of Cedar Boulevard | *34 |
| **Maps are available for inspection** at the City of Newark City Clerk's Office, City Administration Building, 37101 Newark Boulevard, Newark, California. | |
| **San Leandro (City), Alameda County (FEMA Docket No. 7242)** | |
| *San Leandro—Line A (Zone 2):* | |
| At tidal gate | *7 |
| Approximately 320 feet downstream of Southern Pacific Railroad | *8 |
| Approximately 200 feet downstream of Connally Drive | *30 |
| **Maps are available for inspection** at the Permit Center Kiosk, 835 East 14th Street, San Leandro, California. | |
| **Union City (City), Alameda County (FEMA Docket No. 7242)** | |
| *Line M (Zone 5):* | |
| At gated structure approximately 1,050 feet downstream of Royal Ann Drive | *32 |
| At Southern Pacific Railroad | *42 |
| Approximately 1,000 feet upstream of Gregory Way | *45 |
| *Alameda Creek (Line A (Zone 3A)):* | |
| Approximately 1,350 feet downstream of tidal gates | *7 |
| At upstream side of tidal gates | *8 |
| Approximately 1,000 feet upstream of Interstate 880 | *10 |
| **Maps are available for inspection** at the City of Union City Public Works Department, Engineering Division, 34009 Alvarado Niles Road, Union City, California. | |
| **NEBRASKA** | |
| **Lindsay (Village), Platte County (FEMA Docket No. 7266)** | |
| *Shell Creek:* | |
| Approximately 7,100 feet downstream of Elk Street | *1,647 |
| Approximately 6,400 feet upstream of U.S. Route 91 | *1,668 |
| **Maps are available for inspection** at the Village of Lindsay City Hall, 115 Pine Street, Lindsay, Nebraska. | |
| **Platte County (Unincorporated Areas) (FEMA Docket No. 7290)** | |
| *Shell Creek:* | |
| Approximately 27 miles upstream of confluence with the Platte River | *1,446 |
| Approximately 6 miles upstream of U.S. Route 91 | *1,697 |
| **Maps are available for inspection** at the Platte County Highway Department, 2610 14th Street, Columbus, Nebraska. | |
| **NEW MEXICO** | |
| **Bosque Farms (Village), Valencia County (FEMA Docket No. 7254)** | |
| *Rio Grande (East Overbank):* | |
| Approximately 36,000 feet above limit of detailed study, at the southern corporate limits | +4,859 |
| Approximately 37,000 feet above limit of detailed study | +4,860 |
| *Rio Grande (West Split Flow):* | |
| Approximately 8,200 feet downstream of Esperanza Road | +4,860 |
| Approximately 2,200 feet upstream of Green Acres Lane | +4,873 |
| *Rio Grande (East Split Flow):* | |
| Approximately 37,000 feet above limit of detailed study | +4,860 |
| Approximately 52,700 feet upstream of limit of detailed study, at the northern corporate limits | +4,873 |
| Note: To convert from NGVD to NAVD, add 2.5 feet. | |
| **Maps are available for inspection** at the Village of Bosque Farms Village Hall, 1455 West Bosque Loop, Bosque Farms, New Mexico. | |
| **Valencia County (Unincorporated Areas) (FEMA Docket No. 7254)** | |
| *Rio Grande (Main Channel):* | |
| At limit of detailed study | +4,836 |
| Approximately 48,400 feet above limit of detailed study, at border of the Isleta Indian Reservation | +4,878 |
| *Rio Grande (West Overbank):* | |
| At limit of detailed study | +4,835 |
| Approximately 43,500 feet above limit of detailed study, at the Valencia-Bernalillo County border | +4,877 |
| *Rio Grande (East Overbank):* | |
| At limit of detailed study | +4,832 |
| Approximately 33,200 feet above limit of detailed study | +4,860 |
| *Rio Grande (West Split Flow):* | |
| Approximately 2,000 feet downstream of Village of Bosque Farms corporate limits | +4,860 |
| Approximately 51,500 feet above limit of detailed study, at the northern County boundary | +4,873 |
| *Rio Grande (East Split Flow):* | |
| Approximately 2,000 feet downstream of Village of Bosque Farms corporate limits | +4,860 |
| Approximately 52,700 feet upstream of limit of detailed study, at border of the Isleta Indian Reservation | +4,873 |
| Note: To convert from NGVD to NAVD, add 2.5 feet. | |
| **Maps are available for inspection** at the Valencia County Engineering Office, 444 Luna Avenue, Los Lunas, New Mexico. | |
| **NORTH DAKOTA** | |
| **McHenry County (and Incorporated Areas) (FEMA Docket No. 7286)** | |
| *Mouse River:* | |
| Approximately 530 feet downstream from Dam 326 | *1,426 |
| Approximately 260 feet downstream from Schilling Bridge | *1,520 |
| **Maps are available for inspection** at the McHenry County Auditor's Office, 407 South Main, Towner, North Dakota. | |
| **Maps are available for inspection** at 101 First Street West, Velva, North Dakota. | |
| **Maps are available for inspection** at 4725 19th Avenue North, Velva, North Dakota. | |
| **Maps are available for inspection** at 570 82nd Street Northeast, Willow City, North Dakota. | |
| **Maps are available for inspection** at 750 61st Street Northeast, Towner, North Dakota. | |
| **Maps are available for inspection** at 5045 First Avenue Northwest, Karlsruhe, North Dakota. | |
| **Maps are available for inspection** at 1326 47th Street North, Velva, North Dakota. | |
| **McKinney (Township), Renville County (FEMA Docket No. 7286)** | |

| Source of flooding and location | # Depth in feet above ground. * Elevation in feet (NGVD) |
|---|---|
| *Mouse River:* | |
| Approximately 3,375 feet (.64 mile) downstream of Dam 41 | *1,601 |
| Approximately 1,265 feet (.24 mile) upstream of Swenson Bridge | *1,607 |
| **Maps are available for inspection** at City Hall, Main Street, Tolley, North Dakota. | |
| **Ward County (and Incorporated Areas) (FEMA Docket No. 7290)** | |
| *Mouse River:* | |
| Approximately 264 feet downstream of Schilling Bridge | *1,520 |
| At Lake Darling Dam | *1,600 |
| **Maps are available for inspection** at the Flood Zoning Office, 315 Third Street, Southeast, Minot, North Dakota. | |
| **Maps are available for inspection** at the City of Sawyer City Hall, 104 Dakota Avenue South, Sawyer, North Dakota. | |
| **Maps are available for inspection** at the City of Minot City Engineer's Office, 1025 31st Street, Southeast, Minot, North Dakota. | |
| **Maps are available for inspection** at the City of Burlington City Auditor's Office, 225 Wallace Street, Burlington, North Dakota. | |
| **Maps are available for inspection** at the County Flood Zoning Office, 315 Third Street Southeast, Minot, North Dakota. | |
| **TEXAS** | |
| **College Station (City) and Brazos County (FEMA Docket No. 7198)** | |
| *Bee Creek:* | |
| At confluence with Carters Creek | *234 |
| Approximately 300 feet upstream of confluence of Bee Creek Tributary A | *248 |
| *Foxfire Creek:* | |
| Approximately 3,800 feet downstream of Frost Drive Bridge | *236 |
| Approximately 1,000 feet upstream of Foxfire Drive | *268 |
| **Maps are available for inspection** at College Station City Hall, 1101 South Texas Avenue, College Station, Texas. | |
| **Maps are available for inspection** at the Brazos County Engineer's Office, 2617 Highway 21 West, Bryan, Texas. | |
| **Midland County (and Incorporated Areas) (FEMA Docket No. 7278)** | |
| Playa MI7 | *2,852 |
| Playa MI8 | *2,843 |
| Playa MI9 | *2,846 |
| Playa MI10 | *2,845 |
| Playa MI11 | *2,859 |
| Playa MI21 | *2,826 |
| Playa MI22 | *2,825 |
| Playa MI23 | *2,826 |
| Playa MI25 | *2,809 |
| Playa MI27 | *2,812 |
| Playa MI31 | *2,812 |
| Playa MI32 | *2,809 |
| Playa MI33 | *2,807 |
| Playa MI34 | *2,807 |
| Playa MI38 | *2,799 |
| Playa MI40 | *2,807 |
| Playa MI41 | *2,805 |
| Playa MI42 | *2,806 |
| Playa MI43 | *2,799 |
| Playa MI44 | *2,788 |
| Playa MI46 | *2,803 |
| Playa MI49 | *2,783 |
| Playa MI50 | *2,783 |
| Playa JA1 | *2,864 |
| Playa JA3 | *2,857 |
| Playa JA4 | *2,842 |
| Playa JA6 | *2,840 |
| Playa JA7 | *2,860 |
| Playa JA9 | *2,834 |
| Playa JA10 | *2,828 |
| Playa JA11 | *2,823 |
| Playa JA11A | *2,827 |
| Playa JA12 | *2,816 |
| Playa JA13 | *2,814 |
| Playa JA15 | *2,810 |
| Playa JA19 | *2,872 |
| Playa JA23 | *2,808 |
| Playa SC6 | *2,815 |
| Playa SC10 | *2,788 |
| Playa SC11 | *2,780 |
| *Unnamed Playa:* | |
| 1,400 feet southeast of intersection of FM 307 and FM 715 | *2,744 |
| *Unnamed Playa:* | |
| 1,150 feet northeast of intersection of FM 715 and East Highway 158 | *2,740 |
| *Unnamed Playa:* | |
| 430 feet northwest of West County Road 111 and south County Route 1210 | *2,804 |
| *Unnamed Playa:* | |
| 1,800 feet east of Playa JA6 | *2,853 |
| *Unnamed Playa:* | |
| 1,480 feet northwest of intersection of North Midland and Wood Drives | *2,831 |
| *Unnamed Playa:* | |
| 1,920 feet northwest of Playa JA10 | *2,850 |
| *Unnamed Playa:* | |
| 900 feet south of Playa M140 | *2,803, |
| *Unnamed Playa:* | |
| 1,600 feet south of Playa MI40 | *2,800 |
| *Unnamed Playa:* | |
| 400 feet southeast of Playa MI42 | *2,806 |
| *Unnamed Playa:* | |
| 1,100 feet southeast of Playa MI42 | *2,807 |
| *Unnamed Playa:* | |
| 750 feet northwest of Playa MI43 | *2,805 |
| *Unnamed Playa:* | |
| 900 feet northwest of Playa MI43 | *2,803 |
| *Unnamed Playa:* | |
| 1,550 feet west of Playa MI42 | *2,812 |
| *Unnamed Playa:* | |
| 1,000 feet north of Playa MI43 | *2,800 |
| *Unnamed Playa:* | |
| 900 feet northeast of Playa MI43 | *2,801 |
| *Unnamed Playa:* | |
| 1,500 feet northeast of Playa MI43 | *2,801 |
| *Unnamed Playa:* | |
| 400 feet east of Playa MI43 | *2,801 |
| *Unnamed Playa:* | |
| At intersection of Loop 250 North and North County Road 1160 (Todd Road) | *2,791 |
| *Unnamed Playa:* | |
| 2,000 feet southeast of Playa MI43 | *2,791 |
| *Unnamed Playa:* | |
| 2,150 feet northeast of Playa MI50 | *2,782 |
| *Unnamed Playa:* | |
| 3,000 feet northwest of intersection of North County Route 1150 (Elkins Road) and East County Route 40 | *2,798 |
| *Unnamed Playa:* | |
| 3,050 feet northeast of intersection of Elkins Road and East County Route 40 | *2,799 |
| *Unnamed Playa:* | |
| 2,500 feet northeast of Playa MI42 | *2,807 |
| *Unnamed Playa:* | |
| 1,200 feet west of intersection of FM 1379 and East County Route 109 | *2,708 |
| *Unnamed Playa:* | |
| 1,400 feet north of JA6 | *2,872 |
| *Unnamed Playa:* | |
| 1,910 feet northeast of JA6 | *2,859 |
| *Unnamed Playa:* | |
| 2,080 feet east of MI11 | *2,855 |
| *Unnamed Playa:* | |
| 2,950 feet northeast of MI11 | *2,834 |
| *Unnamed Playa:* | |
| 200 feet north of MI43 | *2,800 |
| *Unnamed Playa:* | |
| 80 feet west of MI43 | *2,799 |
| *Unnamed Playa:* | |
| 360 feet west of MI43 | *2,807 |
| *Mulberry Channel:* | |
| Just upstream of Wolfcamp Circle | *2,755 |
| Approximately 780 feet upstream of Fairgrounds Road | *2,760 |
| Approximately 130 feet upstream of North Lincoln Street | *2,765 |
| Approximately 180 feet downstream of North Lee Street | *2,769 |
| *Scharbauer Draw:* | |
| Just upstream of State Route 349 | *2,772 |
| Just downstream of North A Street | *2,776 |
| Approximately 200 feet downstream of Western Drive | *2,784 |
| *South Draw:* | |
| Approximately 800 feet upstream of confluence with Midland Draw | *2,725 |
| Approximately 3,200 feet downstream of State Route 158 | *2,737 |

| Source of flooding and location | # Depth in feet above ground. * Elevation in feet (NGVD) |
|---|---|
| Approximately 700 feet downstream of State Route 158 | *2,739 |
| Approximately 920 feet upstream of FM 715 | *2,744 |
| *Industrial Channel:* | |
| Approximately 900 feet upstream of confluence with Midland Draw | *2,751 |
| Approximately 300 feet downstream of Fairgrounds Road | *2,759 |
| Approximately 800 feet upstream of Fairgrounds Road | *2,763 |
| Approximately 400 feet downstream of South Lee Street | *2,768 |
| *Upper South Draw:* | |
| Approximately 1,240 feet upstream of South County Route 1180 | *2,751 |
| Approximately 800 feet upstream of Cotton Flat Road | *2,767 |
| Approximately 1,150 feet upstream of Santa Rosa | *2,795 |
| Approximately 150 feet upstream of Interstate Route 20 | *2,812 |
| *JA1 Draw:* | |
| Approximately 1,320 feet downstream of North I Street | *2,789 |
| Just upstream of Maxwell Drive | *2,805 |
| Approximately 1,000 feet downstream of Loop 250 | *2,830 |
| Approximately 150 feet downstream of Crowley Boulevard | *2,836 |
| *Midland Draw:* | |
| Approximately 400 feet upstream of Fairgrounds Road | *2,759 |
| Approximately 1,310 feet upstream of Loop 250 | *2,788 |
| Approximately 5,700 feet upstream of Mockingbird Lane | *2,805 |
| Approximately 5,630 feet upstream of Greentree Boulevard | *2,820 |
| **Maps are available for inspection** at City Hall, 300 North Lorain, Midland, Texas. | |
| **Midland County (Unincorporated Areas) (FEMA Docket No. 7242)** | |
| *Monahans Draw:* | |
| Approximately 2.1 miles downstream of County Road 1160 | *2,694 |
| Approximately 4,300 feet upstream of Tower Road | *2,753 |
| *Monahans Draw (Near Ector County Boundary):* | |
| Approximately 1,000 feet downstream of Ector-Midland County boundary | *2,833 |
| At Ector-Midland County boundary | *2,834 |
| **Maps are available** at the Midland County Engineering and Development Office, 300 North Lorraine, Fifth Floor, Midland, Texas. | |
| **Seguin (City) Guadalupe County (FEMA Docket No. 7294)** | |
| *Walnut Branch:* | |
| Approximately 400 feet downstream of West Kein Street | *484 |
| Just upstream of University Lane | *527 |
| Approximately 200 feet downstream of Interstate 10 | *546 |
| **Maps are available for inspection** at 210 East Gonzales Street, Seguin, Texas. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 99–29168 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–04–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 0, 1, 21, 27, 68, and 90

**[FCC 99–172]**

## Establishment of the Enforcement and Consumer Information Bureaus

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rules to promote a more efficient and effective organizational structure. The Commission has concluded that the proper dispatch of its business and the public interest will best be served by consolidating enforcement and consumer information functions into an Enforcement Bureau and a Consumer Information Bureau, respectively. The Commission also eliminates the Compliance and Information Bureau and the Office of Public Affairs and creates a small Office of Media Relations that will serve as the Commission's liaison with the news media and manage the agency's internet site.

**DATES:** Effective November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Doreen McCarthy, 202–418–0795.

**SUPPLEMENTARY INFORMATION:** To promote a more efficient and effective organizational structure, the Commission has concluded that the proper dispatch of its business and the public interest will best be served by consolidating enforcement and consumer information functions into an Enforcement Bureau and a Consumer Information Bureau, respectively, and by eliminating the Compliance and Information Bureau. In the Order adopted July 12, 1999 and released October 27, 1999, we amend the Commission's Rules to reflect the creation of the new Bureaus, describe their functions and delegated authority and to make other conforming changes. We also note that the new Bureaus will have delegated authority to act on petitions for reconsideration of decisions of their predecessor Bureaus or Offices on matters within the scope of their relevant delegated authority. The Order also eliminates the Office of Public Affairs and creates a small Office of Media Relations that will serve as the Commission's liaison with the news media and manage the agency's internet site.

Authority for the adoption of the foregoing revisions is contained in Sections 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 201(b) and 303(r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provision of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

Accordingly, it is ordered that Parts 0, 1, 21, 27, 68 and 90 of the Commission's Rules, set forth in Title 47 of the Code of Federal Regulations, are amended effective November 8, 1999.

### List of Subjects

*47 CFR Part 0*

Organizations and functions (Government agencies).

*47 CFR Part 1*

Communications common carriers, Telecommunications.

*47 CFR Part 21*

Radio.

*47 CFR Part 27*

Communications common carriers.

*47 CFR Part 68*

Communications equipment, Telephone.

*47 CFR Part 90*

Common carriers, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

## Rule Changes

Parts 0, 1, 21, 27, 68 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

**Authority:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.5 is amended by revising paragraph (a) to read as follows:

### § 0.5 General description of Commission organization and operations.

(a) *Principal staff units.* The Commission is assisted in the performance of its responsibilities by its staff, which is divided into the following principal units:

(1) Office of Managing Director.

(2) Office of Engineering and Technology.

(3) Office of General Counsel.

(4) Office of Plans and Policy.

(5) Office of Media Relations.

(6) Office of Legislative Affairs.

(7) Office of Inspector General.

(8) Office of Communications Business Opportunities.

(9) Office of Administrative Law Judges.

(10) Common Carrier Bureau.

(11) Wireless Telecommunications Bureau.

(12) International Bureau.

(13) Cable Services Bureau.

(14) Mass Media Bureau.

(15) Enforcement Bureau.

(16) Consumer Information Bureau.

* * * * *

3. The undesignated centerheading immediately preceding § 0.15 is revised to read as follows:

## Office of Media Relations

4. Section 0.15 is revised to read as follows:

### § 0.15 Functions of the Office.

(a) Enhance public understanding of and compliance with the Commission's regulatory requirements through dissemination of information to the news media.

(b) Act as the principal channel for communicating information to the news media on Commission policies, programs, and activities.

(c) Advise the Commission on information dissemination as it affects liaison with the media.

(d) Manage the FCC's Internet site and oversee the agency's Web standards and guidelines.

(e) Maintain liaison with the Consumer Information Bureau on press and media issues concerning consumer assistance and information including informal consumer complaints.

5. Section 0.17 is amended by adding paragraph (g) to read as follows:

### § 0.17 Functions of the Office.

* * * * *

(g) Coordinate with the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

6. Section 0.31 is amended by adding paragraph (n) to read as follows:

### § 0.31 Functions of the Office.

* * * * *

(n) To assist the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

7. Section 0.51 is amended by adding paragraph (s) to read as follows:

### § 0.51 Functions of the Bureau.

* * * * *

(s) To assist the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

8. Section 0.61 is amended by removing and reserving paragraph (c), revising paragraph (f) and adding paragraph (g) to read as follows:

### § 0.61 Functions of the Bureau.

* * * * *

(f) Handle equal employment opportunity enforcement and political broadcasting and fairness doctrine complaints involving broadcast stations, cable operators and other multichannel video program distributors.

(g) To assist the Consumer Information Bureau on issues involving informal consumer complaints and other general inquiries by consumers.

* * * * *

9. Section 0.91 is amended by revising paragraphs (a), (c) and (h) to read as follows:

### § 0.91 Functions of the Bureau.

* * * * *

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and licensing of communication common carriers and ancillary operations (other than matters pertaining exclusively to the regulation and licensing of wireless telecommunications services and facilities). This includes: Policy development and coordination; adjudicatory and rule making proceedings, including rate and service investigations; determinations regarding lawfulness of carrier tariffs; action on applications for service and facility authorizations; review of carrier performance; economic research and analysis; administration of Commission accounting and reporting requirements; compliance and enforcement activities not otherwise within the responsibility of the Enforcement Bureau; and any matters concerning wireline carriers that also affect wireless carriers in cooperation with the Wireless Telecommunications Bureau.

* * * * *

(c) Advises and assists the public, other government agencies and industry groups on wireline common carrier regulation and related matters. Also assists the Consumer Information Bureau with informal consumer complaints and other general inquiries by consumers regarding wireline common carrier regulation and related matters.

* * * * *

(h) Administers the Telecommunications Service Priority System with the concurrence of the Enforcement Bureau, and resolves matters involving assignment of priorities and other issues pursuant to part 64 of this chapter.

* * * * *

10. Section 0.101 is amended by revising paragraph (d) to read as follows:

### § 0.101 Functions of the Bureau.

* * * * *

(d) Advises and assists, the public, other government agencies and industry groups. Also assists the Consumer Information Bureau with informal consumer complaints and other general inquiries by consumers regarding cable regulations and related matters.

* * * * *

11. The undesignated centerheading immediately preceding § 0.111 is revised to read as follows:

## Enforcement Bureau

12. Section 0.111 is revised to read as follows:

### § 0.111 Functions of the Bureau.

(a) Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules, Commission orders and Commission authorizations, other than matters that are addressed in the

context of a pending application for a license or other authorization or in the context of administration, including post-grant administration, of a licensing or other authorization or registration program.

(1) Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers (wireline, wireless and international).

**Note to paragaph (a)(1):** The Consumer Information Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services and equipment for persons with disabilities. The Common Carrier Bureau has primary responsibility regarding compliance with common carrier accounting and related requirements, including those imposed under section 220 of the Communications Act, and complaints regarding connection of equipment to the telephone network under part 68 of the Commission's rules. The International Bureau has primary responsibility for complaints regarding international settlements rules and policies. The Cable Services Bureau has primary responsibility for pole attachment complaints under section 224 of the Communications Act.

(2) Resolve complaints regarding acts or omissions of non-common carriers subject to the Commission's jurisdiction under Title II of the Communications Act and related provisions, including complaints against aggregators under section 226 of the Communications Act and against entities subject to the requirements of section 227 of the Communications Act.

**Note to paragraph (a)(2):** The Consumer Information Bureau has primary responsibility for informally resolving individual informal complaints from consumers against non-common carriers subject to the Commission's jurisdiction under Title II of the Communications Act and related provisions, other than complaints involving access to communications services and equipment for persons with disabilities.

(3) Resolve formal complaints regarding accessibility to telecommunications services and equipment for persons with disabilities, including complaints filed pursuant to sections 225 and 255 of the Communications Act.

(4) Resolve complaints regarding radiofrequency interference and complaints regarding radiofrequency equipment and devices, including complaints of violations of sections 302 and 333 of the Communications Act.

**Note to paragraph (a)(4):** The Cable Services Bureau has shared responsibility for cable signal leakage complaints and the Office of Engineering and Technology has shared responsibility for radiofrequency equipment and device complaints.

(5) Resolve complaints regarding compliance with the Commission's Emergency Alert System rules.

(6) Resolve complaints regarding the lighting and marking of radio transmitting towers under section 303(q) of the Communications Act.

**Note to paragraph (a)(6):** The Wireless Telecommunications Bureau has responsibility for administration of the tower registration program.

(7) Resolve complaints regarding compliance with statutory and regulatory provisions regarding indecent communications subject to the Commission's jurisdiction.

(8) Resolve complaints regarding the broadcast and cable television children's television programming commercial limits contained in section 102 of the Children's Television Act.

**Note to paragraph (a)(8):** The Mass Media Bureau has responsibility for enforcement of these limits in the broadcast television renewal context.

(9) Resolve complaints regarding unauthorized construction and operation of communications facilities, including complaints of violations of section 301 of the Communications Act.

(10) Resolve complaints regarding false distress signals under section 325(a) of the Communications Act.

(11) Resolve other complaints against Title III licensees and permittees.

**Note to paragraph (a)(11):** The Mass Media Bureau has primary responsibility for complaints regarding children's television programming requirements, and for political and related programming matters and equal employment opportunity matters involving broadcasters, cable operators and other multichannel video programming distributors. The relevant licensing Bureau has primary responsibility for complaints involving tower siting and the Commission's environmental rules. The Cable Services Bureau has primary responsibility for complaints regarding the Commission's Cable Antenna Relay Service rules.

(12) Resolve complaints regarding other matters assigned to it by the Commission, matters that do not fall within the responsibility of another Bureau or Office or matters that are determined by mutual agreement with another Bureau or Office to be appropriately handled by the Enforcement Bureau.

(13) Identify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office.

(14) Issue or draft orders taking or recommending appropriate action in response to complaints or investigations, including, but not limited to, admonishments, damage awards where authorized by law or other affirmative relief, notices of violation, notices of apparent liability and related orders, notices of opportunity for hearing regarding a potential forfeiture, hearing designation orders, orders designating licenses or other authorizations for a revocation hearing and consent decrees. Issue or draft appropriate orders after a hearing has been terminated by an Administrative Law Judge on the basis of waiver. Issue or draft appropriate interlocutory orders and take or recommend appropriate action in the exercise of its responsibilities.

(15) Encourage cooperative compliance efforts.

(16) Mediate and settle disputes.

(17) Provide information regarding pending complaints, compliance with relevant requirements and the complaint process, where appropriate and to the extent the information is not available from the Consumer Information Bureau or other Bureaus and Offices.

(18) Exercise responsibility for rulemaking proceedings regarding general enforcement policies and procedures.

(19) Advise the Commission or responsible Bureau or Office regarding the enforcement implications of existing and proposed rules.

(20) Serve as the primary point of contact for coordinating enforcement matters, including market and consumer enforcement matters, with other federal, state and local government agencies, as well as with foreign governments after appropriate consultation, and provide assistance to such entities. Refer matters to such entities, as well as to private sector entities, as appropriate.

(b) Serve as trial staff in formal hearings conducted pursuant to 5 U.S.C. 556 regarding applications, revocation, forfeitures and other matters designated for hearing.

(c) Under the general direction of the Defense Commissioner, coordinate the defense activities of the Commission and provide support to the Defense Commissioner with respect to his or her participation in the Joint Telecommunications Resources Board, and the National Security Telecommunications Advisory Committee and other organizations. Recommend national emergency plans

and preparedness programs covering Commission functions during national emergency conditions. Support the Chief of the Common Carrier, International and Wireless Telecommunications Bureaus on matters involving assignment of Telecommunications Service Priority System priorities and in administration of that system. The Chief, Enforcement Bureau, or that person's designee, acts as FCC Alternate Defense Coordinator and principal to the National Communications System. Perform such alternate functions as may be delegated during a national emergency or following activation of the President's war emergency powers as specified in section 706 of the Communications Act.

(d) In coordination with the International Bureau, participate in international conferences dealing with monitoring and measurement; serve as the point of contact for the U.S. Government in matters of international monitoring, fixed and mobile direction-finding and interference resolution; and oversee coordination of non-routine communications and materials between the Commission and international or regional public organizations or foreign administrations.

(e) In conjunction with the Office of Engineering and Technology, work with technical standards bodies.

(f) Administer the Commission's Emergency Alert System. Be responsible for rulemakings involving the Emergency Alert System.

(g) Oversee the Commission's privatized ship radio safety inspection program.

(h) Have authority to rule on emergency requests for Special Temporary Authority during non-business hours.

(i) Provide field support for, and field representation of, the Bureau, other Bureaus and Offices and the Commission. Coordinate with other Bureaus and Offices as appropriate.

(j) Handle congressional and other correspondence relating to or requesting specific enforcement actions, specific complaints or other specific matters within the responsibility of the Bureau, to the extent not otherwise handled by the Consumer Information Bureau, the Office of General Counsel (impermissible *ex parte* presentations) or another Bureau or Office.

(k) Have authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the responsibility of the Bureau. Before issuing a subpoena, the Enforcement Bureau shall obtain the approval of the Office of General Counsel.

(l) Perform such other functions as may be assigned or referred to it by the Commission.

13. Section 0.121 is amended by revising paragraph (a) as follows:

**§ 0.121 Location of field installations.**

(a) Field offices are located throughout the United States. For the address and phone number of the closest office contact the Enforcement Bureau or see the U.S. Government Manual.

* * * * *

14. Section 0.131 is amended by revising paragraphs (a), (h) and (i) to read as follows:

**§ 0.131 Functions of the Bureau.**

* * * * *

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of wireless telecommunications, including ancillary operations related to the provision or use of such services; and any matters concerning wireless carriers that also affect wireline carriers in cooperation with the Common Carrier Bureau. These activities include: policy development and coordination; conducting rulemaking and adjudicatory proceedings, including licensing and complaint proceedings for matters not within the responsibility of the Enforcement Bureau; acting on waivers of rules; acting on applications for service and facility authorizations; compliance and enforcement activities for matters not within the responsibility of the Enforcement Bureau; determining resource impacts of existing, planned or recommended Commission activities concerning wireless telecommunications, and developing and recommending resource deployment priorities.

* * * * *

(h) Develops and recommends policies, programs and rules to ensure interference-free operation of wireless telecommunications equipment and networks. Coordinates with and assists other Bureaus and Offices, as appropriate, concerning spectrum management, planning, and interference matters and issues, and in compliance and enforcement activities. Studies technical requirements for equipment for wireless telecommunications services in accordance with standards established by the Chief, Office of Engineering and Technology.

(i) Advises and assists consumers, businesses and other government agencies on wireless telecommunications issues and matters related thereto. Also assists the Consumer Information Bureau with informal consumer complaints and other general inquiries by consumers regarding cable regulations and related matters.

* * * * *

15. Add an undesignated center heading and 0.141 to read as follows:

**Consumer Information Bureau**

**§ 0.141 Functions of the Bureau.**

(a) Serve as the primary Commission entity responsible for communicating information to the general public regarding Commission policies, programs, and activities. Develop, recommend, coordinate and administer the Commission's consumer information program to enhance the public's understanding of and compliance with the Commission's regulatory requirements.

(1) Provide a single source ''one-stop'' shop or ''FCC General Store'' for handling general inquiries and informally resolving individual informal consumer complaints for the Commission.

(2) Provide information to the public on the Commission's policies, goals, objectives, and regulatory requirements in order to facilitate public participation in the Commission's decision-making processes.

(3) Plan, develop, and implement, in coordination with Bureaus and Offices, a Commission wide strategic information plan. Collect and analyze information received in the Bureau from incoming informal consumer complaints and inquiries, consumer forums, and other industry sources and act as an early warning system to alert the Commissioners and the other Bureaus and Offices of areas of concern or interest.

(4) In conjunction with appropriate Bureaus and Offices, conduct consumer forums to educate the public about important Commission regulatory programs and to solicit public feedback about the work of the Commission.

(5) In coordination with the Managing Director's Office, provide objectives and evaluation methods for the public information portions of the Agency's Government Performance and Results Act (GPRA) submissions and other Agency-wide strategic planning efforts.

(6) Provide expert advice and assistance to Bureaus and Offices

regarding compliance with accessibility requirements.

(7) Provide accessible formats for distribution of Commission material for use by individuals with disabilities, and ensure that individuals with disabilities have access to Commission processes in accordance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(8) Develop and issue, in conjunction with appropriate Bureaus and Offices, consumer alerts and public service announcements to give consumers information about their rights and information to protect themselves from unscrupulous individuals and firms.

(9) Exercise responsibility for rulemaking proceedings regarding general consumer education policies and procedures, and any other related issues, as appropriate.

(b) Provide consumers with timely, up-to-date, and accurate information promptly and professionally, in a format that is most convenient to the consumer through the use of an integrated telephone, TTY, e-mail, web site, and correspondence center.

(1) Provide informal resolution of individual informal consumer complaints in accord with the Bureau's delegated authority (except those complaints filed regarding accessibility to communications services and equipment for persons with disabilities, including complaints filed pursuant to sections 225, 255, and 713 of the Communications Act, which are handled by the Enforcement Bureau.)

(i) Complete an electronic complaint form at the request of consumers and assist consumers with informal resolution of their complaints through service, facilitation, and informal resolution to address consumer-oriented problems.

(ii) Mediate and settle disputes in informal complaints as appropriate.

(2) Develop and implement approaches and delivery mechanisms to increase productivity and continuously improve service to consumers. Develop partnership with other federal, state, and local governments and industry in order to establish mechanisms to quickly address informal consumer complaints and issues.

(3) Identify and refer new, novel and/or hot consumer issues to the appropriate Commission Bureau or Office.

(4) Prepare and distribute information and documents of interest to consumers regarding their rights under applicable law.

(5) In coordination with other Bureaus and Offices, handle Congressional and other correspondence related to specific informal consumer complaints, or other specific matters within the responsibility of the Bureau, to the extent not otherwise handled by the Office of General Counsel (impermissible *ex parte* presentations) or another Bureau or Office.

(c) Develop, plan, coordinate and operate the consolidated reference and research services center to ensure accessibility of the files and record systems for the public and Commission staff.

(1) Serve as the official FCC record custodian for designated records to include intake processing, organization and file maintenance, reference services, retirement, and retrieval of these records. Responsible for managing and maintaining the Electronic Comment Filing System.

(2) Certify records for adjudicatory and court proceedings.

(3) Convene periodic user group meetings to assist in defining requirements for automated reference and research services.

(4) Maintain files for Informal Consumer Complaints, Broadcast Ownership, AM/FM/TV, TV Translators, FM Translators, Cable TV, Wireless, Auction and Common Carrier Tariff and other public record systems in a current state by receiving, reviewing, and filing applications, authorizations, correspondence, technical data and other materials in accordance with established procedures and time frames. Maintain for public inspection Time Brokerage and Affiliation Agreements.

(5) Provide the public and the Commission staff prompt access to manual/computerized records and filing systems.

(6) Maintain court citation file and legislative histories concerning telecommunications dockets.

(d) Manage the Bureau's computer hardware, software, and database systems, such as the Bureau's Internet site, consumer information network systems, and the electronic comment filing system. Responsible for all design, systems development, presentation development, accessibility and coordination with the Chairman, Commissioners, and other Bureaus and Offices to ensure complete, timely, and accurate coverage of Bureau activities and Commission publications.

(1) Participate with the Internet Working Group to set standards and develop guidelines that govern the FCC Internet practices and procedures. Keep abreast of new developments and provide expert advice on how to attain new goals.

(2) In consultation with, and assisted by the Managing Director's Office, identify the role of the Information Technology Center in supporting the hardware, software, and systems needs of the Bureau.

(3) Provide leadership to Bureaus and Offices for dissemination of consumer information via the Internet.

(4) Coordinate with other Bureaus and Offices to develop and maintain Commission-wide databases for dissemination of consumer information and related documents.

(5) Provide technology and automation support to the Bureau to ensure smooth operation of daily business and ongoing work. Purchase, install and monitor use of new technology. Provide training as appropriate.

(6) Determine need for, develop statements of work, recommend, implement and manage automated information systems, electronic filing systems, telephone systems, electronic and document management systems.

(e) Develop, recommend, and implement policies, goals, and objectives to solicit public input in Commission policy-making proceedings to ensure that the Commission has the benefit of a wide spectrum of information and viewpoints in its decision-making processes.

(1) In coordination with the Commission's Bureaus and Offices, maintain liaison with consumer organizations and governmental agencies concerned with FCC regulatory activities to ensure a continuing exchange of views and information.

(2) Conduct consumer forums to educate the public about important Commission regulatory programs and to solicit public feedback from consumers and to encourage more public participation in the work of the Commission.

(3) Develop and maintain special databases for mailing, e-mailing, and sending facsimile material to groups affected by commission actions.

(4) Arrange briefings and seminars for educational institutions, consumer organizations or other groups interested in the operations of the Commission.

(5) In coordination with Bureaus and Offices, implement an informal work group for information sharing purposes to ensure coordination on all consumer information and outreach projects.

(6) Advise and assist the Chairman, Commissioners, and the Bureaus and Offices regarding public participation on consumer information/education matters.

(7) Exercise responsibility for rulemaking proceedings regarding

general consumer education policies and procedures and related matters.

(f) Plan, develop and implement, in coordination with Bureaus and Offices, a Commission-wide strategic information plan.

(1) Develop and establish a coordinated information collection and validation process with bureaus and offices to ensure accuracy and validity of information disseminated by the Bureau.

(2) Collect and analyze information received in the Bureau from incoming consumer complaints and inquiries, consumer forums, and other industry sources and act as an early warning system to alert the Commissioners and the other Bureaus and Offices of areas of concern or interest.

(3) Promote within the Commission an increased understanding of the concerns and viewpoints of the public through formal and informal coordinating procedures to ensure prompt service to the public who seek information about FCC proceedings and policies, and who seek assistance in participating in Commission activities.

(4) Oversee the graphics arts program for the Bureau. In coordination with other Bureaus and Offices, produce audio and video consumer alerts and public service announcements for dissemination to the public.

(5) In consultation with the Managing Director's Office, provide objectives and evaluation methods for the public information portion of the Agency's Government Performance and Results Act (GPRA) submissions an other Agency-wide strategic planning efforts.

(6) Ensure that alternative formats of Commission materials are available to Commission employees, Bureaus, Offices and members of the public. Develop a library of commonly requested materials on disability issues, and issues of interest to all consumers. Provide other Commission materials in alternative formats, upon request. Materials will be available in Braille, audio cassette, large print, computer diskette and CD–ROM.

(g) Appoint a Rehabilitation Act Officer with full authority to oversee FCC compliance with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), and to provide direction and assistance on all associated activities and initiatives to other Bureaus and Offices.

**Note to paragraph (g):** Responsibility for implementing section 501 requirements of the Rehabilitation Act are assigned to the Office of Workplace Diversity. Responsibility for implementing section 504 requirements of the Rehabilitation Act are assigned to the Disability Rights Office. Responsibility for implementing section 508 requirements are assigned to the Office of the Managing Director.

(1) Coordinate with appropriate Bureau/Office experts to provide technical assistance on all accessibility related rules/proceedings. Coordinate with Disability and Business Technical Assistance Center's (DBTAC's) and represent the Commission on rehabilitation and accessibility related committees, working groups, and at associated conferences. Coordinate TTY directory publishing as required by the Telecommunications Accessibility Enhancement Act.

(2) Coordinate with Bureaus and Offices to develop recommendations and propose policies to ensure that telecommunications and mass media are accessible to persons with disabilities. Review relevant agenda items and other documents prepared by Bureaus or Offices to ensure that the documents are in conformance with existing disability laws and policies and that they support the Commission's goal of increasing accessibility of communications services and technologies for persons with disabilities. Provide expert advice on issues relevant to persons with disabilities. Initiate rulemaking proceedings as appropriate.

(3) Provide advice and assistance, as required, to other Bureaus as appropriate, on the requirements of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Communications Act, including sections 255 and 713 and enforcement activities related to accessibility.

(4) Develop specialized disability outreach efforts to include postings on the Commission's web sites and maintaining an electronic disability outreach list and resource library of disability literature, including articles, publications and newsletters.

(5) Monitor legal developments affecting persons with disabilities by reviewing court and Commission decisions, professional publications, and trade press, and by researching legislation, decisions, opinions and regulation.

(6) Manage the Disabilities Issues Task Force and associated working groups.

(7) Coordinate training opportunities for Commission employees on accessibility issues.

(h) Perform such other functions as may be assigned or referred to the Bureau by the Commission.

16. Section 0.181 is amended by revising the introductory text and paragraphs (c), (d) and (h) to read as follows:

**§ 0.181 The Defense Commissioner.**

The Defense Commissioner is designated by the Commission. The Defense Commissioner directs the defense activities of the Commission and has the following duties and responsibilities:

* * * * *

(c) To act as the Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under emergency conditions.

(d) To serve as a member of the Joint Telecommunications Resources Board (JTRB).

* * * * *

(h) To approve national emergency plans and develop preparedness programs covering: provision of service by common carriers; broadcasting and cable facilities, satellite and the wireless radio services; radio frequency assignment; electromagnetic radiation; investigation and enforcement.

* * * * *

17. Section 0.182 is revised to read as follows:

**§ 0.182 Chief, Enforcement Bureau.**

(a) Recommends national emergency plans and preparedness programs covering: Provision of service by common carriers, broadcasting and cable facilities, satellite and the wireless radio services; radio frequency assignment; electro-magnetic radiation; investigation and enforcement.

(b) Acts as Alternate Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under emergency conditions.

(c) Coordinates the FCC's responsibilities under the Interagency Advisory Group (IAG) of the Federal Emergency Management Agency.

(d) Provides administrative support for the National Advisory Committee (NAC) on Emergency Alert System (EAS) issues.

(e) Keeps the Defense Commissioner informed as to significant developments in the field of emergency preparedness and related defense activities.

(f) Coordinates the FCC's responsibilities under the Federal Response Plan, Catastrophic Disaster Response Group (CDRG) administered by the Federal Emergency Management Agency (FEMA).

(g) Serves as the FCC's representative on the National Communications System's Committees.

(h) Under the general direction of the Defense Commissioner coordinates the

National Security and Emergency Preparedness (NSEP) activities of the Commission including Continuity of Government Planning, the Emergency Alert System (EAS) and other functions as may be delegated during a national emergency or activation of the President's war emergency powers as specified in section 706 of the Communications Act. Maintains liaison with FCC Bureaus/Offices, represents the Defense Commissioner with other Government agencies and organizations, the telecommunications industry and FCC licensees on NSEP matters; and, as requested, represents the Commission at NSEP meetings and conferences.

(i) Is authorized to declare that a temporary state of communications emergency exists pursuant to § 97.401(c) of this chapter and to act on behalf of the Commission with respect to the operation of amateur stations during such temporary state of communications emergency.

**§ 0.183 [Removed]**

18. Remove § 0.183.

**§ 0.185 [Amended]**

19. In § 0.185(a), (b) and the introductory text, remove the words ''Chief, Compliance and Information Bureau'' and add, in their place, the words ''Chief, Enforcement Bureau.''

20. Section 0.261 is amended by revising paragraph (a)(15) to read as follows:

**§ 0.261 Authority delegated.**

(a) * * *

(15) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction and not within the jurisdiction of the Enforcement Bureau.

* * * * *

21. Section 0.284 is amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

**§ 0.284 Actions taken under delegated authority.**

(a) * * *

(1) Complaints arising under section 315 of the Communications Act—Office of General Counsel.

* * * * *

(4) Matters involving emergency communications, including the issuance of Emergency Alert System Authorizations (FCC Form 392)—Enforcement Bureau.

* * * * *

22. Section 0.285 is revised to read as follows:

**§ 0.285 Record of actions taken.**

The history card, the station file, and other appropriate files are designated to be the official records of action taken by the Chief of the Mass Media Bureau. The official records of action are maintained in the Reference Information Center in the Consumer Information Bureau.

23. Section 0.302 is revised to read as follows:

**§ 0.302 Record of actions taken.**

The application and authorization files are designated as the Commission's official records of action of the Chief, Common Carrier Bureau pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center in the Consumer Information Bureau.

24. The undesignated centerheading immediately preceding § 0.311 is revised to read as follows:

**Enforcement Bureau**

25. Section 0.311 is revised to read as follows:

**§ 0.311 Authority delegated.**

The Chief, Enforcement Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.111, provided that:

(a) The following matters shall be referred to the Commission en banc for disposition:

(1) Notices of proposed rulemaking and of inquiry and final orders in such proceedings.

(2) Applications for review of actions taken pursuant to delegated authority.

(3) Matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.

(4) Forfeiture notices and forfeiture orders if the amount is more than $100,000 in the case of common carriers or more than $25,000 in the case of all other persons or entities.

(5) Orders concluding an investigation under section 208(b) of the Communications Act and orders addressing petitions for reconsideration of such orders.

(b) Action on complaints regarding compliance with section 705(a) of the Communications Act shall be coordinated with the Office of General Counsel.

(c) Action on emergency requests for Special Temporary Authority during non-business hours shall be promptly reported to the responsible Bureau.

**Note to paragraph (c):** See also § 0.182 of this chapter.

26. Section 0.314 is revised to read as follows:

**§ 0.314 Additional authority delegated.**

The *Regional Director, Deputy Regional Director, District Director or Resident Agent* at each installation is delegated authority to act upon applications, requests, or other matters, which are not in hearing status, and direct the following activities necessary to conduct investigations or inspections:

(a) On informal requests from broadcast stations to extend temporary authority for operation without monitors, plate ammeter, plate volmeter, base current meter, common point meter, and transmission line meter from FM and television stations.

(b)(1) Extend the Communications Act Safety Radiotelephony Certificate for a period of up to 90 days beyond the specified expiration date.

(b)(2) Grant emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, the Great Lakes Agreement or the Commission's rules.

(c) To act on and make determinations on behalf of the Commission regarding requests for assignments and reassignments of priorities under the Telecommunications Service Priority System, Part 64 of the rules, when circumstances require immediate action and the common carrier seeking to provide service states that it cannot contact the National Communications System or the Commission office normally responsible for such assignments.

(d) Require special equipment and program tests during inspections or investigations to determine compliance with technical requirements specified by the Commission.

(e) Require stations to operate with the pre-sunrise and nighttime facilities during daytime hours in order that an inspection or investigation may be made by an authorized Commission representative to determine operating parameters.

(f) Issuance of notices and orders to operators of industrial, scientific, and medical (ISM) equipment, as provided in § 18.115 of this chapter.

(g) Requests for permission to resume operation of ISM equipment on a temporary basis, as provided by § 18.115 of this chapter, and requests for extensions of time within which to file final reports, as provided by § 18.117 of this chapter.

(h) Issuance of notices and orders to operators of Part 15 devices, as provided in § 15.5 of this chapter.

(i) Issuance of notices and orders to cable operators of harmful interference to radio communications services involving safety services, as provided in § 76.613 of this chapter.

(j) When deemed necessary by the *District Director or Resident Agent* of a Commission field facility to assure compliance with the Rules, a station licensee shall maintain a record of such operating and maintenance records as may be necessary to resolve conditions of interference or deficient technical operation.

27. Section 0.317 is revised to read as follows:

**§ 0.317 Record of action taken.**

The application, authorization, and other appropriate files of the Enforcement Bureau are designated as the Commission's official records of action taken pursuant to authority delegated under §§ 0.311 and 0.314, and shall constitute the official Commission minutes entry of such actions. The official records of action are maintained in the Reference Information Center in the Consumer Information Bureau.

28. Section 0.332 is amended by removing and reserving paragraph (a) and revising paragraphs (b) and (c) to read as follows:

**§ 0.332 Actions taken under delegated authority.**

* * * * *

(b) Requests for waiver of tower painting and lighting specifications—Enforcement Bureau.

(c) Matters involving emergency communications—Enforcement Bureau.

* * * * *

29. Section 0.347 is revised to read as follows:

**§ 0.347 Record of actions taken.**

The official record of all actions taken by an Administrative Law Judge, including initial and recommended decisions and actions taken pursuant to § 0.341, is contained in the original docket folder, which is maintained in the Reference Information Center of the Consumer Information Bureau.

30. Section 0.357 is revised to read as follows:

**§ 0.357 Record of actions taken.**

The official record of all actions taken by the Chief Administrative Law Judge in docketed proceedings pursuant to § 0.351 is contained in the original docket folder, which is maintained by the Reference Information Center of the Consumer Information Bureau.

31. Add an undesignated center heading and § 0.361 to read as follows:

## Consumer Information Bureau

**§ 0.361 Authority delegated.**

The Chief, Consumer Information Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.141, provided that the following matters shall be referred to the Commission en banc for disposition:

(a) Notices of proposed rulemaking and of inquiry and final orders in such proceedings.

(b) Application for review of actions taken pursuant to delegated authority.

(c) Matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.

32. Section 0.387 is amended by revising paragraph (b) to read as follows:

**§ 0.387 Other national security and emergency preparedness delegations; cross reference.**

* * * * *

(b) For authority of the Chief of the Enforcement Bureau to declare a general communications emergency, see § 0.182(j).

33. Section 0.413 is revised to read as follows:

**§ 0.413 The Commission's printed publications.**

The Commission's printed publications are described in §§ 0.414 through 0.420. These publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

34. Section 0.416 is revised to read as follows:

**§ 0.416 The Federal Communications Commission Record.**

Texts adopted by the Commission or a member of its staff on delegated authority and released through the Office of Media Relations are published in the FCC Record. The FCC Record is published biweekly in pamphlet form. The pamphlets are available on a subscription basis from the Superintendent of Documents. Each biweekly pamphlet contains a table of contents and current index. A consolidated index is published on a periodic basis.

35. Section 0.422 is revised to read as follows:

**§ 0.422 Current action documents and public notices.**

Documents adopted by the Commission, public notices and other public announcements are released through the Office of Media Relations. These documents are also available on the Commission's website at www.fcc.gov/ and can be obtained from the Commission's duplicating contractor.

36. Section 0.423 is revised to read as follows:

**§ 0.423 Information bulletins.**

Information bulletins and fact sheets containing information about communications issues and the Federal Communications Commission are available on the Commission's web site at www.fcc.gov, ftp.fcc.gov or may be requested from the Consumer Information Bureau, Consumer Information Network Division.

37. Section 0.431 is revised to read as follows:

**§ 0.431 The FCC service frequency lists.**

Lists of frequency assignments to radio stations authorized by the Commission are recapitulated periodically by means of an automated record system. All stations licensed by the Commission are included, except the following: Aircraft, amateur, personal (except General Mobile Radio Service), Civil Air Patrol, and disaster. The resulting documents, the FCC service frequency lists, consist of several volumes arranged by nature of service, in frequency order, including station locations, call signs and other technical particulars of each assignment. These documents are available for public inspection in Washington, D.C., in the Office of Engineering and Technology. Copies may be purchased from the Commission's duplicating contractor. See § 0.465(a).

38. Section 0.434 is revised to read as follows:

**§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.**

Periodically the FCC makes available copies of its data bases and lists containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the TV and FM Table of Allotments. The data bases, and the lists prepared from the data bases, contain frequencies, station locations, and other particulars. The lists are available for public inspection at the FCC's Reference Information Center at 445 12th Street, SW., Washington, DC. Paper copies of the lists may be purchased from the FCC's duplicating contractor; see § 0.465(a). Many of the databases may be viewed at the Commission's web site at www.fcc.gov. and ftp.fcc.gov under mass media services. Microfiche copies of these lists are maintained by the Reference Information Center. These lists are derived from the data bases and can be used as an alternative research source to the Broadcast Application Processing System (BAPS).

39. Section 0.441 is revised to read as follows:

**§ 0.441 General.**

Any person desiring to obtain information may do so by contacting the Consumer Information Bureau. Requests for information, general inquiries, and complaints may be submitted by:

(a) Internet at www.fcc.gov/CIB/FCCINFO or ftp.fcc.gov/CIB/FCCINFO.

(b) Telephone at 1–(888) CALLFCC (1–888–225–5322).

(c) TDD/TDY at (202) 418–0484.

(d) Correspondence at: Consumer Information Bureau, P.O. Box FCC, 445 12th Street, SW., Washington, DC 20554.

(e) Visiting the Reference Information Center of the Consumer Information Bureau at the Commission's main office in Washington, DC.

**§ 0.443 [Removed]**

40. Remove § 0.443.

41. Section 0.445 is amended by revising paragraphs (b), (c) and (g) to read as follows:

**§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.**

* * * * *

(b) Texts adopted by the Commission or a member of its staff on delegated authority and released through the Office of Media Relations are published in the FCC Record. Older materials of this nature are available in the FCC Reports. In the event that such older materials are not published in the FCC Reports, reference should be made to the **Federal Register** or Pike and Fischer Radio Regulation.

(c) All rulemaking documents are published in the **Federal Register**. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of **Federal Register** publication. See § 1.412(a)(1). The complete text of the Commission decision also is released by the Commission and is available for inspection and copying during normal business hours in the Office of Media Relations or as otherwise specified in the rulemaking document published in the **Federal Register**. Docketed matters are available to the public via the Electronic Comment Filing System maintained in the Reference Information Center at 445 12th Street, Washington, DC. The complete texts of rulemaking decisions may also be purchased from the Commission's duplicating contractor.

* * * * *

(g) The FCC Administrative Manual (excepting Part IX, concerning Civil Defense, which contains materials classified under E.O. 10501) is available for inspection in the Office of the Managing Director. The Manual is not indexed but is organized by subject, with tables of contents, and the materials contained therein can be located without difficulty.

* * * * *

42. Section 0.453 is amended by revising paragraphs (a), (b), (d), (e) and (f) to read as follows:

**§ 0.453 Public reference rooms.**

* * * * *

(a) *The Reference Information Center of the Consumer Information Bureau.* (1) Files containing the record of all docketed cases, petitions for rule making and related papers. A file is maintained for each docketed hearing case and for each docket rule making proceeding. Cards summarizing the history of such cases are available for inspection.

(2) Files, documents, and records related to the following services:

(i) Mass Media Services.

(A) Applications for broadcast authorizations and related files are available for public inspection Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527 of this chapter.

(B) Ownership reports filed by licensees of broadcast stations pursuant to § 73.3615.

(C) Network affiliation contracts between stations and networks (for television stations only).

(D) Contracts relating to network service to broadcast licensees filed on or after the 1st day of May 1969 under § 73.3613.

(E) Annual employment reports filed by licensees and permittees of broadcast stations pursuant to § 73.3612 of this chapter.

(F) Contract files which contain pledges, trust agreements, options to purchase stock agreements, partnership agreements, management consultant agreements, and mortgage or loan agreements.

(G) broadcast applications and related files.

(H) FM Translator applications and related files.

(I) Station files containing Notice of Apparent Liability and Memorandum of Opinion and Order and related files.

(J) Network correspondence files and related materials.

(ii) Common Carrier Services, including:

(A) Annual reports filed by carriers under § 43.21 of this chapter.

(B) Reports on pensions and benefits filed by carriers under § 43.42 of this chapter.

(C) Reports of proposed changes in depreciation rates filed by carriers under § 43.43 of this chapter.

(D) Tariff schedules for all charges for interstate and foreign wire or radio communications filed pursuant to section 203 of the Communications Act, all related documents and communications.

(E) All applications for common carrier authorizations acted upon by the Common Carrier Bureau, and related files.

(F) All formal and informal complaints against common carriers filed under §§ 1.711 through 1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto.

(G) Annual employment reports filed by common carrier licensees or permittees pursuant to § 1.815 of this chapter.

(H) Enforcement proceedings and public inquiries and related materials.

(I) Files containing contracts between carriers and affiliates, accounts and subaccounts, pension filings, property records, disposition units, and depreciation rate filings.

(J) Cost Allocation Manuals and related materials.

(K) Section 214 applications and related files, to the extent that they concern domestic communications facilities and services.

(L) Files containing reports required by FCC Rules and Regulations, annual reports to stockholders, administrative reports, monthly bypass reports and related materials.

(M) Files containing reference material from major telephone companies.

(N) Files containing Local Exchange Rates and related files.

(O) Currently effective tariffs filed by Communications Common Carriers pursuant to various FCC Rules and Regulations.

(P) Recent revisions to tariff filings and the Reference Information Center Log which is prepared daily and lists the tariff filings received the previous day.

(iii) Wireless Telecommunications Services and Auction related data including:

(A) Station files containing a complete history of data submitted by the applicant that has been approved by the Commission which includes background material.

(B) Pending files containing applications for additional facilities or modifications of existing facilities.

(C) Cellular and Paging Granted Station files and related materials.

(D) Pending cellular and paging applications and related files.

(E) Electronically stored application and licensing data for commercial radio operators and for all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Field point-to-point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications. Some of these services are available electronically now and most will be available on electronically within 90 days of the implementation of the Universal Licensing System (ULS).

(F) Petitions and related materials.

(iv) International Services, except to the extent they are excluded from routine public inspection under another section of this chapter:

(A) Satellite and earth station applications files and related materials under parts 25 and 100 of this chapter;

(B) Section 214 applications and related files under part 63 of this chapter, to the extent that they concern international communications facilities and services;

(C) International Fixed Public Radio applications and related files under part 23 of this chapter;

(D) Files relating to submarine cable landing licenses and applications for such licenses since June 30, 1934, except for maps showing the exact location of submarine cables, which are withheld from inspection under section 4(j) of the Communications Act (see § 0.457(c)(1)(i));

(E) Documents relating to INTELSAT or INMARSAT;

(F) International broadcast applications, applications for permission to deliver programming to foreign stations, and related files under part 73 of this chapter;

(v) Cable services. The following files and documents are available, including:

(A) All complaints regarding cable programming rates, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(B) Special relief petitions and files pertaining to cable television operations.

(C) Cable television system reports filed by operators pursuant to § 76.403 of this chapter.

(D) Annual employment reports filed by cable television systems pursuant to § 76.77 of this chapter.

(E) Files and documents related to Cable Television Relay Service (CARS)

(b) *Gettysburg Reference Office of the Reference Information Center.* Station files containing applications and related materials for Remote Pickup, Aural STL/ICR, TV Auxiliary, and Low Power Auxiliary Stations in the mass media services. Files regarding Wireless Services are also available up to 90 days after the implementation of the Universal Licensing System (ULS) at which time they become electronically available.

* * * * *

(d) *The Office of Engineering and Technology, FCC Laboratory Reference Room.* The following documents, files and records are available for inspection at this location. Files containing approved applications for Equipment Authorization and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(e) *The International Bureau.* The International Bureau maintains international settlement agreements and contracts and international cable agreements.

(f) *The Cable Bureau.* The Cable Bureau maintains all cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission had assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

* * * * *

43. Section 0.455 is revised to read as follows:

**§ 0.455 Other locations at which records may be inspected.**

Except as provided in §§ 0.453, 0.457, and 0.459, records are routinely available for inspection in the Reference Information Center or the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. Many of these records may be retrieved from the Commission's site on the World Wide Web, located at <http://www.fcc.gov>. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

(a) *Mass Media Bureau.* (1) Rulings under the Fairness Doctrine and section 315 of the Communications Act, and related materials.

(2) Ruling lists which contain brief summaries of rulings.

(3) Congressional correspondence and related materials.

(b) *Common Carrier Bureau.* (1) Reports of public coast station operators filed under § 43.71 of this chapter.

(2) Valuation reports filed under section 213 of the Communications Act, including exhibits filed in connection therewith, unless otherwise ordered by the Commission, with reasons therefor, pursuant to section 213(f) of the Communications Act. See § 0.457(c)(2).

(3) Computer II files and related materials.

(c) *Office of Managing Director.* (1) All minutes of Commission actions, containing a record of all final votes, minutes of actions and internal management matters as provided in § 0.457(b)(1) and (c)(1)(i). These records and files are available for inspection in the Agenda Branch.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Publications Branch.

(3) See § 0.443.

(4) Reports filed pursuant to subpart E of part 19 of this chapter and applications for inspection of such reports. See § 0.460(k).

(d) *Cable Services Bureau.* Correspondence and other actions and decisions relating to cable television services that are not filed in the FCC Reference Information Center, e.g. rate regulation files and related documents.

(e) Office of Engineering and Technology which includes the Bureau's Technical Library containing technical reports, technical journals, and bulletins of spectrum management and related technical materials. Also files containing approved applications for Equipment Authorization (Type accepted, certified and notified) and related materials are available for review. These files are available in the Commission's Laboratory in Columbia, Maryland.

(1) Experimental application and license files.

(2) The Master Frequency Records.

(3) Applications for Equipment Authorization (type accepted, type approval, certification, or advance approval of subscription television systems), following the effective date of the authorization. See § 0.457(d)(1)(ii).

(Application files, technical journals and other technical materials are maintained at the Commission's Laboratory at Columbia, Maryland.)

(f) *Wireless Telecommunications Bureau.* See § 0.453(o) of this chapter.

(g) *International Bureau.* The treaties and other international and bilateral agreements listed in § 73.1650 of this chapter are available for inspection in the office of the Chief, Planning and Negotiations Division, International Bureau. Also contracts and other arrangements filed under § 43.51 and reports of negotiations regarding foreign communication matters filed under § 43.52 of this chapter, except for those kept confidential by the Commission pursuant to section 412 of the Communications Act. See § 0.457(c)(3). Also files relating to international settlements under part 64 of this chapter.

44. Section 0.465 is amended by revising the notes to paragraphs (a) and (b), revising paragraphs (c)(1), (d)(1) and (d)(3) and removing paragraph (d)(4) to read as follows:

**§ 0.465 Request for copies of materials which are available, or made available, for public inspection.**

(a) * * *

**Note to paragraph (a):** The name, address, telephone number, and schedule of fees for the current duplication contractor are published at the time of contract award or renewal in a Public Notice and periodically thereafter. Questions regarding this information should be directed to the Reference Information Division of the Consumer Information Bureau.

(b) * * *

**Note to paragraph (b):** The name, address, telephone number, and schedule of fees for the current transcription contractor are maintained by the Office of the Secretary in the Managing Director's Office.

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Coin-operated and debit card copy machines are available for use by the public.

* * * * *

(d)(1) Computer maintained data bases produced by the Commission may be obtained from the FCC's internet web site at www.fcc.gov.

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(d)(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained from the Office of the Managing Director.

* * * * *

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

46. Section 1.4 is amended by revising paragraph (b)(2) to read as follows:

**§ 1.4 Computation of time.**

* * * * *

(b)(2) For non-rulemaking documents released by the Commission or staff, whether or not published in the **Federal Register**, the release date. A document is ''released'' by making the full text available in the Commission's Office of Media Relations. The release date appears on the face of the document.

* * * * *

**§ 1.47 [Amended]**

47. In § 1.47(h) remove the words ''Formal Complaints and Investigations Branch of the Common Carrier Bureau'' and add, in their place, the words ''Chief of the Enforcement Bureau's Market Disputes Resolution Division''.

48. Section 1.221 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1.221 Notice of hearing; appearances.**

* * * * *

(b) The order designating an application for hearing is mailed to the applicant by the Reference Operations Division of the Consumer Information Bureau and this order or a summary thereof is published in the **Federal Register**. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

(c) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Reference Information Division of the Consumer Information Bureau, file with the Commission, in triplicate, a written appearance stating that he will appear of the date fixed for hearing and present evidence on the issues specified in the order. Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

* * * * *

**§ 1.720 [Amended]**

49. In 47 CFR 1.720, in the introductory paragraph, remove the words ''Common Carrier Bureau's'' and add, in their place, the words ''Enforcement Bureau's''.

**§ 1.721 [Amended]**

50. In 47 CFR 1.721(b) remove the words ''Common Carrier Bureau'' and add, in their place, the words ''Enforcement Bureau''.

**§ 1.722 [Amended]**

51. In 47 CFR 1.722(d)(1) remove the word ''Bureau'' and add, in its place, the words ''Enforcement Bureau''.

52. Section 1.730 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 1.730 The Enforcement Bureau's Accelerated Docket.**

(a) Parties to formal complaint proceedings against common carriers within the responsibility of the Enforcement Bureau (see §§ 0.111, 0.311, 0.314 of this chapter) may request inclusion on the Bureau's Accelerated Docket. As set out in §§ 1.720 through 1.736, proceedings on the Accelerated Docket are subject to shorter pleading deadlines and certain other procedural rules that do not apply to other formal complaint proceedings before the Enforcement Bureau.

* * * * *

53. In the table below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 1.730(b), (c) and (d) | Chief of the Common Carrier Bureau's Enforcement Division. | Chief of the Enforcement Bureau's Market Disputes Resolution Division. |
| 1.730(h) | Office of Public Affairs | Office of Media Relations. |

54. Section 1.735 is amended by revising paragraph (b) to read as follows:

**§ 1.735 Copies; service; separate filings against multiple defendants.**

* * * * *

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part I, subpart G (see § 1.1105(1)(c) and (d)) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Market Disputes Resolution Division, Enforcement Bureau;

(3) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see § 0.261 of this chapter), serve a copy on the Chief, Telecommunications Division, International Bureau; and

(4) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part I, subpart G (see § 1.1105(1)(c) and (d)), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

* * * * *

55. Section 1.4000 is amended by revising paragraph (g) to read as follows:

**§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.**

* * * * *

(g) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

56. The authority citation for Part 21 continues to read as follows:

**Authority:** Secs. 1, 2, 4, 201 through 205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070 through 1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201 through 205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

57. Section 21.924 is amended by revising paragraph (a) to read as follows:

**§ 21.924 Service areas.**

(a) MDS service areas are regional Basic Trading Areas (BTAs) which are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The BTA Map is available for public inspection at the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

* * * * *

## PART 27—WIRELESS COMMUNICATIONS SERVICE

58. The authority citation for Part 27 continues to read as follows:

**Authority:** 47 U.S.C 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

59. Section 27.6 is amended by revising the introductory paragraph to read as follows:

**§ 27.6 Service areas.**

WCS service areas are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined below. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the **Federal Register** Notice that established the 172 EAs are available for public inspection and copying at the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

* * * * *

## PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

60. The authority citation for part 68 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

61. Section 68.317 is amended by revising paragraph (g) as follows:

**§ 68.317 Hearing aid compatibility volume control: technical standards.**

* * * * *

(g) These incorporations by reference of paragraph 4.1.2 (including table 4.4) of American National Standards Institute (ANSI) Standard ANSI/EIA–470–A–1987 and paragraph 4.3.2 of ANSI/EIA/TIA–579–1991 were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be purchased from the American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900. Copies also may be inspected during normal business hours at the following locations: Consumer Information Bureau, Reference Information Center, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554; and Office of the Federal Register, 800 N. Capitol Street, NW., Suite 700, Washington, DC.

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

62. The authority citation for Part 90 continues to read as follows:

**Authority:** Secs. 4, 251 through 252, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251 through 252, 303, 309 and 332, unless otherwise noted.

63. Section 90.7 is amended by revising the definition of *''MTA-based license or MTA license''* to read as follows:

**§ 90.7 Definitions.**

* * * * *

*MTA-based license or MTA license.* A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas (''MTAs''), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the ''MTA Map.'') The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Reference Information Center in the Consumer Information Bureau.

* * * * *

[FR Doc. 99–28984 Filed 11–5–99; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 222**

**[Docket No. 980414094–9287–02; I.D. No. 091797A]**

**RIN 0648–AK55**

## Endangered and Threatened Wildlife and Plants; Definition of ''Harm''

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

**ACTION:** Final rule.

**SUMMARY:** This final rule defines the term ''harm'', which is contained in the definition of ''take'' in the Endangered Species Act (ESA). The purpose of this rulemaking is to clarify the type of actions that may result in a take of a listed species under the ESA. This final rule is not a change in existing law. It provides clear notification to the public that habitat modification or degradation may harm listed species and, therefore, constitutes a take under the ESA as well as ensuring consistency between NMFS and the Fish and Wildlife Service (FWS). This final rule defines the term ''harm'' to include any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

**DATES:** This rule is effective on December 8, 1999.

**ADDRESSES:** Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Chris Mobley, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, phone (301)713–1401 or Garth Griffin, NMFS, 525 NE Oregon St, Suite 500, Portland, OR 97232, phone (503)231–2005.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 1, 1998, NMFS published a proposed rule and request for comments. NMFS proposed to define the term ''harm'', which is contained in the definition of ''take'' in the Endangered Species Act (63 FR 24148). In that proposed rule, NMFS solicited public comments on the proposed definition. On June 11, 1998, NMFS announced the availability of, and solicited comments on, a draft Environmental Assessment on the proposed definition (63 FR 31962). This final rule takes into consideration the comments received in response to the proposed rule.

Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of ''take'' is to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' (16 U.S.C. 1532(19)). The U.S. Fish and Wildlife Service (FWS) issued a regulation further defining the term ''harm'' to eliminate confusion concerning its meaning (40 FR 44412; 46 FR 54748). The FWS' definition of ''harm'' has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened species (See *Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407, 2418, 1995). With the listings of Pacific salmon and steelhead stocks, potentially affected parties have questioned whether NMFS also interprets harm to include habitat destruction. This final rule clarifies that NMFS' interpretation of harm is consistent with that of FWS.

### Definitions and Source of Authority

NMFS interprets the term ''harm'' as an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering (Compare 50 CFR 17.3).

This rule is reasonable for the conservation of the habitats of listed species. Congress acknowledged these needs by stating in the ''Purposes'' subsection of the ESA: ''The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . . .'' (16 U.S.C. 1531(b)). In addition to the text contained in the ''Purposes'' subsection, which indicates the broad goals of the ESA, the structure and legislative history of the ESA indicate Congressional intent to protect the habitats of listed species (*Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407, 2418, 1995).

### Summary of Comments Received in Response to the Proposed Rule

Fifty-three written comments were submitted in response to the proposed rule and 9 written comments were submitted in response to the draft Environmental Assessment prepared for the proposed rule. These comments and NMFS' responses are summarized here.

*Comment 1*: Explain what habitat or activities would be encompassed by ''spawning, rearing and migrating'' and how it is different from ''breeding, feeding or sheltering'' in the FWS' regulation. Is it different or similar or the same as ''essential behavioral patterns.''

*Response*: Including the terms ''spawning'', ''rearing'' and ''migrating'' in the NMFS definition of harm makes it clear that NMFS considers these behaviors to be ''essential behavioral patterns''. NMFS believes it is important to include these terms because they describe essential behavioral patterns for most species under NMFS jurisdiction. NMFS is particularly concerned with addressing harm caused by significant habitat modification or degradation to anadromous and migratory species. Habitat destruction may occur at times when migratory species are not present, but may nonetheless impair essential behavioral patterns when the animals return, resulting in sub-lethal or chronic injury or mortality.

For example, improperly sited aquaculture facilities and their attendant vessel traffic, fixed structures, noise pollution, artificial light, and human activity may obstruct marine mammal and turtle access to habitats of critical importance to their survival, such as haul out sites, breeding grounds and nesting beaches.

It should be noted that spawning is a specific term for fish breeding. Salmon require clean gravel beds for successful spawning. Sedimentation from timber harvest operations may plug the interstitial spaces in gravel spawning areas, resulting in reduced survival of salmon eggs during their incubation period.

Similarly, for species under NMFS jurisdiction, ''rearing'' and ''migration'' should be broadly interpreted to include many of the behavioral patterns associated with ''feeding'' and ''sheltering''. For example, in order to successfully rear and migrate, juvenile salmonids must successfully feed, and also must find adequate shelter in the form of large woody debris and other instream structures in order to avoid predation. Excessive squid and pollock harvest near Steller sea lion rookeries may impair feeding and rearing of juvenile Steller sea lions by reducing their available food supply.

''Migration'' is a particularly important behavioral pattern in the anadromous life history and, therefore,

merits specific mention in the definition. Juveniles must be able to pass downstream from spawning grounds to the open ocean, and adults must be able to return from the ocean to spawning grounds. Human-made barriers to adult migration (thermal barriers, other water quality barriers, and physical barriers) that significantly impede spawning success, or result in significantly increased rates of juvenile injury or mortality would be considered by NMFS to be within the NMFS definition of ''harm'' under the ESA.

*Comment 2*: One commenter opposed the use of ''spawning, rearing and migrating'' because interference with such activities will not in ''all cases result in injury to individual fish.''

*Response*: NMFS disagrees. While not all impacts to a species' habitat impair essential behavioral patterns, any habitat modification that significantly impairs spawning, rearing, or migrating does constitute harm to the species and is a take pursuant to the provisions of the ESA.

*Comment 3*: One commenter noted that the rule should only apply to ''significant habitat modification'' which ''results in demonstrated impairment of essential behaviors.'' Another commenter stated that NMFS must clarify that impairment of essential behavior patterns is not ''injury'' in and of itself but a means to injury—these are two separate elements in establishing harm.

*Response*: NMFS disagrees. An injury is demonstrated if the habitat modification significantly impairs the listed species' ability to feed, breed, rear, migrate or any other behavior essential to its biological processes and behavioral patterns. ''Significant'' impairment of essential behavioral patterns constitutes injury; therefore, establishing the former with respect to listed species establishes harm.

*Comment 4*: Several commenters stated that the public needs clear prospective guidance on activities that could constitute a prohibited take. Commenters sought greater specificity on likely results of water withdrawals and streambed or land clearing activities. Some commenters expressed concern that NMFS is relying on ''probabilistic data'' and not empirical evidence in determining ''harm.''

*Response*: The list of examples provided in this final rule (see ''Activities That May Constitute A Take'') as well as in the proposed rule is intended to provide general guidance to the public on the types of habitat-modifying activities that could result in injury to fish or wildlife. While not exhaustive, this list was developed based on direct experience with managing populations in their natural environment, and from the scientific literature. NMFS cannot provide further detailed guidance in this definition, since the actual impacts of a given act depend on situation-specific conditions. Individuals conducting activities similar to those listed in the examples in areas in or near listed species and their habitat should consult with NMFS for more specific guidance.

In order to determine ''harm,'' the regulation requires that a causal link or relationship between a specific activity or series of activities and the injury or death of listed species be demonstrated. Injury may be shown through a variety of methods and types of evidence. These include, but are not limited to, field surveys and assessments, population studies, laboratory studies, model based procedures, information and data in the scientific literature, or expert witness testimony consisting of inferences or opinions drawn from facts pertaining to a given act(s) of habitat modification or degradation. In some instances, the effect of an activity will be measurable using physical evidence and scientific instruments. For example, the introduction of toxic chemicals can be evaluated through chemical analysis of water samples. Analysis of sedimentation patterns by the Monitoring Study Group of the California State Board of Forestry has demonstrated that timber-harvest roads and their associated watercourse crossings are among the largest contributors to sedimentation of fish-bearing streams. Mass landslides and other failures typically related to road-building and maintenance activities, produced the highest sediment delivery to streams when compared to other erosion processes.

Regardless of the types of evidence used, in all cases, the regulation requires that the causal link(s) between the habitat modification and the injury to listed species be shown.

*Comment 5* : Another commenter stated that it is very difficult to determine when and whether modifications to aquatic habitat will injure fish. Sometimes it is activities occurring upstream from the apparent injury and sometimes it is simply cumulative degradation of the fish habitat.

*Response*: NMFS agrees that sometimes it is difficult to isolate factors causing injury to listed species. All factors that reasonably could have caused the habitat modification or the injury itself must be carefully examined. Whenever an action alone or in combination with,or in concert with other actions is reasonably certain to injure or kill listed species, it will constitute a take. An action which contributes to injury can be a ''take'' even if it is not the only cause of the injury. This concept includes actions reasonably certain to contribute to the death or injury of listed species by significantly impairing the essential behavioral patterns of listed species.

*Comment 6*: ''Significant modification'' should be defined or explained. Another commenter noted that NMFS must connect the maintenance of existing roads and structures or minor alterations of rock, gravel and soil to actual harm to listed species.

*Response*: In order for a modification to be significant, it must be capable of resulting in the death or injury of fish or wildlife. Habitat modification or degradation may be considered significant even if it is of limited physical extent, if it causes injury or death to fish or wildlife. Assessing the significance of a given act of habitat modification or degradation will depend on an evaluation of all the available evidence of a specific situation or action(s), and will most often be determined on a case-by-case basis.

*Comment 7*: The regulation is overly focused on land based activities compared to harvest and hatchery activities with the effect that the rule excludes entire industries that directly cause harm and kill listed fish.

*Response*: Take due to harvest and hatchery activities is covered by other terms in the statutory definition of ''take,'' including ''wound, kill, * * * capture, or collect.'' The primary focus of this regulation is death or injury to listed fish or wildlife from acts that significantly modify or degrade habitat.

Moreover, hatchery and harvest activities also impact listed fish through significant habitat modification or degradation. For example, hatchery waste discharges could degrade instream water quality and result in the actual injury or death of fish if not properly managed. Artificially produced fish competing with listed species for food, shelter, space or opportunities in the migration corridor may, thus, impair essential behavioral patterns. NMFS notes that example 6 in ''Activities That May Constitute A Take'' concerning the introduction of artificially produced individuals may cause harm within the scope of this definition. Excessive trawl impacts to estuarine bottom habitat could significantly degrade juvenile rearing habitat, and over-harvest of prey species such as small bait fish could cause harm if feeding rates were thereby

reduced enough to cause the actual injury or death of listed fish or wildlife.

*Comment 8*: One commenter noted that it is inappropriate for NMFS to use the word ''recovery'' in describing activities that may injure or ''harm'' listed fish. Commenters noted that NMFS lacks the authority to link ''take'' to recovery goals.

*Response*: Comment noted. The word ''recovery'' was inadvertently included in the first example of activities that might fall within the scope of the definition of harm. This has been deleted in the final rule.

*Comment 9*: Some commenters suggested that the proposed rule, if adopted, would constitute an uncompensated ''taking'' in violation of the Fifth Amendment of the U.S. Constitution.

*Response:* This final rule will make no change in existing law. NMFS is not seeking to impose a regulation that denies landowners economically viable use of their property.

As stated elsewhere in this final rule under ''Incidental Take Exceptions'', the ESA authorizes NMFS to exempt parties from its take prohibitions under certain circumstances. Under the terms of ESA section 7(b)(4) and section 7(o)(2), taking of listed species that is incidental to, and not intended as part of, an otherwise lawful activity is not considered prohibited taking provided that such taking is in compliance with the terms and conditions of an incidental take statement issued by NMFS. In addition, the 1982 ESA amendments to section 10(a) authorize NMFS to issue incidental take permits allowing the incidental take of listed species in the course of otherwise lawful activities, provided the activities are conducted according to an approved Conservation Plan which to the maximum extent practicable, minimizes and mitigates the impacts of such taking and avoids jeopardy to the continued existence of the affected species. These mechanisms provide landowners with a means of continuing to use their property while addressing possible incidental take of listed species.

As the Solicitor General explained in the Federal government's reply brief in *Sweet Home* (Gov't Reply Br. at 17), ''[t]he prohibition on the taking of species, in conjunction with the program for authorizing incidental takes, * * * rationally and flexibly addresses the inherent difficulties involved in defining prohibited conduct in light of the wide diversity of species and the range of circumstances in which they live.''

*Comment 10*: Some commenters argued that the proposed rule is inconsistent with the U.S. Supreme Court's decision in *Babbitt* v. *Sweet Home*. In particular, some commenters felt the rule did not require an actual causal relationship between the habitat modification and the injury or death of an individual listed species.

*Response*: As stated previously, in order to constitute ''harm'', the regulation requires that a given act result in, or be reasonably certain to result in, the death or injury of listed fish or wildlife. The rule is consistent with the U.S. Supreme Court's decision in *Sweet Home* upholding the FWS regulation which also defines the term ''harm'' to include habitat modification or degradation.

*Comment 11*: One commenter suggested that NMFS must specifically state that it adopts the interpretation of ''harm'' articulated by the Solicitor General in his brief of the *Sweet Home* case.

Response: NMFS believes that this final rule is consistent with the interpretation of ''harm'' articulated by the Solicitor General. However, NMFS declines to specifically adopt each aspect of the Solicitor General's brief which was written 5 years ago.

*Comment 12*: One commenter argued that NMFS has no authority to promulgate the proposed rule because the Endangered Species Act expired in 1992 and has not been reauthorized by Congress.

*Response*: The ESA has been neither repealed nor does it contain an automatic sunset clause and it is, therefore, enforceable law. In addition, both the Departments of Commerce and Interior receive annual appropriations to carry out the provisions of the Endangered Species Act, including listings, rulemakings, enforcement and the issuance of permits.

*Comment 13*: Several commenters disagreed with NMFS' certification that the proposed rule will not impact a significant number of small businesses and urged NMFS to prepare a Regulatory Flexibility analysis.

*Response*: NMFS continues to believe that this rulemaking will not affect a significant number of small businesses. However, a Regulatory Flexibility Analysis is included with this final rulemaking.

*Comment 14*: One commenter suggested that the first example of ''take'' in the proposed rule was ambiguous because it states that activities modifying habitat include those ''constructing or maintaining barriers that eliminate or impede a listed species access to habitat essential for its survival or recovery''. The commenter stated that existing facilities that prevent or impede access to potential habitat that could be used for the recovery of the species do not cause a ''take''. Several other commenters stated that the current owner of a dam lawfully installed before a species is listed should not be liable for take based on subsequent listing. In the view of these commenters liability for take must be based upon some action occurring after the effective date of listing.

*Response*: See response to comment 8 where the word recovery was stricken from the example in this final rule. NMFS agrees that simply holding title to a barrier that affects access to the habitat of listed species is not necessarily a take under the ESA. However, maintaining or improving an existing facility may actually injure or kill members of a listed species if it significantly impairs essential behavioral patterns such as spawning, rearing or migrating. Maintaining an existing barrier that prevents or impedes access to habitat may cause take of listed species, if adequate comparable habitat is not otherwise available to the listed population. In addition, any person who engages in diverting water may be engaged in a take if the diversion of water injures or kills listed species by significantly impairing essential behavioral patterns.

*Comment 15*: Several commenters noted the use of ''likely to impair'' as inappropriate in the examples provided in the preamble to the proposed rule.

*Response:* NMFS agrees and has made the necessary changes in this final rule. NMFS notes that an act must be reasonably certain to impair essential behavioral patterns of listed species in order to constitute ''harm'' within this definition.

*Comment 16*: Several commenters urged or stated that NMFS was required to specifically adopt the legal principles of ''proximate cause'' and ''foreseeability'' as limitations of liability for ''harm'' to listed species. One commenter noted that NMFS should clarify that the regulation does not create liability for hypothetical, speculative or conjectural injury.

*Response*: NMFS agrees that the regulation does not create liability for hypothetical, speculative or conjectural injury as can be deduced from the term ''actual.'' NMFS notes that that same term ''actual'' provides for cause-in-fact liability. NMFS' definition of ''harm'' is consistent with the views articulated in the opinion of the U.S. Supreme Court in *Sweet Home* v. *Babbitt*. In that opinion, the Court did not limit its discussion to a single term of art for the causal links necessary to show ''harm'' to a species resulting from habitat

modification. The specific elements of causation to be proved, including foreseeability, will be determined on a case-by-case basis. Further, this document and the examples discussed in it, are intended to provide the public with information about activities which may result in injury or death of listed species. In NMFS' view, it is reasonably foreseeable that these activities and similar activities may injure or kill fish and wildlife, including listed species. While an action ''harms'' a listed species only if it actually results in the death or injury of a listed species, NMFS continues to encourage members of the public to consult with its staff whenever an activity is undertaken in the habitat of listed species and/or when listed species are present.

*Comment 17*: One commenter noted that ''merely continuing previously established [water] withdrawals or diversions should not be considered per se an unlawful take of subsequently listed species.'' The commenter further noted that new water withdrawals or diversions should not be considered unlawful takes because Congress has a long-standing history of deference to state law on water rights. The commenter lastly notes that example 5 (see ''Activities That May Constitute A Take'') should be deleted in favor of an ''ad hoc, case-by-case approach'' and that such water diversions should be carefully reviewed and responded to as appropriate.

*Response*: NMFS agrees that each water diversion affecting listed species should be carefully reviewed on a case-by-case basis to determine whether its operation injures or kills listed species. The ESA and state water law operate in cognizance of the principles of comity, federalism and importance of reading apparently conflicting laws in such a manner as to avoid conflict and promote the purposes of both legislative acts wherever possible. It is appropriate to note that the Endangered Species Act encourages this approach by declaring it ''to be the policy of Congress that the Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.'' 16 U.S.C. § 1531(c)(2).

**Activities That May Constitute a Take**

A principal purpose of this final rule is to provide clear notification to parties that habitat modification or degradation may harm listed species and, therefore, constitute a ''take'' under the ESA. The following list identifies several examples of habitat-modifying activities that may fall within the scope of this final rule when these or similar activities cause death or injury to fish or wildlife, including those activities that significantly impair essential behavioral patterns of listed species. In all instances a causal link must be established between the habitat modification and the injury or death of listed species.

1. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate;

2. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat;

3. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns;

4. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat;

5. Removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns;

6. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species;

7. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat;

8. Constructing, maintaining or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat; and

9. Conducting timber harvest, grazing, mining, earth-moving or other operations which result in substantially increased sediment input into streams.

10. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

This list is not exhaustive. It is intended to provide some examples of the types of activities that might be considered by NMFS as constituting a take under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule and general inquiries regarding prohibitions and permits should be directed to NMFS (see **ADDRESSES**).

**Incidental Take Exceptions**

The ESA authorizes NMFS to exempt parties from its take prohibitions under certain circumstances. Under section 7 of the ESA, NMFS conducts consultations on proposed Federal actions and determines whether the proposed action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If the proposed action does not do so, or would not if specified reasonable and prudent alternatives were followed, NMFS may then issue a biological opinion and incidental take statement. The incidental take statement estimates the expected incidental take of a listed species resulting from the action and specifies those terms and conditions required to implement the reasonable and prudent measures necessary or appropriate to minimize this incidental take. If the proposed action is conducted in accordance with these terms and conditions, the incidental take is exempted from the ESA's take prohibitions.

Under section 10(a)(1)(B), NMFS may permit non-Federal parties to take a listed species if such a taking is incidental to, and not the purpose of, an otherwise legal activity. Prior to receiving an incidental take permit pursuant to 10(a)(1)(B), a non-Federal party must prepare a permit application and conservation plan. A conservation plan must contain a description of (1) the impact that will likely result from the taking; (2) what steps the applicant will take to minimize and mitigate to the maximum extent practicable, the impacts and how these steps will be funded; (3) what alternative actions to the take were considered and why they are not being utilized; and (4) any measures the Secretary of Commerce (Secretary) may require as being necessary or appropriate for the purposes of the plan (16 U.S.C. 1539(a)(2)(A)). If the Secretary finds that the applicant will minimize and mitigate to the maximum extent practicable the impacts of any incidental take, and will meet other requirements of section 1539 (a)(2)(B), the Secretary may issue a permit, legally binding the applicant to the conservation measures set forth in the conservation plan.

Congress intended that the conservation planning process be used to reduce conflicts between listed species and private development and to provide a framework that would encourage ''creative partnerships'' between the private sector and local, state, and Federal agencies in the

interest of endangered and threatened species and habitat conservation. NMFS encourages the development of conservation plans and intends to continue pursuing such agreements in the future with willing parties.

### Change in Enumeration of Threatened and Endangered Species

In the proposed rule, issued on May 1, 1998 (63 FR 24148), the definition of harm was added in alphabetical order to 50 CFR 217.12. Since May 1, 1998, NMFS has issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 217.12 has been redesignated as § 222.102; therefore, the definition of harm has been added in this final rule to § 222.102.

### Classification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* requires the preparation of an initial and final Regulatory Flexibility Analyses unless an agency determines that a rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis has been prepared for this action and is available from NMFS (see **ADDRESSES**).

A Final Environmental Assessment and Finding of No Significant Impact have been completed for this final rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule will make no change in existing law.

### List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 2, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 222 is amended as follows:

## PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 222.102, the definition for ''Harm'' is added in alphabetical order to read as follows:

**§ 222.102 Definitions.**

* * * * *

*Harm* in the definition of ''take'' in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

* * * * *

[FR Doc. 99–29216 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 600

**[I.D. 120996A]**

### Magnuson-Stevens Act Provisions; Essential Fish Habitat

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

**ACTION:** Interim final rule; reopening of comment period.

**SUMMARY:** NMFS announces the reopening of a public comment period to assist in the development of a final rule for Essential Fish Habitat (EFH). The interim final rule established guidelines to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans, including the identification of threats and conservation measures. The interim regulations also detailed the procedures that the Secretary, other Federal agencies, state agencies, and the Councils should use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. NMFS now requests additional comments on four specific issues.

**DATES:** Comments must be received at the appropriate address or fax number (See **ADDRESSES**) no later that 5:00 p.m., eastern standard time, on December 23, 1999.

**ADDRESSES:** Comments should be addressed to EFH Coordinator, Office of Habitat Conservation, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments also may be sent via facsimile (fax) to 301–713–1043. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Jon Kurland, NMFS, 301–713–2325, fax 301–713–1043, e-mail *jon.kurland@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

This rulemaking is required by section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1855(b)). The interim final rule was promulgated on December 19, 1997 (62 FR 66531). Details concerning the justification for and development of the interim final rule were provided in the proposed rule (62 FR 19723, April 23, 1997).

The interim final rule contains two subparts. Subpart J of 50 CFR part 600 provides guidelines to the Councils for including information in fishery management plans on the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the identification of recommended measures to conserve and enhance EFH, as required by sections 303(a)(7) and 305(b)(1)(A) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(7), 1855(b)(1)(A)). Subpart K of 50 CFR part 600 details the procedures for implementing the coordination, consultation, and recommendation requirements of section 305(b) of the Magnuson-Stevens Act (16 U.S.C. 1855(b)).

In issuing the interim final rule, NMFS decided to postpone development of a final rule for two reasons. First, NMFS decided to provide an additional comment period to allow another opportunity for affected parties to provide input prior to the development of a final rule. Second, NMFS determined that it would be advantageous to implement the EFH provisions of the Magnuson-Stevens Act for a period of time via interim final regulations, which would afford an opportunity to gain experience adding EFH information to fishery management plans and carrying out consultations and coordination with Federal and state agencies whose actions may adversely affect EFH.

Since the promulgation of the interim final rule, EFH provisions for 39 fishery management plans have been developed by the Councils and approved or partially approved by the Secretary. Additionally, NMFS and Federal agencies have begun consulting on actions that may adversely affect EFH. Approximately 2000 EFH consultations have been completed to date.

The comment period on the interim final regulations closed on March 19, 1998 (63 FR 8607, February 20, 1998). NMFS carefully reviewed and is considering the written comments received on the interim final rule. NMFS now intends to proceed with development of a final rule.

**Electronic Access**

The interim final rule is accessible via the Internet at *http://www.nmfs.gov/habitat/*.

**Request for Comments**

In light of the comments received on the interim final rule and NMFS' experience implementing the EFH provisions of the Magnuson-Stevens Act under the interim final rule for approximately 20 months, NMFS has identified four issues that warrant additional public input prior to the development of a final rule. Commenters on the interim final rule need not resubmit their previous comments. When developing the final rule, NMFS will consider all comments received on the interim final rule as well as comments received in response to this document.

NMFS requests comments on the following issues:

(1) Given the statutory definition of EFH in section 3(10) of the Magnuson-Stevens Act (16 U.S.C. 1802(10)), what suggestions do you have for improving the regulatory guidance regarding the description and identification of EFH, including the breadth of EFH designations, in §§ 600.815(a)(1) and (2) of the interim final rule?

(2) Section 600.815(a)(3) of the interim final rule addresses fishing activities that may adversely affect EFH. What additional guidance, if any, should the final rule contain on how Councils should document their efforts to minimize the effects of fishing on EFH, to the extent practicable, as required by section 303(a)(7) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(7))?

(3) Has the use of existing environmental review procedures as described in § 600.920(e) of the interim rule been an effective way to handle EFH consultations? What additional guidance, if any, should the final rule provide on how to use existing environmental reviews to satisfy EFH consultation requirements?

(d) Federal action agencies are required by § 600.920(g) of the interim rule to prepare an EFH Assessment as part of the consultation process. How, if at all, should the EFH Assessment requirement be revised in the final rule?

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

Dated: November 2, 1999.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–29215 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 64, No. 215
Monday, November 8, 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 923

**[Docket No. 99 AMS–FV–923–A1; FV–00–923–1]**

### Sweet Cherries Grown In Designated Counties in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 923

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 923, hereinafter referred to as the ''order.'' The order regulates the handling of sweet cherries grown in six counties in eastern Washington. The purpose of the hearing is to receive evidence on proposed amendments to the order. Six proposals were submitted by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order. The Committee's proposals would: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; Increase representation on the Committee by adding an additional handler member; Allow for special purpose shipments of cherries to handling operations outside the production area; Provide for collection of late payment charges and/or interest on handlers' late payment of assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a single form. The Fruit and Vegetable Programs (F&V) of the Agricultural Marketing Service (AMS) proposes two additional amendments to bring the program into conformance with current U. S. Department of Agriculture (Department) policy. These provisions would establish a limit on the number of consecutive terms a person may serve as a member on the Committee and would require that continuance referenda be conducted on a periodic basis to ascertain support for the order. AMS also proposes to allow such changes as may be necessary to the order to conform with any amendment that may result from the hearing.

**DATES:** The hearing will begin at 9:00 a.m. in Yakima, Washington, on November 16, 1999, and, if necessary, will continue the next day beginning at 9:00 a.m.

**ADDRESSES:** The hearing will be held at the W.L. Hansen Building, 105 S. 18th Street, Yakima, Washington 98901.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Finn or Anne Dec, 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 email at: kathy.finn@usda.gov or anne.dec@usda.gov. Small businesses may request information on this proceeding by contacting Jay Guerber, 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, or email at jay.guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless the amendments present an irreconcilable conflict with a law, regulation or policy.

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. 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposed six amendments to the order that would affect its scope and administrative operations.

(1) Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range. The marketing order's rules and regulation are currently in effect for only six counties in the eastern portion of the State. Sweet cherry production is increasing significantly in other counties that did not have production when the order was promulgated in 1957. The Committee believes expanding marketing order regulations to cover all sweet cherry production east of the Cascades would ensure that sweet cherries produced east of the Cascades in Washington would be of a consistent and high quality.

(2) Increase representation on the Committee by adding one additional handler member. The Committee believes that handler representation should be equal among the districts, especially if the districts are reapportioned to accommodate the additional counties proposed to be included in the production area.

(3) Authorize special purpose shipments, with appropriate safeguards,

allowing movement of cherries to handling operations outside the production area. The Committee believes that facilitating the shipments of cherries outside the production area for packing would provide more flexibility to growers in deciding who would market their cherries. Also, language would be added specifying that the Committee could rescind or deny to a handler, the special purpose shipment certificate if proof satisfactory to the Committee was obtained that the cherries were handled contrary to the special purpose section.

(4) Authorize the Committee, with AMS approval, to collect late payment charges and/or interest on late payments. The Committee believes this would encourage timely remittance of assessments by handlers. The Committee may also recommend other methods of assessment collection with the approval of the Secretary.

(5) Authorize the Committee, with AMS approval, to establish container marking requirements. The Committee believes this would reduce confusion among buyers, help differentiate between grades and varieties of sweet cherry shipments, and improve compliance with order requirements.

(6) Authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection. Currently, members and alternates complete this form after notification of the selection. This proposal would combine two forms currently being used. The Committee believes this will simplify the Committee selection process. The Committee works with AMS in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

The AMS proposes adding two provisions which would help assure that operations and activities of the Committee are reflective of industry opinions and positions. The first provision would establish a limit on the number of consecutive terms a person may serve as member on the Committee.

The second provision would require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

Also, AMS proposes to allow such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is being held for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determining whether there is a need for the proposed amendments to the order; and (3) determining whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act. These points are particularly important for the proposal to expand the production area. Sweet cherry growers and handlers who are not currently subject to the order are encouraged to provide testimony at the hearing.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Committee in this rulemaking proceeding; and, the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

**List of Subjects in 7 CFR Part 923**

Marketing agreements, Cherries, Reporting and recordkeeping requirements.

## PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Washington Cherry Marketing Committee:

*Proposal No. 1*

Revise § 923.4 to read as follows:

**§ 923.4 Production area.**

*Production area* means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

Revise § 923.14 to read as follows:

**§ 923.14 District.**

*District* means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 923.31(m):

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

*Proposal No. 2*

Revise § 923.20 to read as follows:

**§ 923.20 Establishment and membership.**

There is hereby established a Washington Cherry Marketing Committee consisting of sixteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he/she is an alternate. Ten of the members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as ''grower members'' of the committee; and the six members of the committee who shall be handlers, or officers or employees of handlers, are referred to in this part as ''handler members'' of the committee. Four of the grower members and their respective alternates shall be producers of cherries in District 1, and six of the grower members and their respective alternates shall be producers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their respective alternates shall be handlers of cherries in District 2.

*Proposal No. 3*

Amend § 923.54 by revising paragraphs (b) and (c) to read as follows:

**§ 923.54 Special purpose shipments.**

* * * * *

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all

requirements, under or established pursuant to § 923.41, § 923.52, § 923.53, or § 923.55, the handling of cherries in such minimum quantities, or types of shipments, or for such specified purposes as the committee, with approval of the Secretary, may prescribe. Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent cherries handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cherries pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cherries will not be used for any purpose not authorized by this section. The committee may rescind or deny to any handler the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were handled contrary to the provisions of this section.

*Proposal No. 4*

Revise § 923.41 by adding a new paragraph (c) to read as follows:

**§ 923.41 Assessments.**

* * * * *

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary as recommended by the committee. The committee may also recommend other methods of assessment collection with the approval of the Secretary.

*Proposal No. 5*

Amend § 923.52 by revising paragraph (a)(3)to read as follows:

**§ 923.52 Issuance of regulations.**

(a) * * *

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

* * * * *

*Proposal No. 6*

Revise § 923.25 to read as follows:

**§ 923.25 Acceptance.**

Any person prior to selection as a member or an alternate member of the committee shall qualify by filing with the Secretary a written acceptance of willingness to serve on the committee.

The Fruit and Vegetable Programs, Agricultural Marketing Service, proposes the following two amendments.

*Proposal No. 7*

Revise § 923.21 to read as follows:

**§ 923.21 Term of office.**

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

*Proposal No. 8*

Amend § 923.64 by adding a new sentence at the beginning of paragraph (c) to read as follows:

**§ 923.64 Termination**

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain where continuance of this part is favored by growers. * * *

* * * * *

Dated: November 3, 1999.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 99–29196 Filed 11–5–99; 8;45am]

BILLING CODE 3410–02–P

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 120

## Business Loan Program

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** SBA proposes to amend the regulations governing Certified Development Companies (''CDCs''). This proposed rule would amend the rules governing CDC Area of Operations (the geographic area where SBA authorizes a CDC to make loans under SBA's Development Company Loan Program (''504 loan'')). The proposed rule would cover an applicant requesting to become a CDC; an existing CDC applying to expand its Area of Operations within the State in which it is chartered; an existing CDC applying to expand its Area of Operations beyond the State in which it is chartered into a contiguous bi-sected local economic area (''Local Economic Area''); and an existing CDC applying to expand its Area of Operations outside the State in which it is chartered into another State beyond a Local Economic Area.

The proposed rule also revises when SBA considers a county ''adequately served'' (when the 504 loan activity within a county precludes the county from being available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request). In some cases, counties would be available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request under the proposed rule that are not available under the current regulations.

The proposed rule would clarify under what circumstances and conditions a CDC may contract out its management and staff functions. It also would address the purposes for which a CDC may use its net income generated in different States. The proposed rule would eliminate a limited liability company from the types of organizations that may apply to become a CDC. Finally, the proposed rule would expressly authorize CDCs to establish Loan Committees and set forth conditions under which they may be used.

**DATES:** Submit comments on or before December 8, 1999.

**ADDRESSES:** Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Gail H. Hepler, (202) 205–7530.

**SUPPLEMENTARY INFORMATION:** When Title V of the Small Business Investment Act of 1958—Loans to State and Local Development Companies—was enacted by Public Law 85–699 on August 21, 1958, it defined a Development Company as ''an enterprise * * * formed for the purpose

of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations * * * A local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State * * * A local development company shall be principally composed of and controlled by persons residing or doing business in the locality * * *'' (13 CFR part 108, section 2, as of January 1, 1967).

When the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations ''formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area.'' (Legislative History, Pub. L. 100–590, p.22. It continues ''to qualify for this program, a development company must be chartered in the State where it intends to operate * * *'' (*id*, p.23))

Since the inception of the Certified Development Company Program (''504 Program''), no CDC has been certified to operate permanently in more than one State, except for relatively few circumstances when a CDC's operations are in a Local Economic Area. Regulations published on August 10, 1982, permitted a CDC to operate within two States if ''(i) a State line bisects a city, in which case the 503 company may operate city-wide or (ii) the 503 company has obtained prior written approval to operate within a contiguous economic area, as determined by SBA, which crosses a State line.'' Since this regulation was published, of the 270 active CDCs, only nine have applied for and received approval by SBA to have their permanent Areas of Operations cross State lines to include a contiguous bi-sected local economic area. The permanent Area of Operations of the other 261 CDCs are within their State of incorporation.

Prior to the regulations published on March 1, 1996, all counties within a CDC's Area of Operations had to be contiguous. The only exception was Statewide CDCs that were intended to cover those counties not covered by local CDCs. Many States did not (and continue to not) have Statewide CDCs. Therefore, many of those States had counties that were not covered by any CDC resulting in the small businesses in those counties not having access to the CDC Program. To accommodate these small businesses, the regulations for the program were modified on July 23, 1987, to permit the temporary expansion of a CDC's Area of Operations for up to 1 year, to include an area underserved by the 504 Program. In such cases, the CDC needed prior SBA approval of each loan. The temporary expansion could be renewed by the district office. The CDC was exempt from a CDC's membership and Board requirements in the temporary area. (The regulation permitting temporary expansions was replaced as of March 1, 1996, by § 120.839, case-by-case extension, which permitted a CDC to apply to make an individual loan for a 504 project outside of its Area of Operations to the SBA district office serving the area under certain circumstances.)

The district offices were authorized to approve temporary expansions for up to 1 year so that small businesses could have access to the program where there were no existing CDCs. Under this regulation, CDCs received temporary authority to operate in other contiguous counties in their States or in a Local Economic Area in an adjoining State. If the CDC wanted to expand its permanent Area of Operations to include the temporary area, it had to comply with the regulations governing the eligibility requirements for CDCs including membership and board representation. Often, CDCs were better able to assess whether or not they wanted a particular geographic area permanently by temporarily marketing and doing projects in it. Some decided not to include the area permanently and withdrew; others permanently expanded into the areas. In other cases, new CDCs or other local CDCs were approved by SBA to include these areas in their permanent Areas of Operations.

During the mid-1990s, three CDCs temporarily expanded beyond their State of incorporation and beyond a Local Economic Area. In each case, local CDCs covering these areas were inactive or did not exist and the SBA district offices wanted their small businesses to have access to the 504 Program. When the temporary authority expired, one CDC sponsored a new CDC incorporated in the State to service the area with the required membership and board representation. The application was approved. However, the other two CDCs submitted applications to expand to include their temporary areas in their permanent Areas of Operations. Since, in each case, the areas were beyond the CDC's State of incorporation and beyond a Local Economic Area, SBA could not consider these requests under its existing regulations.

However, given the low 504 lending volume in several parts of the country, SBA believes that it is in the best interests of underserved communities to permit active CDCs in good standing to permanently expand their Areas of Operations beyond their State of incorporation and beyond a Local Economic Area. SBA proposes to call such a CDC a ''Multi-State CDC'' (a CDC that is operating as a foreign corporation in another State and is permitted by SBA under certain circumstances to include in the CDC's permanent Area of Operations counties in that State that are located beyond a Local Economic Area). At the same time, SBA wants to ensure that the congressional intent for CDCs is followed and that they are formed by local citizens whose primary purpose is to improve their community's economy. Therefore, the proposed regulations would require the following:

1. The requirements in § 120.822, Membership, must be met separately for the Area of Operations within the State in which the CDC is incorporated and each additional State in which it operates as a Multi-State CDC.

2. The requirements in § 120.823, CDC Board of Directors, must be met separately for the State in which the CDC is incorporated and for each additional State in which it operates as a Multi-State CDC. In addition, in order for the Board of Directors (''Board'') to maintain the appearance of independence and objectivity regarding the loan decisions, CDC staff or management must not be voting members of the Board. This will eliminate any appearance of a conflict of interest.

3. Each State must have a separate Loan Committee comprised of members residing or working in that State, and representing at least three of the four membership groups (government organizations responsible for economic development in the Area of Operations in the State; financial institutions that provide commercial long-term fixed asset financing in the Area of Operations in the State; community organizations dedicated to economic development in the Area of Operations in the State; and businesses in the Area of Operations in the State) including at least one member with commercial loan experience acceptable to SBA. In order for the Loan Committee to maintain the appearance of independence and objectivity regarding loan decisions, CDC staff or management must not be voting members of the Loan Committee. Again, this will eliminate any appearance of a conflict of interest.

4. The CDC's Board must ratify, at least quarterly, the actions of its Loan Committees. As well as meeting the general regulatory requirements of a CDC's Board, the Board must have equal voting representation from the State in which the CDC is incorporated and each of the States the CDC operates in as a Multi-State CDC.

5. The CDC may apply to expand only in those counties that meet the criteria of § 120.835(a) as proposed in this regulation.

6. The CDC, upon the request of SBA, must provide evidence that the net income generated in any State where the CDC is operating as a Multi-State CDC is being invested in that State.

7. Any loans approved by SBA for a Multi-State CDC will not be considered in the calculations under §§ 120.810(a) and 120.835(a). In other words, in determining whether a county is ''adequately served'' for purposes of a new CDC's Area of Operations or an existing CDC's expansion request, the 504 loans approved for a Multi-State CDC will not be used as part of the calculation if the new CDC or expanding CDC is incorporated within the State.

The proposed regulations require board and membership representation from each State in which a Multi-State CDC proposes to operate to ensure that the CDC's community economic development efforts will be properly tailored to meet the needs of the communities it serves and that the CDC does not evolve primarily into a loan packager. Local membership, Board, and Loan Committee representation are more likely to identify businesses with the greatest potential for increasing or retaining local employment and helping the community's economy. For example, a local Loan Committee would more likely know if the approval of an application from a new business, such as a hotel, would help other nearby businesses or, instead, would risk the business's failure, or cause other, established hotels to fail, due to a surplus of hotels in the area.

The proposed regulations also re-introduce the concept of a Local Economic Area previously Stated in § 108.503–1(c)(i) prior to March 1, 1996. It would permit a CDC to apply for an Area of Operations that crosses State lines without meeting the above requirements when the contiguous areas that lie in different States are part of the same ''local economic area.'' The same Local Economic Area would mean that the employees and customers of the businesses in that area work and live in that economic area as if there is no State line dividing it. Re-introducing the concept in the regulations will help differentiate this type of expansion from the proposed one in which a CDC incorporated in one State is applying to expand as a Multi-State CDC into another State.

The proposed rule revises the definition for ''Area of Operations'' and adds definitions for ''Multi-State CDC'' and ''Local Economic Area'' to § 120.802.

Under the proposed rule, for a 24-month period after a new CDC has been approved to operate in a county in its State of incorporation or an existing CDC has been approved to expand into an area within its State of incorporation, SBA will not accept an application to include the county in the Area of Operations of a new CDC or an application from an existing CDC to expand into that county. This would give the CDC that received permission to operate in the counties an opportunity to recoup up-front costs of establishing itself in the new area.

The proposed regulations would also change §§ 120.810 and 120.835 to permit a new CDC or an existing CDC incorporated in a State to apply to operate in a county within that State with a population of 100,000 or more, even if the county is being ''adequately served'' by an existing CDC incorporated in that State. Currently, if a CDC is doing one 504 loan per year per 100,000 population averaged over 24 months in a particular county, another CDC may not apply to include that county in its Area of Operations. Under the current regulations, the county is ''adequately served.'' The proposed regulations would permit SBA to consider an application for that county from another CDC incorporated in that State if the county has a population of 100,000 or more and there is only one CDC incorporated in that State that includes that county in its permanent Area of Operations. This will give small businesses more choices.

The proposed rule further amends §§ 120.810 and 120.835 to direct an applicant for certification as a new CDC and for expansion within its State of incorporation or into a Local Economic Area to apply to the SBA district office serving the area where the CDC's headquarters is located. The current regulation requires an applicant to apply to the district office serving a proposed area of operations. If a CDC is applying to expand into another State as a Multi-State CDC, it must apply to the SBA district office serving the area where the CDC will headquarter its Multi-State CDC operations in that State. A new CDC may not apply to cover an area as a Multi-State CDC during the first 24 months after SBA approves it to be a CDC. SBA believes that a CDC should demonstrate that it has actively serviced an Area of Operations within its State of incorporation (including any Local Economic Areas) before it applies to cover an area as a Multi-State CDC. SBA will review a CDC's 504 performance history when it considers an application to serve an area as a Multi-State CDC.

Proposed regulation § 120.837 would be retitled ''SBA decision on application for certification or expansion.'' Current § 120.837 applies only to decisions on requests for expansion. Under the proposed rule, the provisions of § 120.837 would apply to applicants applying to become CDCs and CDCs wishing to expand. In either case, the proposed regulation would require the processing district office to solicit comments from all other district offices serving the CDC's existing and proposed area of operations to determine if the applicant is in compliance with all of SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review of any management or staff contracts, and the timely submission of all annual reports.

The proposed rule further amends § 120.837 to delete the examples of the types of information a district office might consider in reviewing an application for expansion. The amended rule would clarify that the district office, in making its recommendation, and the Associate Administrator for Financial Assistance (AA/FA), in making the decision on the application, may consider any available information regarding the proposed area of operations, the requesting CDC, and the existing CDCs serving the area. Some CDCs and district offices have treated the examples in the current regulation as a prescribed list that could not be supplemented.

The proposed regulations would delete the requirement in § 120.837 that the AA/FA must make his or her final decision within 30 days of receipt of the district office's recommendation. Because of staffing limitations, SBA has not been able to meet this deadline. However, SBA will continue to place a priority on these requests.

The proposed regulation § 120.837(c) also would establish that any unilateral authority that a CDC has in its State of incorporation (such as Accredited Lenders Program (ALP), Premier Certified Lenders Program (PCLP), or Priority CDC) does not carry over into a State in which it is operating as a Multi-State CDC. The CDC must earn any such status in each State based solely on the activity in that State. SBA's grant of any special unilateral authority in an Area of

Operations depends on the quality of a CDC's performance history, relationship with its SBA district office(s), and its processing, closing, servicing, and liquidation abilities in that Area of Operation. There is no guarantee that the quality of a CDC's operations in one State will be duplicated in another State with a separate membership, Board, Loan Committee, management, and staff.

The proposed rule would amend § 120.820 to delete a limited liability company from the types of organizations that may apply to be certified as a CDC. SBA believes that since a limited liability company structure only benefits its members when it is a for-profit entity providing its members certain tax advantages over a C Corporation while still offering its members some of the liability protection enjoyed by C Corporation shareholders, a limited liability company structure would not be appropriate to be used to fulfill the non-profit, local economic development role intended for CDCs. (SBA has never received an application from a limited liability company to become a CDC.) Section 120.822 sets forth a CDC's membership requirements. The proposed rule adds to § 120.822 the requirement that the membership must meet at least annually. It emphasizes that a CDC must meet the membership requirements separately for its State of incorporation and for each State in which it proposes to and is operating as a Multi-State CDC.

Section 120.823 sets forth the requirements regarding a CDC's Board of Directors. The proposed regulation clarifies that a quorum represents at least five Directors authorized to vote. There may be no conflict of interest or self-dealing, or any appearance of a conflict of interest or self-dealing in regards to any action of a CDC Board. Board members often must recuse themselves from voting on a project. The proposed regulation clarifies that it is the number of Board members voting, not present, that determines whether there is a quorum.

A CDC Board must be independent, objective, and composed of qualified representatives of the required community groups with a nexus to the mission and activities of the CDC. For example, an individual is not a qualified representative of the business community merely because he or she works for a business located in the community. A board member must be a responsible official of the represented organization. An example of a responsible official of a business would be the owner of the business. An example of a responsible official of a bank would be a commercial loan officer.

The Board is responsible for hiring and providing oversight of the CDC's management and staff, which in turn is responsible for the day-to-day marketing, processing, closing, and servicing of the loans. In order to maintain the appearance of objectivity on the part of the Board, the proposed regulation prohibits any member of a CDC's staff or management from being a voting member of the Board. If a member of a CDC's staff or management is present as a non-voting member of the Board, his or her presence does not count toward a quorum.

Many CDC Boards designate a Loan Committee to review and decide on loan approvals and servicing actions on an interim basis between Board meetings. SBA's current regulations do not address Loan Committees. The proposed regulation clarifies that a Board may establish a Loan Committee. The Loan Committee must meet the same organizational requirements as the full Board. It must be independent and objective, providing objective analysis of the actions recommended by the CDC management and staff. It must represent at least three of the four membership groups; and include at least one person with commercial lending experience acceptable to SBA. Like the Board, the Loan Committee must have at least five voting members to establish a quorum and the Loan Committee must not include any CDC staff or management as a voting member. Members must be responsible members of the represented organizations with a nexus to the missions and activities of the CDC. All members must live or work in the Area of Operations of the State in which the 504 project on which they are voting is located, unless the project qualifies under one of the exceptions in § 120.839, Case-by-case Extensions. For example, a representative Loan Committee might include three bankers (lenders), a CPA (business), a commercial real estate agent (business), a representative of the local economic development authority (government), and a member of the Board of Directors who represents the community (community). If there is a Loan Committee, the Board must still meet at least quarterly and ratify the actions of the Loan Committee.

The proposed rule makes it clear that a CDC must meet the Board and Loan Committee requirements for its State of incorporation and for each State in which it proposes to and is operating as a Multi-State CDC. Also, there can be no conflict of interest or self-dealing, or any appearance of a conflict of interest or self-dealing, on the part of any Board or Loan Committee member in regard to any action of the Board or Loan Committee. If there is a potential for an appearance of a conflict of interest, the Board or Loan Committee member must recuse him or herself from voting on the action. For example, if a Loan Committee member is an officer of the bank that will have the first mortgage on the 504 project being reviewed for approval, he or she should not vote on the project. At least one other member of the Loan Committee with commercial lending experience will have to be present to vote on the project. Also, the language allowing an alternative, approved by SBA, to a voting Board member with lending experience has been deleted because SBA believes that a CDC should have several Board or Loan Committee members with commercial lending experience available to vote on loans, rather than needing an exception to the requirement because its member is unavailable.

In § 120.824, the proposed rule clarifies under what circumstances a CDC may contract out its management and staffing. Section 503(e) of the Small Business Investment Act of 1958 states that a qualified State or local development company must have: (1) A full-time professional staff; and (2) professional management ability (including adequate accounting, legal, and business-servicing abilities). Public Law 100–590, approved November 3, 1988, permitted an exception to these requirements for a CDC in a rural area. It states that the rural CDC ''shall be deemed to have satisfied the requirements of a full-time professional staff and professional management ability if it contracts with another certified development company which has such staff and management ability and which is located in the same general area to provide such services.'' The Congressional Record dated October 3, 1988, states that this would allow ''a certified development company in a rural area to contract out for professional staff and professional management ability rather than hiring the employees in-house. This will help development companies in rural areas which do not do a sufficient loan volume to justify a full time staff.'' (Congressional Record—H9279). This is the only exception Congress made to the requirement that a CDC must have in-house full-time professional management and staff.

In recent years, many CDCs have entered into contracts with outside parties for CDC staffing and management. Questions have arisen

regarding the extent and propriety of such contracts.

In § 120.824, the proposed rule requires a CDC to have a full-time professional, including an Executive Director (or the equivalent) managing daily operations. At a minimum, this means a CDC must have at least one full-time salaried professional employee that is employed directly to manage the CDC. A CDC may petition the AA/FA to waive this requirement in only two circumstances: (1) When the management of a rural CDC with insufficient loan volume to justify its own management employee is to be contributed by another CDC located in the same general area; or (2) when the management of a CDC is to be contributed by a non-profit affiliate of the CDC that is financially subsidizing the CDC's operation and has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours. The first exception is authorized by statute. SBA proposes to permit the second exception because it considers the CDC and the affiliate to be sufficiently related to have the same or similar mission and objectives for the Area of Operations.

A CDC must possess a full-time professional staff that is capable of packaging, processing, closing, and servicing loans. The staff capacity of the CDC may be procured from salaried employees or, under certain circumstances, on a contractual basis that is acceptable to SBA, as long as at least one full-time professional manager in charge of the day-to-day operations of the CDC is a salaried employee of the CDC. The purpose of permitting a CDC to contract for staff functions, in certain cases, is to allow those CDCs that do not have sufficient 503/504 project-related income to provide the cash flow to support a full-time staff for each of the functions to be able to contract for a qualified individual on a part-time basis. If a CDC contracts for some of the staff functions, the services must be billed at rates that are reasonable and customary for the service and the geographic area.

The proposed regulation eliminates the reference in the current § 120.824 to Lender Service Providers, as defined in 13 CFR 103.1. This reference has been confusing to CDCs, and SBA believes it is not necessary. The proposed rule clarifies that the contractors must either live or work in the CDC's Area of Operations.

In contracting out for management and staff services, there must be no evidence of a conflict of interest or self-dealing, or any appearance of a conflict of interest or self-dealing on the part of the CDC's Board, management, or staff that could result in increased costs to a small business borrower or the CDC, or which would adversely affect the financial condition of the CDC including its ability to become self-sustaining. Any contracted staff must be qualified for the function that he or she is providing and live or do business in the CDC's Area of Operations.

SBA believes that Congress intended a CDC to sustain its operations continuously with reliable sources of funds, including income from services rendered from the Development Company Loan Program. A CDC's Board is not acting in the best interests of the CDC, SBA, or small business borrowers if it is permitting fee income generated from the Development Company Loan Program to be diverted to another organization through a contractual relationship rather than retained in the CDC to support its operations and economic development mission. The reason for the present clarification to the regulations is to ensure that the congressional intent is followed and that CDCs are not doing indirectly what they are not permitted to do directly, such as becoming effectively a shell for a for-profit organization through a contractual relationship. This would be in direct conflict with the intent of the Development Company Loan Program. Except for a few for-profit CDCs certified before January 1, 1987, and grandfathered in 1986, when the eligibility requirements for a CDC were changed, a CDC must be non-profit. The preamble to the 1986 regulations stated that ''The purpose of a 503 company shall be to foster economic development in its area of operations; any benefit flowing to shareholders, members or other related parties shall be merely incidental to such purpose.'' The preamble went on to say that the reason for the change was ''the desire to emphasize the *pro bono* publico character of the industry over the profit incentive. The nature of the 503 company is to be a catalyst in fostering economic development, and not a profit center for owners or members * * *'' (64 FR 20765).

Conflict of interest and self dealing, or any appearance of a conflict of interest or self dealing by related parties (which includes the CDC's professional management, staff, and Board of Directors) to the detriment of a small business borrower, the CDC, or SBA is prohibited.

If a CDC Board proposes to contract for staff rather than hire that staff directly, SBA must preapprove and annually review each contract to ensure that the contracts are reasonable and customary for the area and that there is no self-dealing or conflict of interest, or any appearance of self-dealing or conflict of interest. If the CDC's Board believes that it is in the best interest of the CDC to contract for a function, the CDC's Board must justify to SBA why SBA should favorably consider the contract for the services. SBA-approved contractors must not be compensated directly from the small business and must be compensated only by the CDC from the eligible 504 project-related fees that the CDC receives. No contractor or Associate of a contractor may be a voting or non-voting member of the CDC's Board or Loan Committee.

Finally, the proposed rule amends § 120.825 to clarify and emphasize that any funds generated from 503 and 504 loan activity by a CDC remaining after the payment of staff and overhead expenses must be retained in the CDC as a reserve for future operations or to be invested in other local economic activity in its Area of Operations. One of the primary missions of the CDC's Board must be to ensure that the CDC is, or is becoming, self-sufficient through the fee income generated while maintaining its local economic focus. If the CDC's Board approves a contract that benefits the contractor at the expense of the CDC, then the CDC's Board is failing its mission.

SBA invites comment on all aspects of this proposed rule, including the underlying policies. SBA may rely on its own expertise in promulgating the final rule. Submitted comments will be available to any person or entity upon request.

**Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)**

For the purposes of Executive Order 13132, SBA certifies that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

This proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Currently, out of approximately 24 million small businesses in the United States, about 4000 receive 504 loans annually. As described in the preamble, through this regulation, SBA hopes to increase the number of loans made to small businesses. Even if SBA were to assume a generous result of a 20 percent increase in loans, it would only result in an annual increase of 800 loans per year. SBA does not consider this a significant economic impact on a substantial number of small entities. Other aspects of this rule clarify management and structural requirements for CDCs. These aspects would have no economic impact on small entities, as they merely alter CDC requirements.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 3 of that Order.

**List of Subjects in 13 CFR Part 120**

Loan programs—business, Small business.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 120 as follows:

## PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Amend § 120.802, to revise the definition of ''Area of Operations'' and add definitions of *Local Economic Area* and *Multi-State CDC* in alphabetical order to read as follows:

*Area of Operations* is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis.

* * * * *

*Local Economic Area* is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, shares a border with the CDC's existing Area of Operations (or applicant's proposed Area of Operations) in its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) within its State of incorporation. Examples would be a city that is bi-sected by a State line or a metropolitan statistical area that is bi-sected by a State line.

*Multi-State CDC* is a CDC that is incorporated in one State and is authorized by SBA to operate as a CDC in another State beyond any contiguous Local Economic Areas.

* * * * *

3. Revise § 120.810 to read as follows:

**§ 120.810 Applications for certification as a CDC.**

Applicants for certification as a CDC must apply to the SBA District Office serving the area in which the applicant proposes to locate its headquarters.

(a) An SBA District Office may accept an application for a county only if:

(1) The county is part of the Area of Operations of only one CDC that is incorporated in the State where the county is located; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in the State where the county is located; and the applicant is incorporated in the State where the county is located.

(2) For all counties other than those that qualify under paragraph (a)(1) of this section:

(i) There is no CDC that includes the county in its Area of Operations; or

(ii) The CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant (loans that are approved by SBA for a Multi-State CDC outside of its State of incorporation are not to be used in the calculation if the applicant is incorporated in the State); and the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in the State where the county is located.

(b) An applicant whose application has been accepted must demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829 and the need for 504 services in the Area of Operations (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap). Applications must also include an operating budget approved by the applicant's Board of Directors, and a plan to meet CDC operating requirements (without specializing in a particular industry). An applicant's proposed Area of Operations may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC. The AA/FA shall make the certification decision.

4. Revise § 120.820 to read as follows:

**§ 120.820 CDC non-profit status.**

A CDC must be a non-profit corporation in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987, may retain their certifications.) An SBIC may not be a CDC.

5. Revise § 120.822 as follows:

**§ 120.822 CDC membership.**

(a) A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(1) Government organization responsible for economic development in the Area of Operations and acceptable to SBA;

(2) Financial institutions that provide commercial long-term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(4) Business in the Area of Operations.

(b) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

6. Revise § 120.823 to read as follows:

**§ 120.823 CDC Board of Directors and Loan Committee.**

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. The Board members must be responsible officials of the organizations they represent, and at least one must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least five Directors authorized to vote. No person who is a member of a CDC's staff or management may be a voting member of the Board. When the Board votes on loan approval or

servicing actions, at least one Board member with commercial lending experience acceptable to SBA must be present and vote. There must be no appearance of a conflict of interest with respect to any actions of the Board.

(a) The Board may establish a Loan Committee that reports to the Board. The Loan Committee members must represent at least three of the four membership groups including at least one member with commercial lending experience acceptable to SBA. All members must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in § 120.839, Case-by-case extensions. No CDC staff or management is permitted to be a voting member of any Loan Committee. A quorum shall require at least five voting members. The CDC's Board must ratify the actions of any Loan Committee on at least a quarterly basis. There must be no appearance of a conflict of interest with respect to any actions of the Loan Committee.

(b) If the CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must meet the Board and Loan Committee requirements for each State.

7. Revise § 120.824 to read as follows:

**§ 120.824 Professional management and staff.**

A CDC must have full-time professional management, including an Executive Director (or the equivalent), managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process 504 loan applications, close 504 loans, service, and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations. CDCs may obtain, under written contract, marketing, packaging, processing, closing, or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations under the following circumstances:

(a) The CDC has at least one salaried professional employee that is employed directly (not contracted ) full-time to manage the CDC. A CDC may petition SBA to waive the requirement of at least one full-time manager if the CDC is rural and has insufficient loan volume to justify its own management, and another CDC located in the same general area will provide the management; or the management of a CDC is to be contributed by a non-profit affiliate of the CDC that is financially subsidizing the CDC's operations and has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours.

(b) SBA must pre-approve all contracts. (CDCs may contract for legal and accounting services without SBA approval.)

(c) If a CDC's Board believes that it is in the best interest of the CDC to contract for a marketing, packaging, processing, closing, servicing or liquidation function, the CDC's Board must justify to SBA why SBA should favorably consider the contract for the services. The CDC's Board must demonstrate to SBA that compensation under the contract is only from the CDC, is reasonable and customary for similar services in the Area of Operations, is only for actual services performed, and does not evidence any conflict of interest or self-dealing, or an appearance of conflict of interest or self-dealing, on the part of any of the CDC's officers, management, and staff, including members of the Board and any Loan Committee.

(d) Contracts must be for a period not to exceed 2 years (including options to renew) and must clearly identify procedures satisfactory to SBA that permit the CDC to terminate the contract prior to its expiration date. SBA must review all 2-year contracts after the first year to ensure that there is no conflict of interest or self-dealing, or an appearance of conflict of interest or self-dealing.

(e) No contractor (under this section) or Associate of a contractor may be a voting member of the CDC's Board or Loan Committee.

8. In § 120.825 add the following two sentences to the end of the section as follows:

**§ 120.825 Financial ability to operate.**

* * * Any funds generated from 503 and 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained in the CDC as a reserve for future operations or to be invested in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain separate accounting for each State of all 504 fee income and expenses and provide, upon SBA's request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which it was generated.

9. Revise § 120.835 to read as follows:

**§ 120.835 Application to expand a CDC's Area of Operations.**

An existing, active CDC applying to expand its Area of Operations must be operating in conformance with all existing SBA regulations, policies, and performance benchmarks and be well-qualified to serve the proposed area. A CDC seeking to expand its Area of Operations must apply in writing to the SBA District Office where the CDC is headquartered, unless it is applying as a Multi-State CDC. In that case, the CDC must apply to the SBA District Office that services the area where the Multi-State CDC is locating its principal office in that State.

(a) An SBA District Office may accept a CDC's application to expand its Area of Operations into a county within its State of incorporation, in a Local Economic Area or in another State beyond a Local Economic Area that it would service as a Multi-State CDC only if:

(1) The county is part of the Area of Operations of only one CDC that is incorporated in the State where the county is located; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in the State where the county is located; and the applicant CDC is incorporated in the State where the county is located.

(2) For all counties other than those that qualify under paragraph (a)(1) of this section:

(i) There is no CDC that includes the county in its Area of Operations; or (ii) The CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant CDC (loans that are approved by SBA for a Multi-State CDC outside of its State of incorporation are not to be used in the calculation if the requesting CDC is incorporated in the State); and the county has not become part of an Area of Operations within the last 24 months of a CDC that is incorporated in that State.

(b) An applicant whose application for expansion has been accepted must demonstrate to the satisfaction of SBA that it satisfies all of the certification and operating criteria in §§ 120.820 through 120.829. It must demonstrate that it has the ability to provide full service to small businesses in the

requested area including processing, closing, servicing, and, if authorized, liquidating 504 loans. It must also demonstrate the need for 504 services in the Area of Operations and present a plan for servicing the area. If there is already one or more CDCs in the requested Area of Operations, the applicant must justify the need for another. In addition, an applicant to service an area as a Multi-State CDC must show that:

(1) The requirements in § 120.822, Membership, are met separately for the Area of Operation within the CDC's State of incorporation and for each additional State in which it operates or seeks to operate as a Multi-State CDC;

(2) The requirements regarding Boards of Directors in § 120.823, CDC Board of Directors and Loan Committees, are met separately for the State of incorporation and for each additional State in which it operates or seeks to operate as a Multi-State CDC;

(3) The CDC Board of Directors must have the same number of members residing or working in the CDC's State of incorporation and each other State in which it operates or seeks to operate as a Multi-State CDC; and

(4) The CDC must have separate Loan Committees in its State of incorporation and in each State in which the CDC operates or seeks to operate as a Multi-State CDC, comprised of members residing or working in that State.

10. Revise § 120.837 to read as follows:

**§ 120.837 SBA decision on applications for a new CDC or for an existing CDC to expand Area of Operations.**

(a) The processing District Office must solicit the comments of any other District Office in which the CDC operates or proposes to operate. The processing District Office must determine that the CDC is in compliance with SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review by SBA of any management or staff contracts, and the timely submission of all annual reports. In making its recommendation on the application, the District Office may consider any information presented to it regarding the requesting CDC, the existing CDC, or CDCs that may be affected by the application, and the proposed area of operation.

(b) The District Office will submit the application, recommendation, and supporting materials within 60 days of receipt of a complete application from the CDC to the AA/FA, who will make the final decision. The AA/FA may consider any available information.

(c) If a CDC is approved to operate as a Multi-State CDC, any unilateral authority that a CDC has in its State of incorporation under any SBA program (such as the Accredited Lenders Program (ALP), Premier Certified Lenders Program (PCLP), or Expedited Closing Process (Priority CDC)) does not carry over into a State in which it is operating or is approved to operate as a Multi-State CDC. The CDC must earn the status in each State based solely on its activity in that State.

Dated: September 23, 1999.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 99–29090 Filed 11–5–99; 8:45 am]

BILLING CODE 8025–01–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–NM–182–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes. That action would have required replacement of the Anti-Skid Control Unit (ASCU) of the aircraft braking system with an improved unit. Since the issuance of the NPRM, the manufacturer has advised the Federal Aviation Administration (FAA) that the entire Model 328–100 fleet has been retrofitted with the improved ASCU, and all ASCU spares have been modified or otherwise removed from service. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2196; fax (425) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on September 22, 1997 (62 FR 49457). The proposed rule would have required replacement of the Anti-Skid Control Unit (ASCU) of the aircraft braking system with an improved unit. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The proposed actions were intended to prevent disconnect of the ASCU and reversion to manual braking efficiency during operation on runways contaminated by standing water, slush, or wet snow, which could result in reduced braking efficiency.

### Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the manufacturer has provided the FAA with confirmation that the entire fleet of Dornier Model 328–100 series airplanes has been retrofitted with the improved ASCU, and all ASCU spares have been modified or otherwise removed from service.

### FAA's Conclusions

Upon further consideration, the FAA has determined that the proposed actions of the NPRM (Rules Docket 95–NM–182–AD) are unnecessary since the unsafe condition that those actions were intended to address no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed rule nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 95–NM–182–AD, published in the **Federal Register** on September 22, 1997 (62 FR 49457), is withdrawn.

Issued in Renton, Washington, on November 2, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–29175 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–SW–63–AD]**

## Airworthiness Directives; Eurocopter France Model SA. 315B Helicopters

**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 Eurocopter France Model SA. 315B helicopters, that currently requires an initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube). This action would require the same corrective actions as the existing AD, and would require an additional dye-penetrant inspection of the half-shell attachment clamps (clamps). This proposal is prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The actions specified by the proposed AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before January 7, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–63–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

**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 should 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 No. 98–SW–63–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, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, 76137.

### Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA. 315B helicopters. The DGAC advises that fatigue failure of the spar tube can result in separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998, which specifies initial and repetitive visual inspections, modification of the horizontal stabilizer spar tube if necessary, and a one-time dye penetrant inspection of the half shell attachment clamps with repetitive visual inspections of those clamps. The DGAC classified this service bulletin as mandatory and issued DGAC AD 96–277–037(A)R2, dated July 29, 1998, in order to assure the continued airworthiness of these helicopters in France.

On June 2, 1998, the FAA issued AD 98–12–21, Amendment 39–10575 (63 FR 31610), to require an initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube. That action was prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The requirements of that AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the DGAC has advised that the clamps should be inspected for cracks and replaced if a crack is found. If no crack is found, a safety wire should be wrapped around each clamp so that the clamp is held together in the event of clamp failure.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA. 315B helicopters of the same type design, the proposed AD would supersede AD 98–12–21 to require an initial and repetitive visual inspections and modification, if necessary, of the spar tube, as well as installing safety wire around each attachment clamp.

The FAA estimates that 28 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately:

- 0.5 work hour per helicopter to accomplish the inspections;

• 3 work hours per helicopter to accomplish the modification; and

• 0.5 work hour per helicopter to inspect and fit the safety wire;

and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,100 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $37,520.

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 39–10575 (63 FR 31610, June 10, 1998), and by adding a new airworthiness directive (AD), to read as follows:

**Eurocopter France:** Docket No. 98–SW–63–AD. Supersedes AD 98–12–21, Amendment 39–10575, Docket No. 98–SW–02–AD.

*Applicability:* Model SA. 315B helicopters with horizontal stabilizers, part number (P/N) 315A35–10–000–1, 315A35–10–000–2, or higher dash numbers, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (f) 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 failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect the aircraft records and the horizontal stabilizer installation to determine whether Modification 072214 (installation of the spar tube without play) or Modification 072215 (adding two half-shells on the spar) has been accomplished.

(2) If Modification 072214 has not been installed, comply with paragraphs 2.A., 2.B.1), 2.B.2)a), and 2.B.2)b) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998 (SB). If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts.

(3) If Modification 072215 has not been installed, first comply with paragraphs 2.A., 2.B.1), and 2.B.3), and then comply with paragraph 2.B.2)c) of the Accomplishment Instructions of the SB.

**Note 2:** Modification kit P/N 315A–07–0221571 contains the necessary materials to accomplish this modification.

(b) Before the first flight of each day:

(1) Visually inspect the installation of the half-shells, the horizontal stabilizer supports, and the horizontal stabilizer for corrosion or cracks. Repair any corroded parts in accordance with the applicable maintenance manual. Replace any cracked components with airworthy parts before further flight.

(2) Confirm that there is no play in the horizontal stabilizer supports by lightly shaking the horizontal stabilizer. If play is detected, comply with paragraphs 2.A. and 2.B.2(a) of the Accomplishment Instructions of the SB. If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts before further flight.

(c) At intervals not to exceed 400 hours time-in-service (TIS) or four calendar months, whichever occurs first, inspect and lubricate the spar tube attachment bolts.

(d) Within 90 calendar days and thereafter at intervals not to exceed 24 calendar months, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the Accomplishment Instructions of the SB.

(1) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next 500 hours TIS or 18 calendar months, whichever occurs first.

(2) If corrosion is found inside the tube in the half-shell area, apply a protective treatment as described in paragraph 2.B.1(b) of the Accomplishment Instructions of the SB.

(e) Within 30 calendar days, perform a one-time dye-penetrant inspection for cracking on the 4 attachment clamps (See No. 11 on Figure 3 of the SB) of the half-shells as shown in Figure 3 of the SB. If a crack is found in any clamp, replace the cracked clamp with an airworthy clamp. If no crack is found, safety wire the clamp as shown in Detail C in the SB using two wraps of 0.6-mm or 0.8 mm (.023 or .032 inch) diameter lockwire (See No. 21 on Figure 3 of the SB) around the clamp so that the clamp is held together in the event of clamp failure. After installing the safety wire, inspect the clamps before the first flight of each day in accordance with paragraph (b)(1) of this AD.

(f) 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, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(g) 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 helicopter to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–277–037(A)R2, dated July 29, 1998.

Issued in Fort Worth, Texas, on November 1, 1999.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–29174 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 89–NM–134–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Industrie Model A300, A310, and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires certain changes to the procedures in the airplane flight manual related to operation of the emergency lighting system. The NPRM also proposes to require a modification of the emergency lighting system, which would constitute terminating action for the AFM changes. In addition, the NPRM proposed to expand the applicability to include all A300, A310, and A300–600 series airplanes. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking that proposes to require, among other things, the same actions described above. Accordingly, the proposed rule is withdrawn.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on September 11, 1989 (54 FR 37470) (hereinafter referred to as ''the original NPRM''). The original NPRM would have superseded an existing airworthiness directive (AD), applicable only to Model A300 series airplanes, that requires certain changes to the procedures in the FAA-approved Airplane Flight Manual (AFM) related to operation of the emergency lighting system. The original NPRM also would have required a modification of the emergency lighting system, which would constitute terminating action for the AFM changes. The original NPRM also would have expanded the applicability to include all Model A300, A310, and A300–600 series airplanes. The original NPRM was prompted by flight crew reports that the Floor Proximity Emergency Escape Path Marking System (FPEEPMS), which is part of the airplane's emergency lighting system, did not illuminate automatically with loss of AC power. The proposed actions were intended to prevent lack of FPEEPMS lighting for evacuation in an emergency situation.

### Actions That Occurred Since the NPRM Was Issued

Since the issuance of the original NPRM, the FAA has issued separate rulemaking that proposes to include, among other things, the actions contained in the original NPRM. (That separate rulemaking is a new NPRM, Rules Docket 98–NM–205–AD, published in the **Federal Register** on September 13, 1999 (64 FR 49420)).

### FAA's Conclusions

Because the separate rulemaking now incorporates, as part of its proposed required actions, the same actions that were proposed in the original NPRM, the FAA has determined that the original NPRM is unnecessary. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 89–NM–134–AD, published in the **Federal Register** on September 11, 1989 (54 FR 37470), is withdrawn.

Issued in Renton, Washington, on November 2, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–29176 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–224–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 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 all Fokker Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. That action was prompted by reports of several accidents in which Fokker Model F28 series airplanes lost aerodynamic lift when attempting takeoff with ice contamination on their wings. This action would add a requirement, for certain airplanes, for modification of the wing leading edge ice protection system to include on-ground wing ice protection, and a new revision to the AFM. This proposal is prompted by the development of a modification which introduces a wing anti-icing system that will operate on the ground as well as in flight. The actions specified by the proposed AD are intended to prevent degradation of aerodynamic lift during takeoff when icing conditions exist, which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by December 8, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–224–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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

## 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–224–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–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On November 30, 1994, the FAA issued AD 94–25–03, amendment 39–9087 (59 FR 62563, December 6, 1994), applicable to all Fokker Model F28 series airplanes, to require a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. That action was prompted by reports of several accidents in which Fokker Model F28 series airplanes lost aerodynamic lift when attempting takeoff with ice contamination on their wings. The requirements of that AD are intended to prevent degradation of aerodynamic lift during takeoff when icing conditions exist.

## Actions Since Issuance of Previous Rule

In the preamble to AD 94–25–03, the FAA indicated that the actions required by that AD were considered ''interim action'' until final action is identified, at which time the FAA may consider further rulemaking. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows that determination.

## Explanation of Relevant Service Information

Fokker has issued Service Bulletins SBF100–30–018, dated April 1, 1997 (for Fokker Model F28 Mark 070, 0100 series airplanes), and F28/30–031, Revision 1, dated May 4, 1998 (for Fokker Model F28 Mark 1000, 2000, 3000, 4000 series airplanes). These service bulletins describe procedures for modifying the wing leading edge ice-protection system to include on-ground wing leading edge ice protection. The modification involves installation of a temperature sensor in the wing leading edge, installation of a temperature control unit, modification of the aircraft wiring, and performance of an after-installation test of the system. Additionally, Fokker has issued Manual Change Notification (MCNO) F100–003 (for Fokker Model F28 Mark 070, 0100 series airplanes) and MCNO F28–003 (for Fokker Model F28 Mark 1000, 2000, 3000, 4000 series airplanes). These MCNO's specify changes to the AFM following modification of the wing leading edge heating system. Accomplishment of the actions specified in the service bulletins and MCNO's is intended to adequately address the identified unsafe condition.

## FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–25–03 to continue to require a revision to the AFM that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. This proposed AD would add a requirement, for certain airplanes, for modification of the wing leading edge ice-protection system to include on-ground wing leading edge ice-protection and a new revision to the AFM. The actions would be required to be accomplished in accordance with the service bulletins and MCNO's described previously.

## Difference Between Proposed Rule and Related Service Information

This proposed rule would differ from the service bulletins and MCNO's. The RLD has determined that the modification of the wing leading edge ice protection system should be optional, instead incorporating the changes related to this modification into the AFM. The FAA has determined that modification of the wing leading edge ice protection system should be mandated, and that the appropriate AFM changes should be required after incorporation of the wing leading edge ice protection system.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by AFM flight crew procedure requirements. AFM crew procedures may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with total reliance on timely crew actions, has led the FAA to consider placing less emphasis on flight crew procedures and more emphasis on design improvements. The proposed

modification requirement is consistent with these conditions.

## Cost Impact

There are approximately 191 airplanes of U.S. registry that would be affected by this proposed AD.

The currently required AFM revisions proposed by this AD 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 currently required AFM revisions proposed by this AD on U.S. operators is estimated to be $60 per airplane.

The modification that is proposed in this AD action for certain airplanes would take approximately 274 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $26,585 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $43,025 per airplane.

The new AFM revisions proposed by this AD 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 new AFM revisions proposed by this AD on U.S. operators is estimated to be $60 per airplane.

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 39–9087 (59 FR 62563, December 6, 1994), and by adding a new airworthiness directive (AD), to read as follows:

**Fokker Services B.V.:** Docket 98–NM–224–AD. Supersedes AD 94–25–03, Amendment 39–9087.

*Applicability:* All Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 degradation of aerodynamic lift during takeoff when icing conditions exist, which could result in reduced controllability of the airplane, accomplish the following:

**Restatement of Requirements of AD 94–25–03, Amendment 39–9087**

(a) Within 10 days after December 21, 1994 (the effective date of AD 94–25–03, amendment 39–9087), incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM. This action is required until the requirements of paragraph (c) are accomplished.

*''Wing De-Icing/Anti-Icing Prior To Takeoff*

*CAUTION*

The Model F28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by sections 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present, unless the operator complies with either OPTION 1 or OPTION 2, below:

OPTION 1

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation.

OR

OPTION 2

The following takeoff procedure is used:

*WARNING:*

**The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by sections 91.527 and 121.629 of the FAR.**

- (All Marks, except Mark 0100 and Mark 0070) When using flight director for takeoff, select HDG mode and 10 degrees pitch attitude.
- Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.
- (All Marks, except Mark 0100 and Mark 0070) Use rated takeoff thrust.
- (Mark 0100 and Mark 0070) Use takeoff/go-around (TOGA) thrust.
- Do not use FLEXIBLE thrust.
- At $V_R$ rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.
- When positively climbing, select gear UP.
- DO NOT EXCEED 10 DEGREES PITCH UNTIL AIRSPEED IS ABOVE $V_2$ + 20 KTS.
- When above $V_2$ + 20 KTS, slowly increase the pitch attitude, keeping the speed above $V_2$ + 20 KTS.
- Retract the flaps at or above $V_{FR}$ + 20 KTS.

*NOTES TO OPTION 2:*

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be accounted for in the obstacle clearance analysis. WEIGHT MUST BE OFF-LOADED, IF NECESSARY, TO MEET THESE CONDITIONS.

2. (Mark 0100 and Mark 0070) Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of $V_2$ + 20 KTS.

3. (Mark 0100 and Mark 0070) Do not engage the auto-pilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 SINGLE ENGINE OPERATION of the F28 Mark 0100 (Fokker 100) and F28 Mark 0070 (Fokker 70) AFM, or Section 1.7.4 OPERATION UNDER ABNORMAL CONDITIONS of the F28 FHB, as applicable.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. DO NOT EXCEED 10 DEGREES PITCH UNTIL AIRSPEED IS ABOVE $V_2$ + 20 KTS.''

**Note 2:** If an operator elects to implement in its fleet only one of the two OPTIONS specified in this paragraph, the other OPTION does not have to be included in the Limitations Section of the AFM. However, the OPTION that is implemented must be incorporated in the AFM verbatim as it appears in this paragraph.

**New Requirements of This AD**

(b) For Model F28 Mark 0070, 0100 series airplanes identified in Fokker Service Bulletin SBF100–30–018, Appendix 1, dated April 1, 1997; and Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes identified in Fokker Service Bulletin F28/30–031, Appendix 1, Revision 1, dated May 4, 1998: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 18 months after the effective date of this AD, modify the wing anti-ice system for operation on the ground in accordance with the applicable service bulletin.

(2) Prior to further flight after accomplishing the modification required by paragraph (b)(1) of this AD, remove the AFM revisions required by paragraph (a) of this AD, and incorporate the flight manual changes described in Fokker Manual Change Notification (MCNO) F100–003, dated September 19, 1997 (for Fokker Model F28 Mark 070, 0100 series airplanes), and Fokker MCNO F28–003, dated September 5, 1997 (for Fokker Model F28 Mark 1000, 2000, 3000, 4000 series airplanes); as applicable.

**Note 3:** Incorporation of the leading edge thermal anti-ice modification and associated operating instructions does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by sections 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

**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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**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 November 2, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–29178 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–177–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace BAe Model ATP 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 all British Aerospace BAe Model ATP airplanes. This proposal would require a one-time inspection of the orientation of certain bolts of the rudder standby control system (SCS), and reinstallation of the bolts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent uncommanded engagement of the rudder SCS, which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by December 8, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–177–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### 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–177–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–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace BAe Model ATP airplanes. The CAA advises that it has received a report of uncommanded engagement of the rudder standby control system, which occurred during full and free checks of the rudder primary controls. Subsequent investigation revealed incorrect installation of a bolt that secures the primary drive rod to the fork end of the lever assembly of the rudder control system; such incorrect installation may have occurred during manufacture or maintenance. As a result, when the rudder approached full left travel, the tail of the bolt contacted the synchro drive of the standby control system (SCS), causing a mismatch in the synchro alignment followed by engagement of the rudder SCS. This condition, if not corrected, could result in uncommanded engagement of the rudder SCS and consequent reduced controllability of the airplane.

## Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin ATP–27–86, dated May 15, 1999, which describes procedures for a one-time inspection of the orientation of two bolts of the rudder SCS, and removal and reinstallation of any incorrectly installed bolt. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–05–99 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

## FAA's Conclusions

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

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

## Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed 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 $1,800, or $180 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**British Aerospace Regional Aircraft**
[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–177–AD.

*Applicability:* All BAe Model ATP airplanes, certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncommanded engagement of the rudder standby control system (SCS), accomplish the following:

(a) Within one year after the effective date of this AD, perform a one-time general visual inspection of the orientation of the bolts in the rudder SCS, in accordance with British Aerospace Service Bulletin ATP–27–86, dated May 15, 1999. If any bolt is incorrectly installed, as specified by Figure 1 of the service bulletin, prior to further flight, remove and reinstall the bolt in accordance with the service bulletin.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**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.

**Note 4:** The subject of this AD is addressed in British airworthiness directive 005–05–99.

Issued in Renton, Washington, on November 2, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–29179 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–252–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. The actions specified by that AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage. This action would, for certain airplanes, extend the compliance time for the modification of the web-to-cap fastener holes, and would eliminate references to modification of the outboard spar.

**DATES:** Comments must be received by December 23, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–252–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 Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

**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–252–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–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On June 15, 1999, the FAA issued AD 99–13–08, amendment 39–11202 (64 FR 33386, June 23, 1999), applicable to all Lockheed Model L–1011–385 series airplanes, to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. That action was prompted by an FAA determination that a modification of certain web-to-cap fastener holes must be accomplished within a specified period of time to ensure an acceptable level of safety of the affected fleet. The requirements of that AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has determined that a reference to Table 1 of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, which contains appropriate thresholds for accomplishment of the modification of the web-to-cap fastener holes, was inadvertently omitted from paragraph (d) of AD 99–13–08. For certain airplanes, this omission results in a shorter compliance time for accomplishing the modification than what was recommended in Lockheed Service Bulletin 093–57–218, Revision 1. The FAA finds that such a short compliance time is unnecessarily restrictive, and that it is necessary to

revise the existing AD to increase the inspection threshold to that recommended by the manufacturer.

In addition, since the issuance of AD 99–13–08, the FAA has determined that the text of paragraph (f) of that AD [which describes an acceptable alternative, for certain airplanes, to accomplishment of paragraph (d) of that AD that also will defer the initiation of inspections for a certain period of time] specifies certain areas that do not, for the purposes of this AD, require modification. Paragraphs (f)(1) and (f)(2), as well as Notes 3 and 4, of the existing AD specify modification of the inboard and outboard rear spars. The FAA has previously determined that modification of the outboard rear spars is not necessary, and the service bulletins referenced in these sections do not describe procedures for modification of the outboard rear spars. Therefore, the FAA finds that, in order to alleviate any unnecessary burden on operators of the subject airplanes who elect to accomplish this option to attain compliance, and to make the requirements of the AD consistent with the procedures specified in the service bulletins referenced, it is necessary to revise paragraphs (f)(1) and (f)(2) and Notes 3 and 4 to eliminate reference to the outboard rear spar.

## 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 revise AD 99–13–08 to continue to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between IWS 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. This action proposes to extend the compliance time for the modification of the web-to-cap fastener holes for certain airplanes, and to eliminate references to modification of the outboard spar. The actions would continue to be required to be accomplished in accordance with the service bulletins described previously in AD 99–13–08.

## Cost Impact

There are approximately 235 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD. The proposed requirements of this AD would not add any new additional economic burden on affected operators. Also, because the existing AD states the cost impact only for the required modification and not for the acceptable alternatives that were provided for certain airplanes, no change to the cost impact information is necessary. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators:

The inspections that are currently required by AD 99–13–08 take approximately 13 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 inspections on U.S. operators is estimated to be $91,260, or $780 per airplane, per inspection cycle.

The modification that is currently required by AD 99–13–08 takes approximately 100 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 modification on U.S. operators is estimated to be $702,000, or $6,000 per airplane.

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

## Regulatory Impact

The regulations 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 39–11202 (64 FR 33386, June 23, 1999), and by adding a new airworthiness directive (AD), to read as follows:

**Lockheed:** Docket 99–NM–252–AD. Revises AD 99–13–08, Amendment 39–11202.

*Applicability:* All Model L–1011–385 series airplanes, certificated in any category.

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

**Restatement of Actions Required by AD 99–13–08, Amendment 39–11202**

**Inspections**

(a) Perform a visual inspection to detect signs of cracking and other discrepancies (i.e., corrosion, fastener looseness, nicks, scratches, or other surface damage) of the web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, as specified in Figure 2 of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996; and of the web area around those fasteners; in accordance with Part I of the Accomplishment Instructions of that service bulletin. Perform the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Except as provided by paragraph (a)(2) of this AD: Perform the initial inspection

prior to the accumulation of the number of landings specified as the ''inspection threshold'' in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, or within 10 days after June 27, 1996 (the effective date of AD 96–12–24, amendment 39–9667), whichever occurs later.

(2) For airplanes on which the wing rear spar was modified prior to June 27, 1996, in accordance with one of the Lockheed service bulletins listed in paragraph (a)(2)(ii) of this AD, accomplish the inspection as follows:

(i) Perform the initial inspection prior to the accumulation of the number of landings specified as the ''inspection threshold'' in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, calculated from the time the wing rear spar was modified (rather than from the date of manufacture of the airplane), or within 10 days after June 27, 1996, whichever occurs later.

(ii) This paragraph applies to airplanes on which the wing rear spar has been modified in accordance with one of the following service bulletins:

- Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; or
- Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; or
- Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, or Revision 4, dated March 27, 1995; or
- Lockheed Service Bulletin 093–57–215, dated April 11, 1996.

**Repetitive Inspections**

(b) If no sign of cracking or other discrepancy is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

**Corrective Actions**

(c) If any sign of cracking is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, perform either eddy current surface scan inspections, or bolt hole eddy current inspections, as appropriate, to confirm cracking, in accordance with Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(1) If no cracking is confirmed, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of the service bulletin.

(2) If any cracking is confirmed, prior to further flight, repair it in accordance with the service bulletin.

**Modification**

(d) Except as provided by paragraph (e) or (f) of this AD, as applicable: Prior to the accumulation of the number of landings specified as the threshold in Table 1 of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996; or within 12 months after July 28, 1999 (the effective date of AD 99–13–08, amendment 39–11202); whichever occurs later; modify the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343 in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(e) For Model L–1011–385–3 series airplanes: Accomplishment of the modification specified in paragraph (e)(1) or (e)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the upper and lower caps of the rear spar between IWS 228 and IWS 346 in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or Revision 4, dated March 27, 1995. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the left and right wing rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–215, dated April 11, 1996. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–215, dated April 11, 1996), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

**Note 2:** Accomplishment of the modification of the upper and lower caps of the rear spar between IWS 228 and IWS 346, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, dated July 25, 1988, Revision 1, dated August 11, 1989, or Revision 2, dated January 25, 1991, is considered acceptable for compliance with the modification specified in paragraph (e)(1) of this amendment.

(f) For Model L–1011–385–1 series airplanes: Accomplishment of the modification specified in paragraph (f)(1) or (f)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991; or Revision 7, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991; or Revision 6, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the ''repeat visual inspection interval'' in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

**Note 3:** Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 2, dated October 12, 1988; Revision 3, dated August 11, 1989, Revision 4, dated May 16, 1990; or Revision 5, dated May 23, 1990, is considered acceptable for compliance with the modification specified in paragraph (f)(1) of this amendment.

**Note 4:** Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 1, dated October 25, 1988; Revision 2, dated July 31, 1989; Revision 3, dated March 7, 1990; or Revision 4, dated July 1, 1991, is considered acceptable for compliance with the modification specified in paragraph (f)(2) of this amendment.

(g) If any condition (i.e., number of discrepant fasteners per stiffener bay, or cracking) is identified during the accomplishment of the modification specified in Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, and that condition exceeds the limits specified in paragraph B.(3) of Part II of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

**Alternative Method of Compliance**

(h)(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, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(h)(2) Alternative methods of compliance, approved previously in accordance with AD 96–12–24, amendment 39–9667, or AD 99–13–08, amendment 39–11202, are approved as alternative methods of compliance with paragraph (d) of this AD.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

**Special Flight Permits**

(i) 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 November 2, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–29180 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF JUSTICE

## 28 CFR Part 16

**[AAG/A Order No. 178–99]**

## Privacy Act of 1974; Implementation

**AGENCY:** Department of Justice.

**ACTION:** Proposed Rule.

**SUMMARY:** The Department of Justice proposes to further exempt the United States Marshals Service Internal Affairs System, JUSTICE/USM–002, from subsections (e)(1) and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). This system is currently exempt from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) pursuant to subsections (j)(2) and (k)(5). In addition to records compiled during the course of investigations of allegations of misconduct or criminal violations by USMS personnel, this system also contains records compiled for law enforcement investigations related to actual or potential civil and regulatory violations. The additional exemptions are necessary to avoid interference with such law enforcement investigations and to protect the privacy of third party individuals. The reasons for the exemptions are set forth in the text below.

**DATES:** Submit any comments by December 8, 1999.

**ADDRESSES:** Address written comments to the Department of Justice, ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530 (Room 1400, NPB).

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill at (202) 307–1823.

**SUPPLEMENTARY INFORMATION:** The United States Marshals Service Internal Affairs System, JUSTICE/USM–002, is being published in full text in the Notice section of today's **Federal Register**.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a ''significant impact on a substantial number of small entities.''

### List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: October 22, 1999.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

## PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.101 by revising paragraphs (e) introductory text, (e)(1), (f)(1), and (f)(3); by redesignating paragraphs (f)(7), (f)(8) and (f)(9) as paragraph (f)(8), (f)(9) and (f)(10) and adding new paragraph (f)(7) to read as follows:

**§ 16.101 Exemption of U.S. Marshals Service Systems—limited access, as indicated**

* * * * *

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e)(5), (e)(8), (f) and (g).

(1) Internal Affairs System (JUSTICE/USM–002)—Limited access.

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(2) or (k)(5). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally.

(f) * * *

(1) From subsections (c)(3) and (d) to the extent that release of the disclosure accounting may impede or interfere with civil or criminal law enforcement efforts, reveal a source who furnished information to the Government in confidence, and/or result in an unwarranted invasion of the personal privacy of collateral record subjects or other third party individuals.

* * * * *

(3) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with civil or criminal law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law agencies in discharging their law enforcement responsibilities.

* * * * *

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and interfere with the preparation of a complete investigative report or otherwise impede effective law enforcement.

* * * * *

[FR Doc. 99–28630 Filed 11–5–99; 8:45 am]

BILLING CODE 4410–AR–M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

## 36 CFR Chapter XI

**[Docket No. 98–4]**

## Response to Petition for Rulemaking on Classroom Acoustics

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Response to petition for rulemaking on classroom acoustics.

**SUMMARY:** This document responds to a petition for rulemaking on classroom

acoustics. The Architectural and Transportation Barriers Compliance Board (the Access Board) will support the development of a standard on classroom acoustical design by the American National Standards Institute (ANSI) Committee on Noise (S–12), under the secretariat of the Acoustical Society of America (ASA). Resources and technical assistance on classroom acoustics are provided in this document.

**FOR FURTHER INFORMATION CONTACT:** Lois Thibault, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 132 (voice); (202) 272–5449 (TTY). These are not toll-free numbers. Electronic mail address: thibault@access-board.gov.

**SUPPLEMENTARY INFORMATION:**

## Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 2 on the telephone keypad, then 1, and requesting publication C–12. Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication C–12. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also posted on the Board's Internet site at http://www.access-board.gov/rules/acoustic2.htm.

## Background

The Architectural and Transportation Barriers Compliance Board [1] (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 (ADA) to ensure that new construction and alterations of facilities covered by the law are readily accessible to and usable by individuals with disabilities. The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. The guidelines contain scoping provisions and technical specifications for designing elements and spaces that typically comprise a building and its site so that individuals with disabilities will have ready access to and use of a facility. Although ADAAG contains a number of provisions for access to communications, including requirements for text telephones, assistive listening systems, and visible alarms, it does not include provisions for the acoustical design or performance of spaces within buildings and facilities.

On April 6, 1997, the Access Board received a petition for rulemaking from a parent of a child with a hearing loss, requesting that ADAAG be amended to include new provisions for acoustical accessibility in schools for children who are hard of hearing. Several acoustics professionals, parents of children with hearing impairments, individuals who are hard of hearing, and a coalition of organizations representing them had also urged the Board to consider research and rulemaking on the acoustical performance of buildings and facilities, in particular school classrooms and related student facilities.

On June 1, 1998, the Board published a Request for Information (RFI) in the **Federal Register** to gather public input on this issue (63 FR 29679). The Board sought comment on a variety of issues in the notice and indicated that it would determine a course of action after evaluating responses to the notice. Alternatives included research, rulemaking, and technical assistance on acoustical issues. Approximately 100 comments were received in response to the RFI. The preponderance of the comments were from parents of children with hearing impairments and from professionals in acoustics and audiology. Few comments were received from school systems.

A Board review of classroom acoustics also identified several key issues. A third of the school systems cited in a 1995 General Accounting Office study reported that acoustics for noise control was their most serious environmental concern. Studies of elementary and secondary school classrooms revealed that excessive background noise, which competes with the speech of teachers, aides, classmates, and audio educational media, is common even in new classrooms. School construction is again on the increase and much public and governmental attention is now being focused on education issues.

## Comments

Commenters submitted research which showed how high levels of background noise in classrooms compromise speech intelligibility for children with hearing loss and other auditory disabilities and limit the effectiveness of assistive technologies (such as hearing aids, FM systems, and soundfield amplification) for such students, so that their reading, communication, and learning skills may not develop adequately.

Audiologists noted that children, because they are neurologically immature and lack the experience necessary to predict from context, are inefficient listeners who require optimal conditions in order to hear and understand. Those who miss key words, phrases, and concepts because of poor listening conditions must struggle to keep up and may later do poorly academically and suffer from behavior problems. At particular risk are children who are experiencing temporary hearing loss from otitis media (as much as 15% of the school age population, according to a recent Centers for Disease Control analysis), children with mild to moderate permanent hearing losses, children with speech impairments, children who have learning disabilities and central auditory processing disorders, children for whom English is a second language, and very young children generally.

Acoustical consultants confirmed that controlling the reverberation within a classroom and limiting the background noise generated both outside and within a space could provide significant improvement in speech transmission indices (STI) and signal-to-noise ratios (SNR) necessary for optimal performance of assistive technologies. Heating, ventilating, and air conditioning (HVAC) units and systems were identified as primary contributors to classroom noise. It was also noted that self-noise in classrooms can be dramatically reduced with reductions in reverberation time and background noise.

Commenters familiar with school design and construction, including State education agencies, architects, and engineers, agreed that background noise and reverberation could be controlled using standard means and materials of construction. It was noted that new computer software makes it possible to quickly analyze listening conditions under a variety of design, construction, and finishing and equipment choices (basic acoustical design for classrooms

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; the General Services Administration; and the United States Postal Service.

can also be accomplished with pencil-and-paper calculations). Many textbooks, manuals, and guides are available on architectural acoustics, and include values for the noise resistance of wall construction and the sound absorbency of common surfacing materials. Recommendations for limits on reverberation and background noise in classrooms have been included in architectural and engineering texts on acoustics for more than 40 years.

Commenters pointed out that acoustical standards already exist in the model building codes, particularly for housing; in several State education and health department requirements for schools, in requirements for Federal courtroom design and construction, and in the building codes covering school construction in a number of European countries. HVAC equipment is commonly rated for noise output under a number of ANSI protocols, and the Los Angeles Unified School District has recently begun to require manufacturers and installers to observe noise thresholds on HVAC equipment placed in its schools. Two Fellows of the Acoustical Society of America (ASA) noted that the Society had formed a Working Group on Classroom Acoustics in 1997 under the ANSI Committee on Noise (S–12) and recommended that the Board pursue the joint development of a standard for classroom acoustics with the Working Group, which was preparing a draft standard for consideration.

**Action**

Following a detailed analysis of the comments and research submitted in response to the RFI, the Access Board agrees that many classrooms are likely to include children for whom background noise must be controlled in order to optimize listening conditions. Furthermore, the Board has determined that collaboration with the existing ANSI/ASA Working Group on Classroom Acoustics would be the most effective way to develop technical and scoping recommendations for classroom acoustics. On March 10, 1999 the Board voted to support the efforts of the Working Group to draft a common standard for classroom acoustics that will incorporate criteria for children with disabilities. The ASA agreed to broaden the membership of the Working Group to involve other groups, including representatives of school systems, school designers, disability organizations, the U.S. Department of Education, and the Access Board and committed to a 2-year standards development process. The Access Board will fund some administrative costs of the Working Group and will consider additional funding, if necessary. After the standard has been ratified by the Committee on Noise, the Board will pursue its enforceability under the ADA or other statutes. This course of action is consistent with the Board's goal to take a leadership role in the development of codes and standards for accessibility and with the National Technology Transfer and Advancement Act of 1995, which requires Federal agencies to consider the use of private sector standards where appropriate.

In May 1999, the Working Group was expanded with the addition of representatives of the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), Self Help for Hard of Hearing People (SHHH), the American Speech-Language-Hearing Association (ASHA), the American Federation of Teachers (AFT), The American Institute of Architects (AIA), the Council of Educational Facility Planners (CEFPI), the Educational Audiology Association (EAA), the American Academy of Audiology (AAA), the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), and the American Society of Testing and Materials (ASTM). Other members may be added at the discretion of the Working Group co-chairs, the Access Board, and the U.S. Department of Education.

Both the Access Board and the U.S. Department of Education will be active participants in the Working Group. In addition to the Acoustical Society of America (ASA), Working Group members from the acoustical professions represent the Institute of Noise Control Engineering (INCE) and the National Council of Acoustical Consultants (NCAC).

The first meeting of the newly-expanded Working Group was held on May 18, 1999 in Fairfax, VA to consider a draft standard. The next meeting of the Working Group will take place on November 5–6, 1999 in Columbus, OH. Other meetings will be scheduled as required. All meetings will be open to the public. For further information, contact: Charles E. Schmid, Executive Director, Acoustical Society of America, 365 Ericksen Avenue, Suite 324, Bainbridge Island, WA 98110, (206) 842–6001, charles@aip.org. It is expected that a draft standard will be recommended to the Committee on Noise in Spring 2001 for balloting.

Until a standard for classroom acoustics can be implemented, the Access Board offers the following technical assistance for the information of design professionals, schools, parents, and others who seek guidance on how to provide an acoustical environment that supports listening and learning.

**Technical Assistance**

Many factors, including design and construction methods, teaching techniques, and amplification technologies, can affect the listening conditions in a classroom. Primary among them is background noise, of which there are several sources, some more amenable than others to treatment by design and construction means. Self-generated noise, for example, particularly in the lower grades, may be difficult to control. While a quiet room can minimize the need for raising the voice (and carpeting can soften the sound of footfalls and furniture), self-noise can be only partially ameliorated by architectural means. Reverberation—sounds that reflect from hard surfaces and arrive back at the listener's ear at different times—adds to background noise levels and smears the clarity of direct sound, thus reducing speech intelligibility. Fortunately, reverberation is relatively easy and economical to control—even in existing classrooms—by adding absorbent materials to certain room surfaces.

**Speech Intelligibility**

Background noise both competes with and obscures the useful speech and other signals in a classroom. The greater the noise and reverberation in a room, the louder the signal must be to be heard and understood. Speech intelligibility is in part a function of the signal-to-noise ratio (SNR). The SNR at a child's ear is the difference between the loudness of the signal (the teacher's voice, for example, typically about 60 dB) and the loudness of the competing noise in the room, from heating, ventilating, or air conditioning systems or other noise from within or outside the classroom (often measured in the 45–55 dB range in classrooms). And because loudness varies with distance (every doubling of the distance between speaker and listener causes a 6 dB drop in signal loudness), the SNR will vary as a child or teacher moves about the classroom.

Decibel levels are usually measured at 3 feet from the speaker. When there are 6 feet—twice the distance—between speaker and listener, only 54 dB of the 60 dB delivered by the typical teacher reaches the student. At 12 feet, only 48 dB arrive. At 24 feet—the back row of a small classroom—only 42 dB will be audible. In some locations and at some times, the loudness of the background noise in a classroom may well exceed

the loudness of the desired sound signal. Research has shown that children who have temporary and permanent hearing loss need an SNR of at least +15—that is, 15 dB greater than the background noise—for adequate speech intelligibility.

Children with other disabilities will also benefit from good classroom acoustics. In particular, children who receive speech therapy—the most frequently delivered special service in elementary schools '' need good listening conditions for themselves and their listeners. Research suggests that children who have auditory processing, language, and learning disabilities, particularly attention deficit disorders, find it easier to focus on an educational task if the SNR is higher. Audiologists have also called attention to children at risk because of age (young children just acquiring language generally need higher SNR values than adults) and native language (children for whom English is a second language have similar needs). Every student will learn more effectively in good listening conditions, but for children with hearing loss, including the often-undiagnosed temporary losses due to the common, chronic ear infections of childhood, good acoustics are an essential basis for learning and for other remediations necessary to learning.

**Amplification**

Many children with hearing loss will use both personal (hearing aid) and classroom (radio frequency or FM) amplification to maximize SNR values. Amplification technologies can supplement the speech signal but cannot compensate for (or overcome) a poor acoustical environment. To be effective, amplification requires control of reverberation times and background noise. Furthermore, background noise, when amplified, can be painful and disruptive for children with a variety of auditory disabilities.

Many schools are now installing soundfield systems—amplification distributed throughout the classroom—to improve listening conditions for all students, not just those who have hearing impairments. Note, however, that such amplification will add to background noise in work areas within the room and may impinge on adjacent spaces without adequate acoustical barriers in partition walls. In addition, most assistive listening and soundfield systems require that the speaker use a microphone, which may not always be feasible in group situations. Input from other speakers—aides, peers, and audio equipment, for instance—will not generally be amplified, and casual remarks may be missed. Educators recognize that the incidental learning that occurs in a classroom is as important to socialization, skill mastery, and self-esteem as is the formal curriculum delivered by the teacher. And instructional methods are changing to small-group, computer-supported learning that makes it difficult to utilize these amplification technologies. By optimizing basic room acoustics, design professionals can ensure that all children have maximal access to teaching 'signals', both directly and through assistive technologies.

**Design Issues**

The characteristics of good architectural acoustics and the means to achieve good listening conditions in classrooms are well-known and not difficult or costly to apply in new construction and alterations. School architects who have had a standard education in HVAC and acoustical design may not even require the services of the acoustical consultant they would expect to include in a contract for the design of an audiovisual facility, auditorium, or concert hall. Facility and room acoustical design for good listening and learning environments will consider:

- Site, space, and classroom adjacencies that minimize classroom exposure to environmental, equipment, and occupancy noise;
- Room size and proportion for appropriate sound reflection and absorption;
- Slab, ceiling, roof, and wall construction (including doors and windows) that are appropriate barriers to noise;
- HVAC equipment selection, system design, and installation that minimizes structure, duct, and operating noise;
- Finishes selected and located for proper reverberation control, and
- Attention to electronic and radio-frequency interference with assistive devices.

Good detailing, tight specifications, and careful construction and finishing will also be necessary to ensure that the facility and the spaces within it meet design intent. In general, the objectives of classroom acoustical design should be to control and limit background noise and reverberation.

**Background Noise**

Noise can be mitigated at the source, along its path, and at the receiver. A combination of small improvements at each point can often produce the most cost-effective noise reduction. In general, favorable architectural acoustics will depend upon construction that resists the passage of sound, finishes that absorb sound energy, and HVAC design that minimizes noise output.

The now-common practice of heating, cooling, and ventilating classrooms using through-the-wall or roof-mounted units has had a significant and deleterious effect on classroom acoustics. Few manufacturers have yet been motivated to control the noise of fans, compressors, and air movement through grilles that contributes the largest proportion of background noise in most existing classrooms. The research literature is replete with teacher reports of the need to turn off the heating or cooling unit during important lessons. Children with hearing loss must always be seated away from such noise sources and close to the teacher. While retrofit enclosures can achieve a reduction in noise output, it has been found to be a costly fix that few schools will fund. Ducted (and piped) systems with central HVAC equipment are much more suited to noise management through isolation and the manipulation of duct sizing, length, openings, and lining, but are often a casualty of cost-cutting. Unit ventilators are typically specified for hotel and motel guestroom construction where the background noise they contribute helps maintain acoustic privacy between rooms; as currently engineered, they are not appropriate for spaces in which communication is a primary function. What is most needed is a collaboration between schools, designers, and manufacturers to reduce the noise levels of such units, a re-engineering process that is being applied to many appliances and equipment.

Background noise from the exterior environment can be managed with wall construction of appropriate sound resistance and the specification of multi-pane glazing and well-insulated and isolated frames typically required for energy conservation (sound reduction can be enhanced by pairing glass of different thicknesses). Windows and other openings are the weak link in building enclosure. Where exterior noise is significant, it will not be possible to maintain speech intelligibility in classrooms with the windows open.

Background noise can also enter the classroom from adjacent spaces—other classrooms, the gymnasium, cafeteria, or auditorium, and corridors—through walls, doors, plumbing chases, and ducts. Sound-resistant slab, wall, and ceiling construction and well-gasketed, sound-rated doors are the answer here. When designing building alarm systems,

it is a good idea to pair visible (strobe) and audible alarms in classrooms, since room enclosures with high Sound Transmission Class (STC) values may mute corridor bells.

Noise generated within the classroom also contributes to background noise levels. Audio-visual equipment, computers, the pump in an aquarium, even lighting ballasts add decibels to the mix. The self-noise of students working in small groups can be mitigated by increasing absorbent surfaces. Carpeting is used in many elementary schools to quiet the noise of footfalls and furniture shifting by younger children, who need higher SNRs for speech intelligibility. Recent advances in carpet technology have led to the availability of bacteria-resistant floor coverings.

**Reverberation**

Reverberation is the measure of the time (in seconds) that it takes a given sound to decay by 60 decibels. Long reverberation times are not desirable because late-arriving sounds blur speech clarity and increase background noise. However, early sound reflections in rooms can actually reinforce the speech signal and improve SNR if they arrive at the listener's ear within 50 milliseconds. By placing materials to reflect early sound and absorb late-arriving noise, it is possible to optimize the reverberant characteristics of a given room.

A recent paper by Rebecca Reich and John Bradley of the Canadian National Research Council reports on their investigation of classroom reverberation through computer modeling. Using the ODEON room acoustics ray tracing program (version 2.6 for DOS), researchers were able to identify optimum conditions for speech as a reverberation time of 0.5 seconds (the research also showed that speech intelligibility varied only one-half of one percent between reverberations of 0.3 and 0.6 seconds). Nine different placements of material, each with the same total of sound absorption, were tested. When the source position was located at the head of the room, in traditional classroom style, speech clarity was found to be optimal when the absorptive material was located on the upper portions of classroom side and rear walls.

**Interference**

Interference from lighting ballasts, radio frequency sources, HVAC controls, and other electrical, electronic, microwave and even infrared sources can compromise the effectiveness of assistive technologies and has become an increasing problem for many people who are hard of hearing. Young children with hearing loss may not be able to identify and call attention to malfunctioning devices. In extreme cases, such as schools located in the path of transmission towers or equipment, it may be necessary to install shielding in exterior wall and roof assemblies.

**Accessibility Recommendations**

In 1995, the American Speech-Language-Hearing Association (ASHA) published a Position Statement on Acoustics in Educational Settings that called for ''appropriate acoustical environments in all educational settings, to include classrooms, assembly areas, and communications-related treatment rooms''. ASHA's Acoustical Guidelines recommend that:

- Unoccupied classroom noise levels should not exceed 30 dB(A) or a Noise Criteria (NC)-20 curve [2]
- Reverberation times should not exceed 0.4 seconds, and
- The SNR at a student's ear should exceed a minimum of +15.

The ASHA recommendations are backed by substantial research and are the most authoritative on the subject of listening conditions for children who have hearing loss and other disabilities. An extensive bibliography is included. Self Help for Hard of Hearing People (SHHH), an advocacy organization, has endorsed the ASHA guidelines. AG Bell, an organization whose membership is over 50 percent parents of children with hearing loss and includes many professionals who work with children, advises its members to utilize the ASHA guidelines in advocating for an appropriate acoustical environment for children with hearing loss.

**Industry Recommendations and Standards**

Industry coverage of acoustical issues rarely includes discussion of the characteristics of good listening conditions for people who are hard of hearing, although specialists in the design of facilities for people who are elderly have begun to recognize this as a significant issue. Acoustical design for children's environments is not typically distinguished from practices suitable for adults.

Criteria for classroom listening conditions at three levels of quality were recently outlined in ''Goals and Criteria for Acoustical Planning'', a presentation by R. Kring Herbert, FASA, at the 1999 conference ''Eliminating Acoustical Barriers to Learning in Classrooms'' in New York City, organized by the coalition formed to submit comment to the Board's RFI:

| Listening conditions | A-weighted sound level (dBA) | Room criteria (RC), Neutral [1] | RT–60 (seconds) |
|---|---|---|---|
| Desirable (new construction) | 31 | RC–25N | 0.5 |
| Adequate (alterations) | 36 | RC–30N | 0.5 |
| Poor | 41 | RC–35N | 0.5 |

[1] Room criteria ratings were developed to assess the effect on listeners of HVAC noise, which can be annoyingly ''hissy'' (H) in the high frequencies and ''rumbly'' (R) in the low frequencies. Sound pressure levels for RC curves are lower at both extremes (46 dB maximum at 63 Hz and 13 dB maximum at 8000 Hz for RC–20) than NC curves, although they are identical at mid-range (26 dB at 500 Hz).

Textbooks on acoustical design typically contain guidelines for maximum background noise in different occupancies. Recommendations in current publications show a range of 25 dB(A) to 35 dB(A) maximum for the interior sound level in unoccupied classrooms. Most texts do not distinguish between classrooms for children and classrooms for adults. Only Egan, of those consulted in the Board's analysis, considered hard-of-hearing users. Egan recommends a 5 dB reduction in background noise for facilities serving people who have hearing loss. Reverberation times between 0.5 and 0.8 seconds have been recommended for classroom uses.

[2] NC curves weight sound pressure levels across 8 standard frequencies to approximate human perception of sound, which is greater in the high frequencies. To meet NC–20, sound pressure level at the lowest standard frequency (63 Hz) can be as much as 50 dB, while at the highest frequency (8000 Hz) it can be no more than 16 dB).

The American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) in its 1995 Handbook suggests a Room Criteria maximum of RC–40N for small classrooms (<750 SF) and RC–35N for larger classrooms. This is considerably higher than most acoustical textbooks recommend, and recognizes no adjustment for classrooms for children or for people who have hearing loss.

The American National Standards Institute (ANSI) in S12.2–1995, ''Criteria for Evaluating Room Noise'' suggests RC–25–30 for lecture halls and classrooms and RC–35–40 for open plan facilities (where it is significantly more difficult to control background noise). Again, no adjustment is suggested for younger listeners or those who have hearing impairments.

**Acoustical Modeling and Measurement**

Computer modeling is a useful way to project the effects of various design decisions and materials selections on the speech intelligibility of a classroom. Professional engineering software for acoustics analysis has been used for many years in the design of performance halls. New user-friendly software packages are now becoming available to assist non-specialists to determine reverberation time and specify proper locations and areas of absorbency.

Both background noise and reverberation time can also be calculated from relatively simple equations contained (and explained) in most acoustics texts. Editions of M. David Egan's text ''Concepts in Architectural Acoustics'' has been a standard reference work for students of architecture since 1972. Tables of material and assembly characteristics needed for acoustics computations, including values for absorbency, sound transmission, impact isolation and other factors, are published in many textbooks; 'Part IX Acoustics', in ''Mechanical and Electrical Equipment for Buildings'', by Stein, Reynolds, and McGuinness, has been an assigned text for architecture and engineering students through eight editions. Many manufacturers of acoustical finishes and products also provide details on wall, partition, slab, ceiling, and roof design in catalogs and product data sheets. ''Architectural Graphic Standards'' and ''Timesavers Standards'', key resources for design professionals, both contain basic information on architectural acoustics and noise control, including design and construction details and noise reduction values.

Background noise in existing facilities can be metered on several scales, including the A scale, which is adjusted for human hearing. Simple inexpensive devices may be adequate to determine the existence of an acoustical problem, but more sophisticated and costly devices are necessary to perform an acoustical analysis. Reverberation meters also exist, although they do not seem to be much used by consultants.

**Standard-Setting and Regulation of the Acoustical Environment**

Acoustical standards are of two general types: performance standards, usually combined with a testing protocol, as with ANSI and ASTM standards, or design and construction standards that require a specified sound absorbency or sound transmission or resistance value in building elements—ceilings, walls, windows—known through prior testing to achieve certain results.

Because design, construction, and use all affect the acoustics of a space, design professionals are understandably wary of single-number requirements for reverberation and background noise. A 5 dB difference in room performance could be due to meter quality, changes or omissions in construction, lack of equipment maintenance, teacher fatigue, or even a new flight pattern at a nearby airport.

Sweden, Portugal, Germany, and Italy all have acoustical standards for educational facilities. The Swedish standard is based upon room area and absorbency values for ceiling tiles (the higher the absorbency rating of the material, the less area is required) and on the sound transmission class of wall, floor, and roof/ceiling assemblies. Italy's standard prohibits school construction where environmental noise exceeds certain levels (as, for example, near airports, rail lines, and highways). Research is underway in Great Britain to establish classroom standards for children who are hard-of-hearing.

In the United States, the New York State Department of Education published a manual for classroom design and construction that sets 35 dB(A) as a background noise 'objective' for State school construction. Washington State Department of Health regulations also limit background sound to 35 dB(A) in classrooms. The Los Angeles Unified School District has attempted to limit noise from through-the-wall and rooftop HVAC units through their purchasing program, specifying a 35 dB maximum for equipment noise. The Access Board understands that the School District has not been able to identify a manufacturer of complying units. The District hopes that purchasing volume may encourage manufacturers to develop quieter models.

The model codes (BOCA, UBC, SBC), several state departments of education or health, and the Department of Housing and Urban Development have already adopted acoustical standards for multifamily residential occupancies that establish minimum values for Sound Transmission Class (STC) and Impact Isolation Class (IIC) of wall and slab/roof assemblies. Multifamily housing in California is subject to design and construction standards for acoustical performance. Environmental (exterior) noise is also limited by regulation in many jurisdictions, and others require construction that will provide an interior noise level of no more than 45–55 dB.

**Resources**

There are many other resources available for parents, schools, audiologists, advocates, and design professionals who wish to improve their understanding of issues in classroom acoustics. A coalition of organizations assembled in 1998 to respond to the Access Board's Request for Information (RFI) maintains a lively listserv and archive at classroomacoustics@onelist.com and contains links to other sites of interest. Professional members include the Acoustical Society of America, Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), the American Academy of Audiology (AAA), the American Speech-Language-Hearing Association (ASHA), the Educational Audiology Association (EAA), the National Council of Acoustical Consultants (NCAC), Self Help for Hard of Hearing People (SHHH), and the Council of Educational Facility Planners, International (CEFPI). The U.S. Department of Education maintains a National Clearinghouse on Education Facilities. Its website on classroom facility design at http://edfacilities.org includes references to research and publications on classroom acoustics.

Additional reading and reference material, including electronic links to other websites of interest, will be posted on the Access Board's website at http://www.access-board.gov/rules/acoustic3.htm.

**June I. Kailes,**

*Chair, Architectural and Transportation Barriers Compliance Board.*

[FR Doc. 99–28941 Filed 11–5–99; 8:45 am]

BILLING CODE 8150–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[AZ 086–0018b; FRL–6468–7]**

### Approval and Promulgation of State Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from residential wood combustion.

The intended effect of this action is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, EPA has published a direct final rulemaking fully approving these revisions without prior proposal because the Agency views them as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

**DATES:** Comments must be received in writing by December 8, 1999.

**ADDRESSES:** Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

**FOR FURTHER INFORMATION CONTACT:** Patricia Bowlin, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:** This document concerns Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 4, 1999. For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register.**

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 25, 1999.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 99–28883 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OK–3–1–5201b; FRL–6470–5]**

### Approval and Promulgation of Implementation Plans; Oklahoma; Visibility Protection

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to take direct final action approving a revision to the Oklahoma State Implementation Plan (SIP). The revision concerns approval of the Oklahoma Visibility Protection Plan for the Federal Class I area. The EPA is also proposing to remove the disapproval of the Oklahoma SIP and resultant Federal Implementation Plan for failure to meet the requirements of section 169A of the Federal Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Written comments must be received by December 8, 1999.

**ADDRESSES:** Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

**FOR FURTHER INFORMATION CONTACT:** Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

**SUPPLEMENTARY INFORMATION:** This document concerns approval of the Oklahoma Visibility Protection Plan for the Federal Class I area. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 27, 1999.

**Myron O. Knudson,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 99–29070 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–U

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–7302]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base

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

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978. 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367. 3 CFR, 1979 Comp., p. 376. § 67.4.

2. The table published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Arkansas | Perry County and Incorporated Areas. | Cypress Creek | Approximately 4,200 feet downstream fo Highway 9. | None | *294 |
| | | | Approximately 2,000 feet upstream of Johnson Road. | None | *294 |
| | | Haydou Branch | At confluence with Cypress Creek | None | *294 |
| | | | Approximately 2,200 feet upstream of Adelle Road. | None | *357 |
| Maps are available for inspection at the County Courthouse, Main Street & Highway 60, Perryville, Arkansas. | | | | | |
| Send comments to the Honorable George C. McNeal, Perry County Judge, P.O. Box 358, Perryville, Arkansas 72126. | | | | | |
| Maps are available for inspection at Town Hall, 104 South Johnson Street, Perry, Arkansas. | | | | | |
| Send comments to The Honorable Willie Summers, Mayor, Town of Perry, P.O. Box 36, Perry, Arkansas 72125. | | | | | |
| California | Amador County (Unincorporated Areas). | Sutter Creek | At Old Stockton Road | None | *271 |
| | | | Approximately 2,780 feet upstream from Preston Avenue (Highway 104). | None | *313 |
| | | Sutter Creek Overflow | Approximately 230 feet upstream of Stockton Road. | None | *259 |
| | | | Approximately 2,400 feet upstream from the Southern Pacific Railroad. | None | *279 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps are available for inspection at Amador County Planning Department, 500 Argonaut Lane, Jackson, California. | | | | | |
| Send comments to The Honorable Louis Boitano, Chairperson, Amador County Board of Supervisors, 500 Argonaut Lane, Jackson, California 95642. | | | | | |
| California | Ione (City) Amador County. | Sutter Creek | Approximately 11,880 feet upstream of mouth. | *270 | *271 |
| | | | Approximately 2,160 feet upstream of Preston Avenue. | None | *312 |
| | | Sutter Creek Overflow | Approximately 1,820 feet downstream of Depot Road. | *279 | *278 |
| | | | At its divergence from Sutter Creek | *304 | *302 |
| Maps are available for inspection at P.O. Box 398, Ione, California. | | | | | |
| Send comments to The Honorable Tom Hays, Mayor, City of Ione, Box 398, Ione, California 95640. | | | | | |
| Iowa | Harrison County (Unincorporated Areas). | Missouri River | Approximately 20,000 feet downstream of Highway 30. | None | *1,005 |
| | | | Approximately 10,000 feet upstream of 120th Street. | None | 1,032 |
| Maps are available for inspection at the Harrison County, Emergency Management Agency, 116 North 2nd Avenue, Logan, Iowa. | | | | | |
| Send comments to The Honorable Robert Smith, Chairperson, Harrison County Board of Supervisors, 111 North 2nd Avenue, Logan, Iowa 51546. | | | | | |
| Iowa | Swisher (City) Johnson County. | Swisher Creek | Approximately 16,000 feet above mouth | None | *747 |
| | | | Approximately 19,600 feet above mouth | None | *757 |
| Maps are available for inspection at City Hall, 66 Second Street, Swisher, Iowa. | | | | | |
| Send comments to The Honorable Scotti Grabe, Mayor, City of Swisher, 66 Second Street, Swisher, Iowa 52338. | | | | | |
| Kansas | Leavenworth (County) Unicorporated Areas. | Tonganoxie Creek | Approximately 4,500 feet downstream of Washington Street. | *834 | *834 |
| | | | Approximately 3,800 feet downstream of Washington Street. | *836 | *835 |
| | | | Approximately 1,700 feet upstream of 218th Street. | *863 | *863 |
| | | Unnamed Tributary #3 | Approximately 1,925 feet from confluence with Tonganoxie Creek. | None | *863 |
| | | | Approximately 4,450 feet upstream from its confluence with Tonganoxie Creek. | None | *872 |
| Maps are available for inspection at the Leavenworth County Courthouse, 300 Walnut, Leavenworth, Kansas. | | | | | |
| Send comments to The Honorable Robert Adams, Chairperson, Leavenworth County, Board of Commissioners, 300 Walnut, Leavenworth, Kansas 66048. | | | | | |
| Kansas | Tonganoxie (City) Leavenworth County. | Tonganoxie Creek | Approximately 4,500 feet downstream of Fourth Street. | *843 | *843 |
| | | | Approximately 3,300 Feet downstream of Fourth Street. | None | *843 |
| | | | Approximately 100 feet upstream of 218th Street. | *863 | *862 |
| | | Unnamed Tributary #3 | At confluence with Tonganoxie Creek | None | *863 |
| | | | Approximately 1,925 feet upstream of confluence with Tonganoxie Creek. | None | *863 |
| Maps are available for inspection at City Hall, 321 S. Delaware, Tonganoxie, Kansas. | | | | | |
| Send comments to The Honorable John Franiuk, Mayor, City of Tonganoxie, P.O. Box 326, Tonganoxie, Kansas 66086. | | | | | |
| Nevada | Mineral County (Unincorporated Areas). | Corey Creek | Approximately 50 feet downstream of U.S. Highway 95. | None | *4,253 |
| | | | Approximately 3.6 miles upstream of 1 Street in Hawthorne. | None | *5,028 |
| | | Corey Creek Overflow | Approximately 500 feet upstream of State Highway 359. | None | *4,858 |
| | | | @Approximately 1,500 feet upstream of State Highway 359. | None | *4,906 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps are available for inspection at Mineral County Courthouse, Clerk & Treasurer's Office, Corner of 1st and A Streets, Hawthorne, Nevada. Send comments to the Honorable Jackie Wallis, Chairperson, Mineral County Commissioners, P.O. Box 1095, Hawthorne, Nevada 89415. | | | | | |
| Oregon | Clakamas County (Unincorporated Areas). | Tickle Creek | Approximately 2,600 feet downstream of Southeast 326nd Avenue. | None | *672 |
| | | | @Approximately 2,350 feet upstream of Southeast 395th Avenue. | None | *1,011 |
| Maps are available for inspection at the Clackamas County Department of Transportation and Development, 902 Abernathy Road, Oregon City, Oregon. Send comments to the Honorable Bill Kennemer, Chairperson, Board of Commissioners, Clackamas County, 906 Main Street, Oregon City, Oregon 97045. | | | | | |
| Oregon | Sandy (City) Clackamas County. | Tickle Creek | Aproximately 1,980 feet downstream of 362nd Avenue. | None | *684 |
| | | | Approximately 1,620 feet upstream of Highway 211. | None | *946 |
| Maps are available for inspection at the Planning and Dvelopment Department,, 39250 Pioneer Boulevard, Sandy, Oregon. Send comments to the Honorable Linda Malone, Mayor, City of Sandy, 39250 Pioneer Boulevard, Sandy, Oregon 97055. | | | | | |
| Wyoming | Green River (Town) Sweetwater County. | Bitter Creek | Located at confluence of Bitter Creek with Green River. | None | *6,075 |
| | | | Located approximately 2,160 feet upstream of the confluence of Bitter Creek with Green River. | None | 86,086 |
| | | | Approximately 3,200 feet downstream of the Teton Boulevard Bridge. | None | *6,068 |
| | | | Located approximately 6,800 feet upstream of the Union Pacific Railroad Bridge. | None | *6,090 |
| Maps are available for inspection at the Community Develpment Department, 50 East Second North Street, Green River, Wyoming. Send comments to the Honorable Norm Stark, Mayor, Town of Green River, 50 East Second North Street, Green River, Wyoming 82935. | | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 99–29169 Filed 11–5–99; 8:45 am]

**BILLING CODE 6718–04–P**

# Notices

Federal Register
Vol. 64, No. 215
Monday, November 8, 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

### Agricultural Marketing Service

**[FV–00–327N]**

### United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn. Specifically, AMS is providing for the ''individual attributes'' procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); including varietal types of supersweet varieties in the grade standards; replacing dual grade nomenclature with single letter grade designations; removing the recommended minimum drained weight criteria from the grade standards and providing the criteria in the grading manual; removing the score sheet for canned whole kernel corn; and making minor editorial changes. These changes will improve the use of the standard.

**EFFECTIVE DATE:** December 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, P.O. Box 96456; Washington, D.C. 20090–6456; fax (202) 690–1087; or e-mail Karen.Kaufman@usda.gov. The current United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn, along with the changes, are available either through the address cited above or by accessing AMS's Home Page on the Internet at: www.ams.usda.gov/standards/vegcan.htm.

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Canned Whole Kernel Corn do not appear in the Code of Federal Regulations but are maintained by USDA.

AMS received a petition from the National Food Processors Association (NFPA), requesting that the U.S. grade standards for canned whole kernel corn be revised. NFPA represents over 550 food industry companies [1].

NFPA specifically requested that the U.S. grade standards for canned whole kernel corn, which are currently based on cumulative score points, be modified by converting the U.S. grade standards to statistically-based individual attributes grade standards, similar to the U.S. grade standards for canned green and wax beans (58 FR 4295, January 14, 1993).

In addition, NFPA requested the grade standards include other varietal types *i.e.*, supersweet corn. These newer varieties possess flavor, tenderness, and maturity characteristics that vary somewhat from conventional corn. The proposed revision of the grade standards would include the quality characteristics for these varietal types, for example, appearance, cut, flavor and odor, tenderness and maturity, extraneous vegetable material, specified defects, seriously damaged kernels, damaged kernels and pulled kernels.

NFPA also proposed removing the recommended minimum drained weight criteria from the grade standards and relocating it in the Grading Manual for Canned Whole Kernel Corn since drained weight, as such, is not a factor of quality for the purpose of these grades.

[1] Source—USDA, NASS, ASB.

AMS also proposed to change the standard by replacing dual grade nomenclature with single letter grade designations; removing the recommended minimum drained weight criteria from the grade standards and providing the criteria in the grading manual; removing the score sheet for canned whole kernel corn; and making minor editorial changes.

A notice proposing changes to the United States Standards for Grades of Canned Whole Kernel (Whole Grain) Corn was published in the March 4, 1999, **Federal Register** (63 FR 2357). AMS received three comments on the Notice, two (NFPA and Midwest Food Processors Association) in favor of their recommended changes and one (a private industry canner) against the proposed changes to the standards. NFPA and the Midwest Food Processors Association submitted very similar proposals and are in agreement with the proposed changes. The commentor that opposed believed that the proposed change, from cumulative score points, to individual attributes, would create an unfair business environment and ''that the energy and time that it would take to change the Industry to the new standards is unnecessary and does not outweigh the benefits that would be gained''.

AMS believes that revisions to the standard are needed to meet the needs of the industry and that these changes will allow for a more equitable marketing environment for all canned whole kernel corn processors.

Accordingly, based on all the information we have reviewed, AMS is changing the U.S. Standards for Grades of Canned Whole Kernel Corn by providing for the ''individual attributes'' procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); including varietal types of supersweet varieties in the grade standards; replacing dual grade nomenclature with single letter grade designations; removing the recommended minimum drained weight criteria from the grade standards and provide the criteria in the grading manual; removing the score sheet for canned whole kernel corn; and making minor editorial changes.

This revision becomes effective 30 days after date of publication of this notice in the **Federal Register**.

**Authority:** 7 U.S.C. 1621–1627.

Dated: November 2, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–29211 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Intent To Prepare Environmental Impact Statement, South Fourth of July Timber Sale

**SUMMARY:** The Salmon-Challis National Forest will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of a proposed timber sale in the South Fourth of July subwatershed in the Panther Creek drainage.

The Salmon/Cobalt Ranger District is proposing to manage forested vegetation on approximately 1,855 acres through commercial timber harvest practices and associated pre-commercial thinning. The Interdisciplinary Team also reviewed the effectiveness of travel management closures in meeting the Forest Travel Plan; the Team recommended some road closure changes or modifications in order to better meet the Travel Plan objectives. It will take approximately three to five years to complete the harvest, firewood gathering, slash disposal and post sale pre-commercial thinning. No timber harvest would occur within PACFISH defined riparian habitat conservation areas. The analysis area is approximately 47,600 acres and is located Township 18 North, Range 18 East; Township 19 North, Ranges 17 and 18 East; Township 20 North, Ranges 17 and 18 East; Township 21 North, Ranges 17 and 18 East; Boise Meridian, Lemhi County, Idaho. The analysis area is completely within the Panther Creek drainage. None of the harvest units are within inventoried roadless areas identified in the Salmon National Forest Land and Resource Management Plan.

**DATES:** Written comments concerning the project described in this notice should be received by December 15, 1999, to ensure timely consideration. No scoping meetings are planned at this time.

**ADDRESSES:** Send written comments to District Ranger Terry Hershey, Salmon/Cobalt Ranger District, RR2, Box 600, Salmon, ID 83467.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the proposed action and Environmental Impact Statement should be directed to Wayne Hecker at 208–756–5100.

**SUPPLEMENTARY INFORMATION:** The Forest Service is seeking information and comments from the Federal, State and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the Draft Environmental Impact Statement and Final Environmental Impact Statement. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**. The Responsible Official is George Matejko, Forest Supervisor, Salmon-Challis National Forest. The decision to be made to whether to harvest National Forest System timber and improve conditions for growth and regeneration of ponderosa pine and lodgepole pine stands. The draft is expected to be available in March of 2000, with a Final Environmental Impact Statement estimated to be completed in June of 2000. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts, *City of Angoon* v. *Hodel, 803 F.2d 1016 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the Draft Environmental Impact Statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality. Persons requesting such confidentiality should be aware that, under the Freedom of Information Act, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be submitted with or without name and address within 10 days.

Dated: October 8, 1999.

**George Matejko,**

*Forest Supervisor.*

[FR Doc. 99–29096 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Klamath Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Klamath Provincial Advisory Committee will meet on November 18–19, 1999, at the Klamath County Community Meeting Room, in the Klamath County Courthouse, 316 Main Street, Klamath Falls, Oregon. On Thursday, November 18, the meeting will start at 9:30 a.m. and will adjourn at 5 p.m. On Friday, November 19, the meeting will start at 8 a.m. and adjourn at 1 p.m. Agenda items for the meeting include: (1) Survey and Manage Update; (2) Total Maximum Daily Load Letter Proposal; (3) Watershed Analysis Prioritization on the Shasta-Trinity National Forests; (4) Subcommittee Reports; and (5) Public Comment Periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468 (voice), TDD 530–841–4573.

Dated: November 1, 1999.

**Margaret J. Boland,**

*Forest Supervisor.*

[FR Doc. 99–29112 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Distance Learning and Telemedicine Loan and Grant Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of application filing deadline.

**SUMMARY:** The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 2000. For FY 2000, $20 million in grants and $200 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) $13 million will be available for grants; (2) $130 million will be available for loans; and (3) $77 million will be available for combination grants and loans ($7 million in grants paired with $70 million in loans).

**DATES:** Applications for grants must be postmarked no later than Friday, March 17, 2000. Applications for FY 2000 loans or combination loans and grants may be submitted at anytime up to September 30, 2000, and will be processed on a first-come, first-serve basis.

**ADDRESSES:** Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division, Telecommunications Program.''

**FOR FURTHER INFORMATION CONTACT:** Orren E. Cameron, Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service, STOP 1550, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 690–4493, Facsimile (202) 720–1051.

**SUPPLEMENTARY INFORMATION:** For FY 2000, $13 million in grants, a combination of $7 million in grants paired with $70 million in loans, and $130 million in loans will be made available for distance learning and telemedicine projects.

Notice is hereby given that under 7 CFR 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 2000 as $350,000. The maximum amount for a loan, generally, that will be considered for funding in FY 2000 is $10,000,000. However, RUS may fund a project greater than $10,000,000 subject to the project?s feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, subparts D, E, F, and G, which establish the policies and procedures for submitting an application for financial assistance. These subparts and an application guide to assist in the preparation of applications are available on the Internet at the following address: ''http://www.usda.gov/rus/dlt/dlml.htm''. Applications guides may also be requested from RUS by contacting one of the following Area Offices: Eastern Area, USDA—RUS, Phone: (202) 690–4673; Northwest Area, USDA—RUS, Phone: (202) 720–1025; Southwest Area, USDA—RUS, Phone: (202) 720–0800.

Each application will be reviewed for completeness in accordance with 7 CFR part 1703, subparts D, E, F, and G. The applicant will be notified within 15 working days of receipt of the results of this review, citing any information needed to complete the application. It is suggested that grant applications be submitted prior to the deadline to ensure they can be reviewed and considered complete by the deadline.

Dated: November 3, 1999.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 99–29117 Filed 11–5–99; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Quarterly Survey of Residential Alterations and Repairs.

*Form Number(s):* SORAR–705.

*Agency Approval Number:* 0607–0130.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 2,400 hours.

*Number of Respondents:* 2,400.

*Avg Hours Per Response:* 15 minutes.

Needs and Uses: The Census Bureau conducts the Quarterly Survey of Residential Alterations and Repairs to collect information on real-property improvements and repairs from a sample of owners or designated representatives of rental or vacant residential housing units. We mail this survey quarterly to respondents over a one-year period. We use data gathered in this survey as a component to our published estimates of expenditures for residential upkeep and improvement. Data on improvements and repairs to owner occupied housing units are gathered in the Consumer Expenditures Survey and are also incorporated into published estimates. Estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts, and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

This submission requests a three year extension of the current expiration date. The only change is a 20 percent increase in sample size due to an equivalent sample size increase in the Consumer Expenditures Survey, from which the Quarterly Survey of Residential Alterations and Repairs obtains its sample.

*Affected Public:* Individuals or households, businesses or other for-profit organizations, State, Local or Tribal Government.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, Section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 2, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99–29115 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket No. 50–99]**

### Foreign-Trade Zone 77—Memphis, TN, Expansion of Manufacturing Authority—Subzone 77B Brother Industries (U.S.A.) Inc., (Postage Franking Machines and Electronic Business Equipment), Shelby County, Tennessee

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of FTZ 77, requesting on behalf of Brother Industries (U.S.A.) Inc. (Brother), to expand the scope of manufacturing authority under zone procedures within Subzone 77B, at the Brother plant in Shelby County, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 18, 1999.

Subzone 77D was approved by the Board in 1995 at two sites in Bartlett, Tennessee (Shelby County): *Site 1*—a 25-acre manufacturing facility at Brother Boulevard and Highway 64, and *Site 2*—a 20-acre warehouse facility at 3141 Appling Road, with authority granted for the manufacture of electric and automatic typewriters and word processors (Board Order 774, 60 FR 48100, 9/18/95).

Brother is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 77B to include postage franking machines and electronic business equipment. At the outset, the company is expecting to manufacture postage franking machines (HTSUS 8470.90—duty-free). Brother is also requesting to include in its scope of authority other electronic business equipment that it may produce in the future, including computer printers, facsimile machines, multifunction printer/facsimile/copier machines, labeling and barcode printers, and printer supplies. Foreign-sourced materials may include the following items: ink cartridge assemblies, printing ink, polyacetals and epoxide resins, plastic tubes, hoses and fittings, rubber and plastic self-adhesive film, friction tape, transmission belts, paper pulp filter blocks, screws, washers, bolts, springs, parts and accessories of calculators, cash registers and postage franking machines, electromechanical devices with self-contained motors, computer subassemblies and parts, ball or roller bearings, transmission shafts, electric motors and generators, transformers, adaptors, capacitors, resistors, printed circuit boards (PCBs), PCB shield plates, printed wiring boards, surge arrestors, electrical switching equipment, semiconductor devices, integrated circuits, insulated wire and cable, wire and cable fittings, and liquid crystal devices. Foreign-sourced materials will account for, on average, 50 percent of the postage franking machine's value.

FTZ procedures would exempt Brother from Customs duty payments on foreign components used in export production (some 10% of production). On its domestic sales, Brother would be able to choose the lower duty rate (duty-free to 8.7%, mostly duty-free) that applies to the finished products for the foreign components noted above (duty-free to 12.5%, weighted average for postage franking machines is 1.3%). FTZ procedures will also help Brother implement a more cost-effective system for handling Customs requirements (including weekly entry filings, reduced brokerage fees and Customs merchandise processing fees). The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 7, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 24, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce, Export Assistance Center, Buckman Hall, 650 East Parkway South, Suite 348, Memphis, Tennessee 38104.

Dated: October 27, 1999.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 99–29201 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–557–805]**

### Extruded Rubber Thread From Malaysia; Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request by the petitioner and three producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd, Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1997, through September 30, 1998.

We have preliminarily determined that sales have been made below the normal value by three of the four companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments

in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Shawn Thompson or Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on extruded rubber thread from Malaysia (63 FR 54440).

In accordance with 19 CFR 351.213(b)(1), on October 9, 1998, the petitioner, North American Rubber Thread, requested an administrative review of the antidumping order covering the period October 1, 1997, through September 30, 1998, for the following producers and exporters of extruded rubber thread: Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./ Filmax Sdn. Bhd. (Heveafil), Rubberflex Sdn. Bhd. (Rubberflex), and Rubfil Sdn. Bhd. (Rubfil). On October 27, 1998, Filati, Heveafil, and Rubfil also requested an administrative review.

On November 30, 1998, the Department initiated an administrative review for Filati, Heveafil, Rubberflex, and Rubfil (63 FR 65748 (Nov. 30, 1998)) and issued questionnaires to each of these companies on December 9, 1998.

In February and March 1999, we received responses from Filati, Heveafil, and Rubberflex. We received no response from Rubfil. Because Rubfil did not respond to the questionnaire, we have assigned a margin to Rubfil based on facts available. For further discussion, see the ''Facts Available'' section, below.

In June and July 1999, we issued supplemental questionnaires to Filati, Heveafil, and Rubberflex. We received responses to these questionnaires in September 1999.

In October 1999, we issued additional supplemental questionnaires to the three respondents. We received responses to these questionnaires in October 1999.

## Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

## Period of Review

The period of review (POR) is October 1, 1997, through September 30, 1998.

## 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's regulations are to the regulations at 19 CFR part 351 (1998).

## Facts Available

### *A. Use of Facts Available for Rubfil*

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1998. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to determine Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate for any respondent in any segment of this proceeding. This rate is 52.89 percent. We find that the rate of 52.89 percent, which was assigned in a prior administrative review, is sufficiently high as to effectuate the purpose of the facts available rule (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (Mar. 16, 1998) (*Thread Fourth Review*)).

### *B. Corroboration of Secondary Information*

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. 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 not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers*

*from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (*Fresh Cut Flowers*) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1995–1996 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

**Normal Value Comparisons**

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Heveafil and Rubberflex, as specified in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We compared the constructed export price (CEP) to the NV for Filati, Heveafil, and Rubberflex, as also specified in those sections.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. 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, based on the characteristics listed in sections B and C of our antidumping questionnaire.

**Level of Trade and CEP Offset**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP or CEP. The NV level of trade 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 expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine 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 level of trade 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 level of trade of the export transaction, we make a level-of-trade 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 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers). Based on the information on the record, no level of trade adjustment was warranted for any respondent. Although Filati claimed that the home market level was different, and more remote, than the level of trade of the CEP, we have found the levels of trade to be the same.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 1, 1999.

**Export Price and Constructed Export Price**

For Heveafil and Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

In addition, for all companies, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that the extent of the affiliates' activities performed in the United States in connection with those sales was significant.

*A. Filati*

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 64 FR 12967, 12968 (Mar. 16, 1999) *(Thread Fifth Review); Thread Fourth Review*, 63 FR at 12754; and *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*, 62 FR 54043, 54075 (Oct. 17, 1997).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

*B. Heveafil*

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

*C. Rubberflex*

We based EP or CEP, as appropriate, on the starting price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

**Normal Value**

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 greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Thread Fifth Review*, 64 FR at 12969. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, and rebates.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(c)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were 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 disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than 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) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

*A. Filati*

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price

for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

*B. Heveafil*

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) if the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

*C. Rubberflex*

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act.

For home market price-to-EP comparisons, we made circumstance of sale adjustments for differences in credit expenses, pursuant to section 773(a)(6)(C)(iii) if the Act. For home market price-to-CEP comparisons, we made deductions for home market credit expenses.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1997, through September 30, 1998:

| Manufacturer/exporter | Percent margin |
|---|---|
| Filati Lastex Sdn. Bhd | 0.47 |
| Heveafil Sdn. Bhd | ..... |
| Filmax Sdn. Bhd | 0.17 |
| Rubberflex Sdn Bhd | 6.35 |
| Rubfil Sdn. Bhd | 52.89 |

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, where available. Where the entered value was not available, we estimated the entered value by subtracting international and U.S. movement expenses from the gross sales value. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50) percent. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for Filati, Heveafil, Rubberflex, and Rubfil will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (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 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) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit 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.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213.

Dated: November 1, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–29198 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–822]**

### Certain Helical Spring Lock Washers From the People's Republic of China: Notice of Extension of Time Limit for Administrative Review

**AGENCY:** Import Administration, International trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the fifth review of the antidumping order on certain helical spring lock washers from the People's Republic of China. The period of review is October 1, 1997 to September 30, 1998. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sally Hastings or Annika O'Hara, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–3798, respectively.

**SUPPLEMENTARY INFORMATION:** Because it is not practicable to complete this review within the original time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act''), (*i.e.*, November 10, 1999), the Department of Commerce (''that Department'') is extending the time limit for completion of the final results until May 8, 2000.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 29, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–29199 Filed 11–5–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–833]**

### Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Certain Polyester Staple Fiber From Taiwan

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

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Thirumalai or Alysia Wilson, Office 1 AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4087 or (202) 482–0108, respectively.

#### 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 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

#### Preliminary Determination

We preliminarily determine that certain polyester staple fiber (PSF) from Taiwan is not being sold, nor is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act.

*Case History*

This investigation was initiated on April 22, 1999. *See Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 64 FR 23053 (April 29, 1999) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred:

On May 17, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the product under investigation are materially injuring the United States industry.

In the *Initiation Notice* and in a letter dated May 24, 1999, the Department solicited comments on the scope of the investigation and matching criteria. We received comments on the scope of the investigation and matching criteria from various interested parties May 12, 1999 through June 7, 1999. On June 2, 1999, the Department issued antidumping questionnaires to the two largest producers/exporters of subject merchandise (i.e., Far Eastern Textile Ltd. (Far Eastern) and Nan Ya Plastics Corporation (Nan Ya), collectively referred to as ''the respondents''), as indicated by information on the record of the proceeding at that time.

The respondents submitted their initial responses to the questionnaire July 2 through 29, 1999. The petitioners submitted comments on these responses. After analyzing the responses and the petitioners' comments, we issued supplemental questionnaires to the respondents on August 6, 1999. We received the narrative responses to these supplemental questionnaires August 12 through 27, 1999, and the associated databases on September 3, 1999. On September 14, 1999, we asked respondents to provide explanations for all of the updates and changes to their databases submitted September 3. 1999. The respondents submitted their explanations on September 17 and 20, 1999. On October 13, 1999, the petitioners submitted additional comments on respondents' questionnaire responses. The Department issued another supplemental questionnaire to Nan Ya on October 19, 1999. On October 25, 1999, Nan Ya responded to the last supplemental questionnaire. In addition, the Department requested certain documentation from Nan Ya on September 16, 1999; Nan Ya supplied these documents on October 26, 1999.

The petitioners submitted an allegation that critical circumstances exist with respect to imports of PSF from Taiwan on July 30, 1999. On August 6, 1999, the Department issued critical circumstances questionnaires as part of the supplemental questionnaires.

On August 25, 1999, at the request of the petitioners, the Department extended the preliminary determination until no later than September 29, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 47766 (September 1, 1999). On September 29, 1999, the petitioners requested another extension. In response, the Department extended

the preliminary determination until no later than October 4, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 55248 (October 12, 1999). We further extended the preliminary determination until no later than October 29, 1999 based on petitioners' September 29, 1999 request. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 557001 (October 14, 1999).

*Period of Investigation*

The period of investigation (POI) is April 1, 1998, through March 31, 1999.

This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition.

*Scope of Investigation*

For purposes of this investigation, the product covered is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. Certain polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to these investigations is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments:* As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. Stein Fibers, Ltd. (Stein Fibers), an importer of PSF, requested that the Department modify the scope of investigation to exclude regenerated PSF. Far Eastern and Nan Ya requested that the Department exclude low-melt PSF from the scope of investigation.

Stein Fibers states that under the criteria set forth in the Department's regulations at 19 CFR 351.225(k)(2) (the ''Diversified Products criteria''), regenerated fiber does not fall within the scope of this investigation. First, Stein Fibers asserts that regenerated fiber is a low quality product that is not comparable to U.S.-produced high-quality virgin and recycled PSF. Second, Stein Fibers contends that the quality differences result in different expectations by the ultimate user and in the product's ultimate use. Third, Stein Fibers states that regenerated PSF and U.S.-made virgin or recycled PSF do not compete with each other, and therefore, their channels of trade are dissimilar. Finally, Stein Fibers claims that regenerated fiber is never advertised or displayed while particular brands of U.S.-made virgin or recycled PSF are prominently displayed and advertised in the bedding departments of many department stores.

Gates Formed-Fibre Products, Inc. (Gates), an importer of PSF and interested party in the companion antidumping duty investigation of PSF from the Republic of Korea, stated that the black and colored fiber extruded from textile fiber waste that it imports for the manufacture of substrate for automobile trunk liners is a different class or kind of merchandise than the products covered by the petition. Therefore, Gates argued, black automotive substrate (BAS) should be excluded from the scope of the investigation because (1) it cannot be used for the fill applications described in the petition; (2) it is distinct from other fiber products; (3) it should be excluded based on consideration of the ''Diversified Products'' criteria as set forth in the Department's regulations; (4) the petitioners are considering its exclusion; and (5) if excluded, there would be no risk of circumvention.

With respect to the ''Diversified Products'' criteria, Gates submitted specific comments on each of the criteria. First, Gates claimed that BAS differs from fiber fill product in all possible model matching criteria. Second, Gates stated that the ultimate purchaser would not accept BAS for use in the manufacture of merchandise such as pillows and ski jackets which require fiber fill. Third, Gates asserted that fiber fill is distributed by importers to manufacturers of pillows, comforters, jackets, etc., which then resell their products to distributors and large retailers. BAS is used in the manufacture of trunk liners which are then sold to original equipment manufacturers or their suppliers. Fourth, BAS cannot be used for fill applications. Fifth, products using fiber fill are advertised directly to consumers while BAS for trunk liners is not advertised to consumers.

Far Eastern and Nan Ya note that low-melt PSF acts as an adhesive to hold other fibers together for non-woven batting in high-loft products. Since low-melt PSF itself is not used as filling and is not similar in appearance to cotton or wool, Far Eastern and Nan Ya state that low-melt PSF is clearly outside the scope of investigation. Moreover, Far Eastern and Nan Ya assert that low-melt PSF is outside the scope of investigation when considered in light of the ''Diversified Products'' criteria. First, with respect to product characteristics, low-melt PSF consists of an outer sheath and an inner core as opposed to single-component PSF, according to Far Eastern and Nan Ya. Second, with respect to the expectations of the ultimate user and the ultimate use, Far Eastern and Nan Ya point out that low-melt PSF is used as a bonding agent, not as a filler or loft material. Third, Far Eastern and Nan Ya state that while the channels of trade may be similar, this single criterion is not dispositive. Finally, Far Eastern and Nan Ya note that they supply the U.S. market with a particular specification of low-melt PSF suitable for furniture and bedding manufacturing that is not available domestically in the United States.

Saehan Industries Inc. and Samyang Corporation (Saehan/Samyang), respondents in the companion antidumping duty investigation of PSF from the Republic of Korea, stated that conjugate polyester staple fiber (conjugate PSF) and low-melt polyester staple fiber (low-melt PSF) do not fall under the scope of this investigation. Saehan/Samyang argued that conjugate PSF should be excluded from the scope because there is no U.S. industry producing this product. Saehan/Samyang stated that low-melt PSF is not ''fiber for fill'' and is, thus, not the product targeted by the petitioners. Moreover, Saehan/Samyang claimed that under the ''Diversified Products'' criteria, conjugate PSF and low-melt PSF are outside the scope of this investigation. First, Saehan/Samyang noted that the manufacturing process for conjugate fiber creates a natural curl or spiral, resulting in greater ''fluff.'' ''Regular'' fibers, produced by the petitioners, are straight or mechanically crimped and lack the loft of conjugate fiber.

Second, Saehan/Samyang cited testimony given before the ITC asserting that end-users expect greater loft and a down-like quality from conjugate fibers which is not characteristic of the mechanically-crimped fibers produced by DuPont, one of the petitioners. Third, Saehan/Samyang stated that ''regular'' PSF and conjugate PSF are both used in the production of furniture and home furnishings and, therefore, they are not sold in different channels of trade. However, Saehan/Samyang argued that channels of trade is less significant as a criterion in this case because there are no different channels of trade for any products used in this industry. Fourth, the ultimate use of conjugate PSF is to create a certain level of loft. In the United States, it is either used to provide high-loft characteristics, or it is mixed with ''regular'' fiber to achieve different levels of loft, and these two fibers are not interchangeable. Fifth, Saehan/Samyang stated that although these products are not advertised or displayed in the same way as products sold directly in the retail market, manufacturers and customers treat the two products very differently.

The petitioners objected to the interested parties' requests that regenerated, low-melt, BAS, and conjugate PSF be excluded from the scope of the investigation. According to the petitioners, these products are all PSF, meet the definition of the scope, and are captured within the scope intended by the petitioners. Furthermore, the petitioners claimed that all of these imported products are domestically available. The petitioners added that there is no basis for creating a separate class or kind of merchandise relating to the PSF under consideration.

For purposes of this preliminary determination and in consideration of comments by interested parties, the Department has not modified the scope of this investigation because the current language reflects the product coverage requested by the petitioners, and we have determined that regenerated, low-melt, BAS, and conjugate PSF fall within that scope. On the issue of whether BAS is a separate class or kind of merchandise under the ''Diversified Products'' criteria, we will make a determination in the final determination of this investigation.

*Critical Circumstances*

On July 30, 1999, as amended on August 19, 1999, the petitioners alleged that critical circumstances exist with respect to imports of PSF from Taiwan. In accordance with 19 CFR 351.351(c)(2)(i), since this allegation was filed at least 20 days prior to our preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that, if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

*History of Dumping*

The petitioners submitted information indicating that the European Union (EU) imposed antidumping duties on synthetic fibers of polyester (PSF) from Taiwan in 1992; the EU continues to impose antidumping duties on PSF from Taiwan. Based on the foregoing, we preliminarily determine that there is a history of dumping and material injury with respect to PSF from Taiwan. Therefore, we find that the first criterion has been satisfied. We must now examine whether or not respondents had massive imports.

*Massive Imports*

Far Eastern and Nan Ya submitted data on shipments of subject merchandise to the United States for the eight-month period beginning with December 1998 and ending with July 1999. 19 CFR 351(h) states that, unless the imports during a ''relatively short period'' have increased by at least 15 percent over the imports during a period immediately preceding the filing of the petition, the Secretary will not consider the imports massive. Furthermore, pursuant to 19 CFR 351(i), the Secretary will normally consider a ''relatively short period'' the period beginning on the date the proceeding begins and ending at least three months later. We compared Far Eastern's and Nan Ya's exports in the four-month pre-petition period, December 1998 through March 1999, to their exports in the four months after the filing of the petition, April through July 1999. These comparisons indicate that exports by Far Eastern and Nan Ya did not increase by 15 percent respectively from one period to the next.

Based on these facts, we determine that the second criterion for finding that critical circumstances exist is not satisfied. Therefore, we preliminarily determine that critical circumstances do not exist with respect to exports of PSF from Taiwan by Far Eastern and Nan Ya. We will make a final determination concerning critical circumstances when we make our final determination in this investigation.

*Product Comparisons*

All products produced and sold by the respondents in the home market that fit the definition contained in the Scope of the Investigation section of this notice comprise the foreign like product. (*See* section 771(16) of the Act.) For purposes of this preliminary determination, we have relied on the following criteria, in order, to match U.S. sales of PSF to home market sales of the foreign like product: (1) Fiber composition (conjugate; single component, crimped; low melt; etc.); (2) fiber type (virgin; recycled; blended; regenerated); (3) cross section; (4) finish; and (5) denier. Also, because Nan Ya reported that its sales of PSF in both the home market and in the United States were differentiated by grade of product and Far Eastern reported that its sales were differentiated by color, we compared Nan Ya's sales by grade and Far Eastern's by color.

We first attempted to compare sales of products sold in the U.S. and the home market that were identical with respect to the product matching criteria above. Where we did not find any home market sales of merchandise that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773 (a)(4) of the Act.

*Fair Value Comparisons*

To determine whether sales of certain polyester staple fiber from Taiwan were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average normal values.

*Date of Sale*

We have preliminarily determined that the date of sale for home market and U.S. sales of both Nan Ya and Far

Eastern is the purchase order date/order acceptance memo date. According to the respondents, the material terms of sale rarely changed after this date and any quantity changes made to the sale before shipment were within the industry accepted tolerances.

For some sales by Far Eastern, reported purchase order dates occurred after the date of shipment. For these sales, we have relied on the date of shipment as the date of sale since it is the Department's practice not to rely on a date later than the date of shipment as the date of sale (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664, 30666 (July 8, 1999)).

*Export Price*

In accordance with section 772 of the Act, we based U.S. price on EP. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we found that the respondents made EP sales during the POI. For both respondents, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we used reported gross unit prices on CIF and FOB bases. In accordance with section 772(c)(2) of the Act, we reduced the EP by export taxes, duties and movement expenses, where appropriate. Movement expenses included foreign inland freight, international freight, brokerage and handling, and marine insurance.

*Normal Value*

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent'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 of the subject merchandise, we determined that the home market was viable for both producers.

B. Sales to Affiliated Customers

Nan Ya made sales in the home market to affiliated customers. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to Nan Ya's affiliated customer was on average 99.5 percent or more of the price to its unaffiliated customers, we determined that the sales made to the affiliated customer were at arm's length and included those sales in our calculation of NV pursuant to 19 CFR 351.403(c). The prices to some of Nan Ya's affiliated customers were, on average, less than 99.5 percent of the price to unaffiliated customers and were excluded from the calculation of NV because they were determined not to be at arm's length.

C. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of PSF in Taiwan were made at prices below the cost of production (COP). *See Initiation Notice,* 64 FR at 23055. As a result, the Department has conducted investigations to determine whether the respondents made sales in their home market at prices below their respective COPs during the POI within the meaning of section 773(b)(1) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for PSF based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and packing. We relied on the COP data submitted by each respondent in its cost questionnaire responses with the following exceptions for Nan Ya: (1) We have disallowed the scrap credit for regenerated products because information on the record indicates that Nan Ya has inappropriately allocated the scrap credit to regenerated products and (2) we adjusted Nan Ya's G&A expense rate for other operating costs (*see* the memorandum to the file on the COP and CV adjustments for Nan Ya dated October 29, 1999).

2. Test of Home Market Sales Prices

We compared the adjusted, weighted-average COP to the home market sales of the foreign like product by each respondent. The home market prices were computed net of any applicable discounts, movement charges, taxes, and other direct and indirect selling expenses. We made this comparison in accordance with section 773(b)(1) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities [1] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Act. Because we compared prices to the average COP calculated over the POI, we also determined that such sales were 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.

We found that, for certain models of PSF, more than 20 percent of the home market sales of both respondents were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded the below-cost sales and used the remaining sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of PSF for which there were no comparable home market sales in the ordinary course of trade, we compared EP to the constructed value in accordance with section 773(a)(4) of the Act. *See* Calculation of Normal Value Based on Constructed Value section, below.

D. Calculation of Normal Value Based on Home Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home

[1] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

market that did not fail the cost test. We calculated NV based on ex-works or delivered prices to home market customers. We made deductions from the starting price, where appropriate, for movement expenses and discounts, pursuant to section 773(a)(6)(B). In accordance with section 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we made circumstance of sale (COS) adjustments for direct expenses (*i.e.*, credit expenses, commissions and bank charges), where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments to normal value for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POI-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the home market, we made a downward adjustment to normal value for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the home market.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on home market sales, normal value may be based on the constructed value (CV). Accordingly, for those models of PSF for which we could not determine the normal value based on home market sales, either because (1) there were no sales of a comparable product or (2) all sales of comparison products failed the COP test, we based normal value on the CV.

Sections 773(e)(1) and (2)(A) of the Act provides that the CV shall be based on the sum of the 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. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section, above. We relied on the CV data submitted by each respondent in its questionnaire responses with the exception for Nan Ya of disallowing the scrap credit for regenerated products because information on the record indicates that Nan Ya has inappropriately allocated the scrap credit to regenerated products. As a result, we added the scrap credit back to the regenerated PSF material costs for Nan Ya. (*See* the memorandum to the file on the COP and CV adjustments for Nan Ya dated October 29, 1999.) We based SG&A and profit for each respondent on the actual amounts reported as incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act. For Nan Ya, this entailed reclassifying certain operating expenses pertaining to calculation of the G&A percentage.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, CV.

*Level of Trade*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade as the EP. The normal value level of trade is that of the starting-price sales in the home market or, when normal value is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether normal value sales are at a different level of trade than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customer. If the home market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and home market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

In this investigation, we found that the respondents perform minimal selling functions in the United States and home markets. With respect to each respondent's EP sales, we found a single level of trade in the United States, and a single, identical level of trade in the home market. It was, thus, unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices.

*Currency Conversions*

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent (*see Extruded Rubber Thread From Malaysia; Final results of Antidumping duty Administrative Review,* 64 FR 12967, 12970 (March 16, 1999)). The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice.

*Verification*

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination. At verification, we will closely examine changes between the most recently submitted data sets and prior data sets including, but not limited to: cost allocations, materials usage, unit prices, and expenses. We will also thoroughly check the completeness of respondents' sales reporting.

*Suspension of Liquidation*

Since the estimated weighted-average dumping margins for all examined companies (*i.e.*, both Far Eastern and Nan Ya) are *de minimis*, we are directing the Customs Service not to suspend liquidation of entries of certain polyester staple fiber from Taiwan. These instructions not suspending liquidation will remain in effect until further notice.

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our negative preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

*Disclosure*

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b).

*Public Comment*

For this investigation, case briefs must be submitted no later than November 22, 1999. Rebuttal briefs must be filed no later than November 29, 1999. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a hearing is requested, it will be held on December 3, 1999, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: October 29, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–29207 Filed 11–5–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–839]**

## Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea

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

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Vincent Kane, Craig Matney, or Suresh Maniam, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2815, (202) 482–1778, or (202) 482–0176, respectively.

### 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 (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 refer to the regulations codified at 19 CFR Part 351 (April 1998).

### Preliminary Determination

We preliminarily determine that certain polyester staple fiber (PSF) from the Republic of Korea (Korea) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the Suspension of Liquidation section of this notice.

*Case History*

This investigation was initiated on April 22, 1999 (*see Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 23053 (April 29, 1999) (*Initiation Notice*)). Since the initiation of this investigation, the following events have occurred:

On May 17, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PSF are materially injuring the United States industry.

On May 24, 1999, the Department requested comments from interested parties regarding the criteria to be used for model matching purposes. The parties submitted comments on our proposed model matching criteria on May 26, 1999.

On June 4 and 8, 1999, the Department issued antidumping questionnaires to Samyang Corporation (Samyang), Sam Young Synthetics Co. (Sam Young), and Geum Poong Corporation (Geum Poong) (*see* memorandum dated June 17, 1999, to Deputy Assistant Secretary Richard W. Moreland (Respondent Selection Memorandum), which is on file in Import Administration's Central Records Unit). The respondents submitted their initial responses to the questionnaires between July 2 and 30, 1999. Between July 14 and August 5, 1999, E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a.r.l., d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (hereinafter collectively referred to as ''the petitioners'') filed comments on the questionnaire responses. After analyzing the initial responses and the petitioners' comments, we issued supplemental questionnaires to the respondents between August 9 and 11, 1999. We received responses to these supplemental questionnaires between August 31 and September 3, 1999.

On July 28 and August 10, 1999, the petitioners requested that the Department initiate an investigation of sales below the cost of production (COP) for Samyang and Sam Young, respectively. On August 17 and 18, 1999, based on our review of the petitioners' below cost allegation, we initiated a cost investigation for Samyang and Sam Young (see memoranda dated August 17, 1999 and August 18, 1999, to Senior Director Susan Kuhbach, which is on file in Import Administration's Central Records Unit). On August 19, 1999, we requested that these two companies respond to Section D of the antidumping questionnaires concerning COP and constructed value (CV). We received the responses on September 9, 1999.

On August 16, 1999, the petitioners made a timely request for a postponement of the preliminary determination pursuant to section

733(c)(1)(A) of the Act. On August 25, 1999, the Department extended the preliminary determination until no later than September 29, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 47766 (September 1, 1999). On September 29, 1999, the petitioners requested another extension. In response, the Department extended the preliminary determination until no later than October 4, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 55248 (October 12, 1999). On October 4, 1999, based on petitioners' September 29, 1999 request for extension, the Department further extended the preliminary determination until no later than October, 29, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 55700 (October 14, 1999).

Between September 16 and October 20, 1999, the petitioners requested that the Department use quarterly averaging periods in our analysis rather than annual averaging periods (*see* Fair Value Comparisons section below).

On October 8 and October 15, 1999, we issued Section D supplemental questionnaires to Sam Young and Samyang, respectively. We received responses to these questionnaires between October 15 and October 22, 1999.

*Postponement of Final Determination and Extension of Provisional Measures*

Pursuant to section 735(a)(2) of the Act, on October 4, Samyang requested that, in the event of an affirmative preliminary determination, the Department postpone its final determination in this investigation. On October 6, Sam Young and Geum Poong also requested that, in the event of an affirmative preliminary determination, the Department postpone its final determination in this investigation. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. The respondents have further requested that the Department extend provisional measures from a four-month period to not more than six months. Suspension of liquidation will be extended accordingly.

*Period of Investigation*

The period of investigation (POI) is April 1, 1998, through March 31, 1999.

This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition.

*Scope of Investigation*

For the purposes of this investigation, the product covered is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. Certain polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to this investigation is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

*Scope Comments*

As stated in the *Initiation Notice,* we set aside a period for parties to raise issues regarding product coverage. We received comments on the scope from various interested parties on May 12, 1999, and rebuttal comments on June 7, 1999.

Stein Fibers, an importer of PSF from Korea, argued that under the criteria set forth in the Department's regulations at 19 CFR 351.225(k)(2) to determine whether products are covered or excluded by the scope (also known as the ''Diversified Products'' criteria), regenerated fiber does not fall under the scope of this investigation. First, Stein Fibers asserted that regenerated fiber is a low-quality product that is not comparable to U.S.-produced high-quality virgin and recycled PSF. Second, Stein Fibers contended that the quality differences result in different expectations by the ultimate user and in the product's ultimate use. Third, Stein Fibers stated that regenerated PSF and U.S.-made virgin or recycled PSF do not compete with each other and, therefore, their channels of trade are dissimilar. Finally, Stein Fibers claimed that regenerated fiber is never advertised or displayed, while particular brands of U.S.-made virgin or recycled 1PSF are prominently displayed and advertised in the bedding departments of many department stores.

Gates Formed-Fibre Products, Inc. (Gates), a PSF importer, stated that the black and colored fiber extruded from textile fiber waste that it imports for the manufacture of substrate for automobile trunk liners is a different class or kind of merchandise than the products covered by the petition. Therefore, Gates argued, black automotive substrate (BAS) should be excluded from the scope of the investigation because: (1) It cannot be used for the fill applications described in the petition; (2) it is distinct from other fiber products; (3) it should be excluded based on consideration of the ''Diversified Products'' criteria as set forth in the Department's regulations; (4) the petitioners are considering its exclusion; and (5) if excluded, there would be no risk of circumvention.

With respect to the ''Diversified Products'' criteria, Gates submitted specific comments on each of the criteria. First, Gates claimed that BAS differs from fiber fill product in all possible model matching criteria. Second, Gates stated that the ultimate purchaser would not accept BAS for use in the manufacture of merchandise such as pillows and ski jackets which require fiber fill. Third, Gates asserted that fiber fill is distributed by importers to manufacturers of pillows, comforters, jackets, etc., which then resell their products to distributors and large retailers. BAS is used in the manufacture of trunk liners which are then sold to original equipment manufacturers or their suppliers. Fourth, BAS cannot be used for fill applications. Fifth, products using fiber fill are advertised directly to consumers while BAS for trunk liners is not advertised to consumers.

Far Eastern Textile Ltd. (Far Eastern) and Nan Ya Plastics Corporation (Nan Ya), the respondents in the companion antidumping investigation of PSF from Taiwan, noted that low-melt PSF is used

exclusively for bonding and acts as an adhesive to hold other fibers together for non-woven batting in high-loft products. Since low-melt PSF itself is not used as filling and is not similar in appearance to cotton or wool, Far Eastern and Nan Ya stated that low-melt PSF is clearly outside the scope of investigation. Moreover, Far Eastern and Nan Ya asserted that low-melt PSF is outside the scope of investigation in consideration of the ''Diversified Products'' criteria set forth in section 351.225(k)(2) of the Department's regulations. First, according to Far Eastern and Nan Ya, with respect to product characteristics, low-melt PSF consists of an outer sheath and an inner core as opposed to single-component PSF. Second, with respect to the expectations of the ultimate user and the ultimate use, Far Eastern and Nan Ya pointed out that low-melt PSF is used as a bonding agent, not as a filler or loft material, which is the expectation of the ultimate purchaser for polyester staple fibers. Third, Far Eastern and Nan Ya stated that while the channels of trade may be similar, the Department has consistently recognized that no single criterion is dispositive. Finally, Far Eastern and Nan Ya noted that they supply the U.S. market with a particular specification of low-melt PSF suitable for furniture and bedding manufacturing that is not available domestically in the United States.

Saehan Industries Inc. and Samyang Corporation (Saehan/Samyang), Korean producers and exporters of PSF, stated that conjugate polyester staple fiber (conjugate PSF) and low-melt polyester staple fiber (low-melt PSF) do not fall under the scope of this investigation. Saehan/Samyang argued that conjugate PSF should be excluded from the scope because there is no U.S. industry producing this product. 1Saehan/Samyang stated that low-melt PSF is not ''fiber for fill'' and is, thus, not the product targeted by the petitioners. Moreover, Saehan/Samyang claimed that under the ''Diversified Products'' criteria, conjugate PSF and low-melt PSF are outside the scope of this investigation. First, Saehan/Samyang noted that the manufacturing process for conjugate fiber creates a natural curl or spiral, resulting in greater ''fluff.'' ''Regular'' fibers, produced by the petitioners, are straight or mechanically crimped and lack the loft of conjugate fiber. Second, Saehan/Samyang cited testimony given before the ITC asserting that end-users expect greater loft and a down-like quality from conjugate fibers which is not characteristic of the mechanically-crimped fibers produced by DuPont, one of the petitioners. Third, Saehan/Samyang stated that ''regular'' PSF and conjugate PSF are both used in the production of furniture and home furnishings and, therefore, they are not sold in different channels of trade. However, Saehan/Samyang argued that channels of trade is less significant as a criterion in this case because there are no different channels of trade for any products used in this industry. Fourth, the ultimate use of conjugate PSF is to create a certain level of loft. In the United States, it is either used to provide high-loft characteristics, or it is mixed with ''regular'' fiber to achieve different levels of loft, and these two fibers are not interchangeable. Fifth, Saehan/Samyang stated that although these products are not advertised or displayed in the same way as products sold directly in the retail market, manufacturers and customers treat the two products very differently.

The petitioners objected to the interested parties' requests that regenerated, low-melt, BAS, and conjugate PSF be excluded from the scope of the investigation. According to the petitioners, these products are all PSF, meet the definition of the scope, and are captured within the scope intended by the petitioners. Furthermore, the petitioners claimed that all of these imported products are domestically available. The petitioners added that there is no basis for creating a separate class or kind of merchandise relating to the PSF under consideration.

For purposes of this preliminary determination and in consideration of comments by interested parties, the Department has not modified the scope of this investigation because the current language reflects the product coverage requested by the petitioners, and we have determined that regenerated, low-melt, BAS, and conjugate PSF fall within that scope. On the issue of whether BAS is a separate class or kind of merchandise under the ''Diversified Products'' criteria, we will make a determination in the final determination of this investigation.

*Selection of Respondents*

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of the subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

On June 7, 1999, we received a request from Sung Lim Company Ltd. to participate as a voluntary respondent in this investigation. On June 17, 1999, we received a similar request from Estal Industrial Company. However, we determined that it was not practicable in this investigation to examine all known producers/exporters of the subject merchandise. Instead we found that, given our resources, we would be able to investigate the three producers/exporters with the greatest export volume (*see* Case History section above). For a more detailed discussion of respondent selection in this investigation, *see* our Respondent Selection Memorandum.

*Critical Circumstances*

On July 30, 1999, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. In accordance with 19 CFR 351.206(c)(2)(i), because this allegation was filed at least 20 days prior to our preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to the first criterion, *i.e.*, a history of dumping and material injury in the United States or elsewhere, the European Union (EU) imposed antidumping duties on synthetic polyester fibers from Korea on January 8, 1993. The merchandise subject to the EU antidumping duty order was classified under Common Nomenclature

(CN) 5503.20.00, which is the equivalent of HTSUS subheading 5503.20.00 and, thus, covers the subject merchandise in the instant investigation. On July 29, 1999, the EU terminated the antidumping duty order.

Based on the recent existence of this order, there is sufficient evidence to determine that there is a history of dumping of the subject merchandise and a history of material injury as a result thereof. Because there is a history of dumping and material injury by reason of dumped imports in the EU of the subject merchandise, the first statutory criterion of the test for finding critical circumstances is met. Therefore, we must consider the second statutory criterion: whether or not the imports of the subject merchandise have been massive over a relatively short period.

In determining whether there are ''massive imports'' over a ''relatively short time period,'' the Department ordinarily bases its analysis on import data for at least the three months preceding (the ''base period'') and following (the ''comparison period'') the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period (*see* 19 CFR 351.206(h)). The Department examines respondent-specific shipment information or aggregate import statistics when respondent-specific shipment information is not available.

To determine whether imports of the subject merchandise have been massive over a relatively short period, we compared each respondent's export volume for the three months prior to the filing of the petition (*i.e.*, January through March 1999) to that during the three months subsequent to the filing of the petition (*i.e.*, April through June 1999). For the ''all other'' exporters, although we found massive imports for the mandatory respondents, in this case we also had usable aggregate import data. Therefore, we performed the analysis using total imports from Korea, less those imports accounted for by the respondents (*see Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24338 (Comment 2) (May 6, 1999)).

Based on our analysis, we preliminarily determine that the increase in imports was greater than 15 percent for each of the respondents. Therefore, because (1) there is a history of dumping and material injury, and (2) each of the respondents had more than a 15 percent increase in import volume, we preliminarily determine that critical circumstances exist for each of the companies under investigation. Also, based on our analysis of the import data as described above, we preliminarily determine that critical circumstances do not exist for the ''all other'' exporters.

We note that Sam Young and Geum Poong have argued that the increase in imports was a direct result of an anticipated, publicized freight rate increase and submitted documentation in support of their argument. In making a determination of whether there have been massive imports for purposes of a critical circumstances determination under 19 CFR 351.206(h), the Department normally examines the volume and value of imports, seasonal trends, and the share of domestic consumption accounted for by the imports. Anticipated increases in freight rates are not among the factors that the Department normally takes into consideration when making such a determination. After reviewing the information submitted by the respondents, we believe that the respondents have failed to demonstrate that increased freight rates are a seasonal trend. Therefore, we preliminarily determine that an increase in freight rates is not relevant for our determination of whether there have been massive imports of the subject merchandise.

We will make a final determination concerning critical circumstances when we make our final determination in this investigation.

*Product Comparisons*

Pursuant to section 771(16) of the Act, all products produced and sold by the respondents in the comparison market that fit the definition contained in the Scope of the Investigation section of this notice and were sold during the POI comprise the foreign like product. For purposes of this preliminary determination, we have relied on the following criteria, in order of significance, to match U.S. sales of PSF to comparison market sales of the foreign like product: (1) Fiber composition (conjugate, single component, crimped, low melt, etc.); (2) fiber type (virgin, recycled, blended, regenerated); (3) cross section; (4) finish; and (5) denier. Also, because Samyang specified grade of product in both the comparison market and the U.S. market, we attempted to make comparisons of the same grade for Samyang (*see* memorandum to file on *Preliminary Determination Calculations for Samyang,* dated October 29, 1999, (Samyang Calculations Memo) which is on file in Import Administration's Central Records Unit).

In making our comparisons, we performed the cost test and disregarded all sales that failed this test (*see* the Results of the COP Test section below). We then attempted to compare products sold in the U.S. and the comparison market that were identical with respect to the product matching criteria above. Where we did not find any comparison market sales of merchandise that was identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the comparison market. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

**Fair Value Comparisons**

To determine whether sales of PSF from Korea to the United States were made at less than fair value, we compared the export price (EP) to comparison market prices or CV, as described in the Export Price and Normal Value sections below.

The petitioners allege that due to a significant change in the value of the won and declining prices during the POI, the Department should use quarterly averaging periods rather than a POI average period. The petitioners cite the Department's determination that there was a ''sustained movement'' in the exchange rate during the POI. Furthermore, the petitioners state that the exchange rate appreciated by 20 to 30 percent over the POI. The petitioners argue that the Department has in the past used different averaging periods to avoid the distortive effects on the dumping analysis when there is a significant change in the exchange rate (*see, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea* (''*Sheet and Strip from Korea*''), 64 FR 30664, 30676 (June 8, 1999)).

With regard to declining prices, the petitioners contend that, for the largest volume control numbers, sales prices in both the U.S. and home market dropped significantly during the POI. The petitioners argue that in past cases, when there was a ''significant and consistent'' price decline in the market, the Department used different averaging periods (*see, Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea* (''*SRAMS*''), 63 FR 8934, 8935 (February 23, 1998). The

petitioners claim that in the *SRAMS* case, unit prices of SRAMS fell by 32 percent during the POI.[1] In this case, since some products had a price decline as high as 40 percent, the petitioners request the Department to use quarterly averaging periods to avoid the combined distortive effects that exchange rate and price changes would have on the dumping analysis if POI averaging was used.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars. However, when a currency has undergone a sustained movement, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period. A sustained movement has occurred when the weekly average of the actual daily rates exceeds the weekly average of the benchmark rates by more than five percent for eight consecutive weeks. The benchmark is defined as the moving average of exchange rates for the past 40 business days (*see* Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996). This adjustment is only required when the foreign currency is appreciating against the U.S. dollar. In this case, the Department found a sustained exchange rate movement in the won during March and April of 1998. We therefore used a fixed exchange rate for a period of 60 days after the ''sustained movement'' (*i.e.*, from May 5 to July 5, 1998).

As noted, the ''sustained movement'' of the won occurred in March and April of 1998. Our POI is April 1998 to March 1999. Therefore, half of the ''sustained movement'' occurred outside the POI. In looking only at the month of April 1998, the won appreciated roughly 8.5 percent.[2] The resulting effect on normal value is minimal in comparison to the effect on normal value caused by the exchange rate decline during November and December of 1997. That decline was the change in currency value that prompted the Department to use different averaging periods in *Sheet and Strip from Korea*. Furthermore, we found that, while the actual exchange rate varied over the POI and at one point appreciated by over 20 percent compared to the beginning of the POI, on average, the actual exchange rate did not appreciate out of the ordinary. For example, the average exchange rate for the last month of the POI was only 13 percent higher than the average exchange rate for the first month. Also, this movement did not occur abruptly.

Because the gradual movement of the exchange rate during our POI differs from the situation which occurred in *Sheet and Strip from Korea*, and because the magnitude of the exchange rate change is not large, we find that the change in the value of the won relative to the dollar is not a basis for adopting a different averaging period.

With regard to the petitioners' claim concerning declining prices during the POI, section 777A(d)(1)(A)(i) of the Act allows the Department to use a weighted average-to-average comparison when comparing export prices to home market prices. Section 351.414(d)(3) of the Department's regulations, which discusses the length of averaging periods, states that the Department normally will use weighted averages for the entire POI, but that when prices differ significantly over the course of the POI, the Department may calculate weighted averages for shorter periods.

In this case, for Samyang, we examined changes in the average monthly gross unit price for the subject merchandise sold in the United States and the average monthly gross unit price for the subject merchandise sold in the home market. For Sam Young, we performed the same analysis, except we examined the average monthly U.S. sales prices and the average monthly gross unit prices for the subject merchandise sold in the Canadian market.[3] In analyzing the data, we did not find a significant and consistent price decline during the POI. While monthly average prices were higher at the beginning of the POI than at the end, several months during the POI showed either price increases or virtually no change at all, while other months showed price decreases. Further, we did not find a significant divergence between the two markets.

In addition to our market-to-market analysis, we also examined, for Samyang, the data on an individual control number basis. We first examined changes in the average monthly prices of the three largest U.S. control numbers (representing a significant percentage of total U.S. sales) and their respective matching home market control numbers. Second, we examined the price trends for the four largest home market control numbers (representing a significant percentage of total home market sales). A similar analysis was performed for Sam Young, using the Canadian price in lieu of home market prices. Because Geum Poong did not have a viable home or third country market, we looked at only the movement of prices in the U.S. market. In analyzing the individual control number data for Samyang, Sam Young, and Geum Poong, we found that there was not a significant and consistent decrease in prices. Prices fluctuated both upward and downward throughout the POI.

Based on our analysis, we find that there was not a significant and consistent decline in prices over the POI (*see* Samyang Calculations Memo, and memoranda to file on *Preliminary Determination Calculations for Sam Young*, dated October 29, 1999 (Sam Young Calculations Memo), and *Preliminary Determination Calculations for Guem Poong*, dated October 29, 1999 (Geum Poong Calculations Memo), which are on file in Import Administration's Central Records Unit). Therefore, in accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average NVs.

*Date of Sale*

Samyang and Sam Young reported that the date on which the material terms of sale were set was the invoice date for sales in both the comparison market and the U.S. market. For its sales in the U.S. market, Geum Poong reported the invoice date as the date on which the material terms of sale were set. As noted above, Geum Poong did not have a viable comparison market. The basis for the companies' reporting invoice date as the date of sale is described below.

Samyang reported that it negotiated price and quantity with its U.S. customers, and that a purchase order or other initial sales agreement document was generated confirming the order. However, according to Samyang, changes in price and quantity occurred after the initial sales document was issued and the terms of sale were not fixed until the invoice was issued. Therefore, Samyang reported its U.S. sales prices based on invoice date. Regarding home market sales, Samyang reported that purchase orders were seldom issued. Consequently, Samyang also reported its home market sales based on invoice date.

Sam Young reported that it negotiated price and quantity with its U.S. and Canadian customers. Once agreement was reached, Sam Young faxed a confirmation to its customer and the customer then issued a purchase order to Sam Young. Sam Young claimed,

[1] See petitioners' submission dated October 20, 1999, at 3. The percentage change in price was derived by calculating unit prices on the basis of import statistics.

[2] Calculated by subtracting the dollar/won rate on April 1, 1998 from the dollar/won rate on April 30, 1998 and dividing the result by the dollar/won rate on April 1, 1998.

[3] Geum Poong did not have a viable home or third country market and, therefore, we analyzed price movements only for its U.S. sales..

however, that changes in price and quantity occurred after the purchase order had been issued and, therefore, price and quantity were not fixed until the date on which the invoice was issued. For this reason, Sam Young initially reported invoice date as the date of sale. For certain comparison market sales, Sam Young used the tax invoice date as the date of sale.

Geum Poong reported that it negotiated price and quantity with its U.S. customers by telephone or by fax. For sales negotiated by fax, once an agreement was reached, a purchase order or order acceptance sheet was issued. However, according to Geum Poong, changes in price and quantity occurred after the order was accepted and the purchase order was issued and that the terms of sale were not fixed until the invoice was issued. Therefore, Geum Poong reported its U.S. sales based on invoice date.

The petitioners questioned all three respondents' use of invoice date as the date of sale. Based on our review of the information submitted, we determined that neither Samyang, Sam Young, nor Geum Poong provided sufficient evidence of significant changes in price and quantity between the issuance of the order confirmation and invoice date. Therefore, on September 14, 1999, we requested that Samyang report its U.S. sales based on initial purchase order date. On September 16, 1999, we requested that Sam Young report U.S. and Canadian sales and that Geum Poong report U.S. sales based on initial order confirmation date. For purposes of this preliminary determination, we used initial order confirmation date as the date of sale for all three respondents' U.S. sales and for Sam Young's Canadian sales. For Samyang's home market sales, since no purchase order was issued, we used the sales reported on the basis of invoice date. We will consider this issue further for purposes of the final determination.

*Export Price*

In accordance with section 772 of the Act, we based U.S. price on EP. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with these definitions, we found that all of the respondents' sales during the POI were EP sales. For all respondents, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the gross unit price shown on sales invoices. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the EP, where appropriate, by movement expenses, including foreign inland freight, international freight, brokerage, export taxes, U.S. customs duties, and other miscellaneous charges. We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act.

*Normal Value*

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise.

Samyang had a viable home market for PSF and reported home market sale for purposes of calculating normal value. Sam Young did not have a viable home market. However, it had a viable third country market and reported third country sales for purposes of calculating normal value. For Geum Poong, which had no viable home or third country market, we compared EPs to CV in accordance with section 773(a)(4) of the Act. See the section on Calculation of Normal Value Based on Constructed Value below.

Adjustments made in deriving the normal values for each company are described in detail in the sections on Calculation of Normal Value Based on Comparison Market Prices and Calculation of Normal Value Based on Constructed Value, below.

*B. Cost of Production Analysis*

Based on the timely cost allegations filed on July 28 and August 10, 1999, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that Samyang's PSF sales made in Korea and Sam Young's PSF sales made to Canada were made at prices below COP. As a result, the Department has conducted investigations to determine whether these respondents made sales in their respective comparison markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for PSF, based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and packing costs. For Samyang, we adjusted reported direct material costs to reflect the market price of inputs purchased from unaffiliated sellers, because cost of production data was not provided by the affiliated suppliers (*see* Samyang Calculations Memo). For Sam Young, we revised the reported per unit total materials costs because we noted an apparent discrepancy in the total production quantity used by Sam Young to calculate its per-unit costs (*see* Sam Young Calculations Memo). For Geum Poong, we revised the reported per unit total materials costs to correct for an apparent discrepancy in its duty drawback adjustment (*see* Geum Poong Calculations Memo). In addition, for all three companies, we revised general and administrative expenses and interest expenses based on our corrections to their reported cost of manufacturing.

2. Test of Home Market Sales Prices

We compared the adjusted, weighted-average, COP for Samyang and Sam Young to its home market or Canadian market sales of the foreign like product. The prices were net of movement charges, taxes, rebates, commissions, and other direct and indirect selling expenses. This is accordance with 773(b) of the Act, and was done to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities [4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined 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. Because we compared prices to

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

the POI average COP, we also determined that such sales were 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.

We found that, for certain models of PSF, more than 20 percent of Samyang's and Sam Young's respective comparison market sales were made within an extended period of time 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 normal value, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of PSF for which there were no comparable comparison market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See* the section on Calculation of Normal Value Based on Constructed Value below.

C. Calculation of Normal Value Based on Comparison Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the comparison market that did not fail the cost test. We calculated NV based on FOB or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for movement expenses and discounts. In accordance with sections 773(a)(6) (A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In addition, we made circumstances of sale (COS) adjustments for direct expenses in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments to NV for physical differences in the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and the subject merchandise, using POI-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV for the lesser of (1) the amount of the commission paid in the comparison market, or (2) the amount of indirect selling expenses incurred in the U.S. market. Company-specific adjustments of NV are described below.

Samyang

We calculated normal value based on FOB or delivered prices to unaffiliated purchasers in the home market and made deductions for the following movement expenses: foreign inland freight and loading fees. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, technical services charges, and bank negotiation fees) and adding U.S. direct selling expenses (credit expenses, letter of credit fees, bank charges, and postage charges) in accordance with section 773(a)(6)(C)(iii) of the Act.

Sam Young

We calculated normal value based on FOB prices to unaffiliated purchasers in the Canadian market and made deductions for the following movement expenses: foreign inland freight, wharfage, container taxes, terminal handling fees, and brokerage and handling. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bill of lading charges, letter of credit fees, wire transfer fees, and document handling fees) and adding U.S. direct selling expenses (credit expenses, bill of lading charges, letter of credit fees, wire transfer fees, and document handling fees) in accordance with section 773(a)(6)(C)(iii) of the Act. We offset commission expenses in accordance with section 351.410(e) of the Department's regulations in the manner described above.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, for Samyang and Sam Young, for those models of PSF for which we could not determine the NV based on comparison market sales, either because (1) there were no sales of a comparable product, or (2) all sales of comparison products failed the COP test, we based NV on the CV. In addition, for Geum Poong, which did not have a viable comparison market, we based NV on CV.

Sections 773 (e)(1) and (e)(2)(A) of the Act provide that the CV shall be based on the sum of the 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. For Samyang and Sam Young, we calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section above. We based SG&A and profit for Samyang and Sam Young on the actual amounts reported as realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. Because there is no viable comparison market for Geum Poong and, hence, no company-specific profit or non-U.S. selling expenses, we calculated Geum Poong's profit and selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act. Specifically, we calculated weighted average amounts for selling expenses and profit based on the selling expenses incurred and profit earned by Samyang and Sam Young in their respective comparison markets on sales in the ordinary course of trade. Consistent with section 351.405(b)(2) of the Department's regulations and section 773(e)(2)(B)(iii) of the Act, this profit amount does not exceed the amount normally realized by exporters or producers in connection with the sale for consumption in the home market of merchandise that is in the same general category of products as the subject merchandise, represented by Samyang's home market profit.

In addition, for each respondent we added U.S. packing costs as described in the Export Price section of this notice.

We made adjustments to CV for differences in COS in accordance with section 773(e)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

*Level of Trade*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or constructed export price (CEP) transaction. The normal value level of trade 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 SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

In this case, the respondents made only EP sales in the United States during the POI. To determine whether normal value sales are at a different level of trade than EP, we examine 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 level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *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 implementing these principles in this investigation, we obtained information from Samyang and Sam Young about the channels of distribution involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments.

Samyang

In this investigation, we found that Samyang has three channels of distribution in the home market and two channels for U.S. sales. In both the U.S. and home markets, Samyang sells to end users and distributors. In the home market, Samyang also sells to distributors which not only distribute PSF, but also use it for their own production. For each of the channels of distribution in the U.S. and home markets, Samyang provides the same selling functions, though it provides the functions to varying degrees. We found that these selling functions were minimal in both the U.S. and home markets.

Because the same selling functions are performed in each channel in each market, despite variations in degree for certain functions, we found a single level of trade in the United States, and a single, identical level of trade in the home market. Thus, it was unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices.

Sam Young

In this investigation, we found that Sam Young has one channel of distribution in the comparison market and one channel in the U.S. market. In both the U.S. and comparison markets, Sam Young sells to distributors. For each of these channels of distribution, Sam Young provides the same selling functions and to the same degree. In both the comparison market and the U.S. market, Sam Young generally makes the same freight and delivery arrangements. Packing is also the same in both markets.

Because the single channel of distribution in the Canadian market is the same as the single channel of distribution in the U.S. market, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market. It was, thus, unnecessary to make any level-of-trade adjustment for comparison of EP and comparison market prices.

Geum Poong

In this investigation, we found that Geum Poong has one channel of distribution in the U.S. market. Geum Poong had no viable home or third country markets. When normal value is based on constructed value, the normal value level of trade is that of the sales from which we derive SG&A expenses and profit (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile,* 63 FR 2664 (January 16, 1998)). For Geum Poong, we based selling expenses and profit on a weighted average of selling expenses incurred and profits earned by Samyang and Sam Young. Because Sam Young's and Samyang's comparison market selling functions do not vary significantly from Geum Poong's U.S. selling functions, we made no level-of-trade adjustment for Geum Poong.

*Currency Conversions*

We made currency conversions in accordance with section 773A of the Act. From early March to early May 1998, there was a sustained movement (appreciation) in the value of the Korean won (*see* Policy Bulletin 96–1, *Notice: Change in Policy Regarding Currency Conversions,* 61 FR 9434 (March 8, 1996)). In accordance with the policy described in the Policy Bulletin, we applied a fixed exchange rate for the 60-calendar day period following the sustained movement. That exchange rate was taken from the last day of the sustained movement period, *i.e.,* the last day of the so-called ''recognition period.''

For the remainder of the POI, we followed the Department's practice of using daily exchange rates from the Federal Reserve Bank to convert foreign currencies into U.S. dollars, except where the daily rate involves a fluctuation. A fluctuation occurs where the actual daily rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of daily rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate.

*Verification*

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of PSF from Korea produced or exported by the companies listed below that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. For companies not listed below (*i.e.,* ''all others''), we are directing the Customs Service to suspend liquidation of all entries of PSF from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

| Exporter/producer | Weighted-average margin (percent) |
|---|---|
| Samyang Corporation | 3.51 |
| Sam Young Synthetics Co. | 6.33 |
| Geum Poong Corporation | 26.39 |
| All Others | 7.99 |

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that

ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

*Disclosure*

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

*Public Comment*

For this investigation, case briefs must be submitted no later than February 15, 2000. Rebuttal briefs must be filed no later than February 22, 2000. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case of rebuttal briefs, provided that such a hearing is requested by any interested party. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a hearing is requested, it will be held on February 25, 2000, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: October 28, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–29208 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–828]**

### Silicomanganese From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (''the Department'') is conducting the first administrative review of the antidumping duty order on silicomanganese from the People's Republic of China (''PRC'') in response to requests by the respondents, Guangxi Bayi Ferroalloy Works (''Bayi''), and Sichuan Emei Ferroalloy Import and Export Co., Ltd (''Emei''). The period of review (''POR'') is December 1, 1997 through November 30, 1998.

We have preliminarily determined that U.S. sales of subject merchandise by Bayi and Emei have been made below normal value (''NV''). Since both Bayi and Emei submitted full responses to the antidumping questionnaires and it has been established that they are sufficiently independent, they are entitled to separate rates. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries from Bayi and Emei.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Timothy Finn or Paige Rivas, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0065 or (202) 482–0651 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 as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

**SUPPLEMENTARY INFORMATION:**

### Background

The Department received a request for administrative review from Bayi and Emei on December 17, 1998. We published a notice of initiation of this review on January 25, 1999 (64 FR 3682).

On January 29, 1999, we issued antidumping questionnaires to Bayi and Emei. The Department received responses from both Bayi and Emei to Section A on March 5, 1999 and Sections C and D on March 22, 1999.

We issued supplemental questionnaires to Bayi and Emei on April 12, 1999. The responses to these supplemental questionnaires were received on May 5, 1999. On July 12, 1999, the Department issued additional supplemental questionnaires to Bayi and Emei. The responses to the second supplemental questionnaires were received on August 2, 1999.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 25, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to November 1, 1999 (64 FR 46350).

On October 12, 1999, Bayi and Emei and petitioner, Eramet Marietta Inc. (''Eramet''), submitted publicly available information and comments for consideration in valuing the factors of production used in our NV calculations.

### Scope of Review

The merchandise covered by this order is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTS''). Some silicomanganese may also currently be classifiable under HTS subheading 7202.99.5040. Although the

HTS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

**Separate Rates**

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market economy (''NME'') countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on four factors concerning whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *see also Sparklers,* 56 FR at 20589.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they established an absence of *de jure* control. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 29572, 29573 (June 5, 1995); *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544 (May 8, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

Evidence relevant to a *de facto* absence of government control with respect to exports is based on whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *see also, Sparklers,* 56 FR at 20589. In the instant review, each respondent has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions and, according to respondents, there is no information on the record suggesting central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, we preliminarily determine that both of the respondents have met the criteria for the application of separate rates.

**Export Price**

We calculated export price (''EP'') in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise warranted, based on the facts of record. We calculated EP based on packed, CIF U.S. port, or FOB PRC port, prices to unaffiliated purchasers in the United States, as appropriate. We also deducted from the starting price, where appropriate, an amount for foreign inland freight and foreign brokerage and handling. As these movement services were provided by NME suppliers, we valued them using Indian rates. *See* ''*Normal Value*'' section below for further discussion.

**Normal Value**

*1. Non-Market Economy Status*

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. As a result, we calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

*2. Surrogate Country*

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (''GDP''), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC. *See Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group II, Office IV,* dated June 24, 1999.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to Silicomanganese. For purposes of the LTFV investigation, we found that India was a significant producer of comparable merchandise. *See Preliminary Results Factors of Production Memorandum from the Team to the File,* dated October 20, 1999 (*Factors Memorandum*). Accordingly, absent evidence to the contrary we continue to find India is a significant producer of silicomanganese based on information submitted by the respondents in their October 1999 submission. Therefore, we have continued to use India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production used in our calculations.

*3. Factors of Production*

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: hours of labor employed; quantities of raw materials required; amounts of energy and other utilities consumed; and representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, publicly available published information on imports of materials into the surrogate country within the POR or most contemporaneous with the POR. Where possible, we calculated the average of these import prices exclusive of taxes for use as the surrogate value. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the *Factors Memorandum*. In accordance with this methodology, we valued the raw materials and inputs as follows:

Respondents have stated that they import manganese ore and purchase domestically produced manganese ore. Imported manganese ore was purchased from a market economy supplier and paid for in a market economy currency. Therefore, we used the market economy price paid to the supplier in accordance with section 351.408(c)(1) of the Department's regulations. For domestic manganese ore with a reported 30 percent purity and manganese rich slag, we used a price quote from an Indian supplier from 1997 for the lowest available grade of manganese ore because 30 percent purity and slag are regarded as low grade manganese.

For dolomite, we relied on 1997 Indian import prices for limestone, a comparable material contained in the September and November issues of *Indian Import Statistics.*

To value coke, we relied on India import prices contained in the September and November 1997, as well as the March 1998, issues of *Indian Import Statistics.*

For certain minor miscellaneous materials (*e.g.*, silicon ore) we were unable to find usable factor values. For purposes of the preliminary results we have not assigned a value for these factors of production. We will continue to search for appropriate factor values for use in the final results and will provide notice and opportunity to comment on such values. *See Factors Memorandum.*

For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (''WPI'') published by the International Monetary Fund (''IMF''). We made further adjustments to account for freight costs between the suppliers and Bayi's and Emei's manufacturing facilities.

In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61977 (November 20, 1997).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

For electricity, we relied upon public information from the 1995 edition of *IEA Energy Prices and Taxes* to obtain an average of prices for electricity provided to all industries in India. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For the reported packing materials (*i.e.*, woven plastic bags), we relied upon Indian import data in the April 1997 through March 1998 issues of *Indian Import Statistics.* We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and Bayi and Emei.

For foreign inland freight, we used the August 1998 truck and rail rates from *Rahul Roadlines,* an Indian inland freight supplier.

For foreign brokerage and handling, we used the average of the rates reported in the public questionnaire response in the Antidumping Duty Investigation. *See Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review,* 63 FR 48184 (September 9, 1998); *See* also *Factors Memorandum.* We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For factory overhead (''FOH''), selling, general, and administrative expenses (''SG&A''), and profit, we used information reported for 1992–1993 in the *Reserve Bank of India Bulletin.* From this information, we were able to calculate factory overhead as a percentage of direct material, labor, and energy expenses; SG&A as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A.

**Interested Party Comments on Factor Valuation**

In their October 16, 1999, factor value submissions, interested parties also provided comment on how certain factor inputs should be valued. For electricity, Bayi and Emei argued that Indian electricity rates are aberrationally high and should be rejected in favor of Indonesian electricity rates. Bayi and Emei argue that Indian electricity rates are controlled by the state, which sets artificially high rates for industrial users in order to subsidize low rates for residential users. As evidence of the aberrational nature of Indian industrial rates, Bayi and Emei present the ratio of residential to industrial rates for India, China, the United States and other countries. They argue that this ratio, 0.34 for India compared with 1.66 for Brazil and 1.69 for the United States, among others, demonstrates the aberrationally high nature of Indian rates. Bayi and Emei also submitted press reports showing the deleterious effect of increases in electricity rates on Indian silicomanganese producers.

We are not persuaded by Bayi and Emei's submission that Indian rates should be rejected in favor of Indonesian rates. We have used Indian electricity rates consistently for many PRC cases, including products for which electricity is a major input, *see e.g., Manganese Metal.* The fact that the state controls electricity rates is not a basis to reject Indian rates as some degree of state control is common in many countries. In addition, a comparison of the ratio of industrial to residential rates between India and other countries is not necessarily meaningful for purposes of selecting sources for factor valuation. Each country has a unique mix of sources of electrical supply (*e.g.*, Hydroelectric, Nuclear, Industrial Self-Generated) as well as a unique mix of users (*e.g.*, residential, agricultural). Moreover, electricity is not generally a traded good. Thus, cross-country comparisons are inappropriate for purposes of factor valuation. Furthermore, unless the record convincingly demonstrates that factor values are unreliable, the Department generally prefers to stay within the same country for factor valuation wherever possible because it leads to more consistent results than picking and choosing factor values from different countries. Accordingly, we continue to value electricity based on Indian data.

For manganese rich slag, Eramet argued that we should consider it a by-product rather than a co-product. Bayi and Emei both produce ferromanganese (in addition to silicomanganese); this

production process generates manganese rich slag as a subsidiary product. Eramet provided invoices from a market-economy producer and a U.S producer showing that manganese rich slag has a significant market value. However, relative to the market value of ferromanganese, it should be considered a by-product and valued in accordance with GAAP. Eramet proposes valuing manganese rich slag by adjusting the price of manganese ore by a ratio to account for differences in manganese content. Eramet calculates this ratio using the above referenced invoices. Bayi and Emei argue that manganese rich slag is a waste product with no commercial value, and as such, no factor input value should be used for it in the NV calculations.

We preliminarily disagree with both parties on this point. Manganese rich slag, used in conjunction with manganese ore, is clearly a major input into the production process of silicomanganese and we have valued it using Indian values. Moreover, the above-mentioned ratio is not a reliable basis for adjusting Indian Import values of manganese ore. *See Factor Memorandum*.

**Preliminary Results of the Review**

We preliminarily determine that the following margins exists for the period December 1, 1997 through November 30, 1998:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Guangxi Bayi Ferroalloy Works | 57.71 |
| Sichuan Emei Ferroalloy Import and Export Co., Ltd | 67.97 |

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. 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 a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries for assessment purposes. Pursuant to 19 CFR 351.212(b)(1), where we analyze and use a company's response, we intend to calculate an importer-specific duty assessment rate by dividing the total amount of dumping margins calculated for sales to each importer by the total number of units of those same sales sold to that importer. The unit dollar amount will be assessed uniformly against each unit of merchandise of that specific importer's entries during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For Bayi and Emei, which both have separate rates, the cash deposit rate will be 57.71 percent and 67.97 percent, respectively; (2) for any previously reviewed PRC and non-PRC exporter with a separate rate, the cash deposit rate will be the company- and product-specific rate established for the most recent period; (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter; and (4) the cash deposit rate for all other PRC exporters will continue to be 150.00 percent, the PRC-wide rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–29203 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–533–810]**

## Stainless Steel Bar From India; Notice of Extension of Time Limit for Administrative Review and New Shipper Review

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

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the fourth administrative review and new shipper review of the antidumping duty order on stainless steel bar from India. The period of review for both segments of the proceeding is February 1, 1998 through January 31, 1999. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189.

**SUPPLEMENTARY INFORMATION:** Because of the extraordinary complicated issues involved in these reviews it is not practicable to complete the reviews within the originally anticipated time limit (*i.e.*, November 1, 1999). Therefore, the Department of Commerce (''the Department'') is extending the time limit for completion of the preliminary results to not later than February 28, 2000, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act''). *See* October 25, 1999, Memorandum from Susan Kuhbach to Richard Moreland on file in the public file of the Central Records Unit, B–099 of the Department.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 25, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–29200 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–588–833]**

## Stainless Steel Bar from Japan: Preliminary Results of Antidumping Administrative Review

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

**ACTION:** Notice of preliminary results of antidumping administrative review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Japan in response to a request from a respondent, Aichi Steel Corporation. This review covers the period February 1, 1998, through January 31, 1999.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Minoo Hatten or Robin Gray, 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) 482–1690 or (202) 482–4023, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

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 (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 19 CFR Part 351 (1998).

### Background

On February 26, 1999, the Department received a request from Aichi Steel Corporation (Aichi) to conduct an administrative review of the antidumping duty order on stainless steel bar (SSB) from Japan. On March 29, 1999, the Department published a notice of initiation of an administrative review of Aichi, covering the period February 1, 1998, through January 31, 1999, in the **Federal Register** (64 FR 14860).

On March 25, 1999, Aichi requested that it be permitted to limit the scope of products reported to include home-market sales of only hot-rolled merchandise, as was permitted in the 97/98 review. On March 30, 1999, we granted Aichi's request, given that Aichi confirmed that the same facts apply in this review that applied in the 97/98 review. As was the case in that review, Aichi claims that there are a limited number of home-market sales of stainless steel bar during the period of review (POR) to which U.S. sales would match when calculating dumping margins. See Preliminary Results Analysis Memorandum from case analyst to file, dated October 19, 1999 (98/99 review), in room B–099 of the main Department building; see also Preliminary Results Analysis Memorandum from case analyst to file, dated February 22, 1999 (97/98 review), in room B–099 for additional details.

On April 28, 1999, Al Tech Specialty Steel Corp., Dunkirk, N.Y., Carpenter Technology Corp., Reading, PA, Republic Engineered Steels, Inc., Massillon, OH, Slater Steels Corp., Fort Wayne, IN, Talley Metals Technology, Inc., Hartsville, SC, and the United Steel Workers of America, AFL–CIO/CLC, collectively the petitioners in the less-than-fair value (LTFV) investigation (hereafter petitioners), requested that the Department determine whether antidumping duties have been absorbed in the event that the subject merchandise was sold during the POR in the United States through an importer affiliated with the respondent. As all of Aichi's sales to the United States during the POR were through an unaffiliated importer, duty absorption was not an issue.

On May 17, 1999, the petitioners requested that the Department initiate a sales-below-cost investigation of Aichi's home-market sales. On June 28, 1999, based on section 773(b)(2)(A)(ii) of the Act, since we disregarded certain home-market sales below the cost of production (COP) in the 97/98 review, we initiated a cost investigation for this review. See *Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review*, 64 FR 36333 (July 6, 1999).

### Scope of Review

The merchandise covered by this review is stainless steel bar (SSB). For purposes of this review, the term ''stainless steel bar'' means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.0005, 7222.19.0005, 7222.11.0050, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

### United States Price

In calculating the price to the United States, we used export price (EP) as defined in section 772(a) of the Act because the subject merchandise was sold to an unaffiliated U.S. purchaser in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of record.

We calculated EP for U.S. sales based on F.O.B. Japan port prices to the United States. We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. We used the shipment date as the date of

sale for the U.S. market because this was the point at which the material terms of sale were determined. See Preliminary Results Analysis Memorandum from case analyst to file, dated October 19, 1999, in room B–099.

Aichi claimed that an upward adjustment to EP was appropriate to account for a ''duty drawback'' program. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632, 47635 (September 10, 1997)), ''we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product.'' As discussed below, because the respondent met these criteria, we have made an adjustment to EP.

Aichi participates in Japan's duty-drawback program through its operation of a ''hozei area,'' which is similar to a bonded warehouse. Aichi posts a bond on all materials that enter the warehouse. If Aichi utilizes the imported materials for the production of merchandise that is exported, Japanese Customs Authority then releases the bond. If the imported materials are not used in the production of exported merchandise, Aichi pays import duties on the materials.

We granted an upward adjustment to EP because Aichi was able to show both (1) a link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product.

No other adjustments to EP were claimed.

**Normal Value**

On March 25, 1999, Aichi requested that the Department limit the product scope of Aichi's reporting requirements as in *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 10445 (March 4, 1999).

On March 30, 1999, the Department granted Aichi's request to report only home-market sales of hot-rolled merchandise given that Aichi's letter confirmed that the same facts apply in this review that applied in the last review.

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value (NV), we compare the respondent'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) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. We matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. (See *Level of Trade* below.)

After disregarding appropriate below-cost sales (see *Cost-of-Production Analysis* below), pursuant to section 773(b)(1) of the Act, we compared the EP sales of individual transactions to the monthly weighted-average price of sales of the most similar foreign like product. Where possible, we based NV on delivered prices to unaffiliated purchasers in the home market. Where applicable, we made adjustments to home-market price for billing adjustments, inland freight, warehousing expenses, discounts and rebates. Subject merchandise sold in the United States was compared to home-market products by applying the following criteria on a hierarchical basis: general type of finish, grade, remelting, type of final finishing operation, shape, and size.

Home-market prices were based on delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. To make COS adjustments, we reduced home-market price by an amount for home-market credit and we increased it by an amount for U.S. credit expenses.

**Level of Trade**

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 103–316, at 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade as the U.S. sales (either EP or constructed export price). When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examine 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 level of trade and the differences affect 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 level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. 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 implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities Aichi performed for each channel of distribution. Aichi reported three channels of distribution in the home market and claimed five levels of trade for its home-market sales—consignment sales to trading companies, consignment sales to direct distributors, non-consignment sales to trading companies, non-consignment sales to distributors and non-consignment sales to end-users.

Based on our analysis of information on the record, we determine that there are no differences with respect to selling functions between consignment and non-consignment sales. Specifically, there are no differences between consignment and non-consignment sales with respect to strategic and economic planning, market research, computer, legal, accounting, audit, business systems development assistance, personnel assistance, engineering

services, research and development technical programs, advertising, procurement and sourcing, sales calls/assistance and post-sale warehousing. The distinction between consignment and non-consignment sales is that, in consignment sales situations, Aichi permits the customer to take possession of the product without requiring that the customer pay for the product until the customer sells to its downstream customer. This distinction, however, does not relate to the nature of the selling activities provided. See Preliminary Results Analysis Memorandum from case analyst to file, dated October 19, 1999, in room B–099. This determination is consistent with the Department's determination on this issue in the previous administrative review (see *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 10445 (March 4, 1999)).

Aichi reported sales to three types of customers in the home market: trading companies, end-users, and distributors. Selling functions performed with respect to sales to trading companies included strategic and economic planning, market research, computer, legal and business-systems development, engineering services and post-sale warehousing. In addition to these functions, other functions performed for sales to end-users included R&D technical programs, advertising, and sales calls/assistance. Distributors also were offered personnel training and manpower assistance in addition to the services offered to trading companies and end-users. Based on these differences, we found that the three types of home-market customers constituted three different levels of trade.

We found that Aichi made EP sales of various models of merchandise through unaffiliated trading companies, a channel of distribution similar to the home-market channel involving sales to trading companies. As with sales through the trading-company channel of distribution in the home market, Aichi performed only a few selling functions when selling merchandise to trading companies that exported the merchandise to the United States. Thus, we found that the level of trade for this U.S. channel of distribution was the same as the level of trade for the home-market trading company channel of distribution. See *Id*.

**Cost-of-Production Analysis**

As stated in the Background section of this notice, the Department initiated a COP investigation for Aichi to determine whether Aichi made home-market sales during the POR at prices below their respective COPs (as defined by section 773(b) of the Act). In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information Aichi provided in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of SSB were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of Aichi's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of Aichi's sales of a given product during the POR were at prices less than the COP, we determined that the below-cost sales were made in substantial quantities within an extended period of time. See sections 773(b)(2)(B) and (C) of the Act. Additionally, based on comparisons of prices to weighted-average COPs for the POR, we determined that the sales were at prices which would not permit recovery of all costs within a reasonable period of time, as defined by section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

**Constructed Value**

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of CV. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Aichi in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we make adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences and level-of-trade differences. For comparisons to EP, we make COS adjustments by deducting home market direct selling expenses from and adding U.S. direct selling expenses to NV.

We calculated CV at the same level of trade as the EP. Therefore we made no level-of-trade adjustment.

**Preliminary Results of Review**

As a result of our comparison of EP and NV, we preliminarily determine a weighted-average dumping margin of 1.72 percent for Aichi for the period February 1, 1998, through January 31, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication.

Parties who submit argument are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/customer-specific assessment value for subject merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of SSB from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Aichi will be the rate established in the final results of this review; (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, or the original 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) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 61.47 percent, the all-others rate established in the LTFV investigation (59 FR 66930 (December 28, 1994)).

The deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–29205 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Wisconsin-Madison, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

*Decision:* Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

*Reasons:* Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

*Docket Number:* 99–011. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Micromanipulator, Model MK1. *Manufacturer:* Singer, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 18, 1999.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 99–29202 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 991027290–9290–01]**

### Application of Marine Biotechnology To Assess the Health of Coastal Ecosystems: Request for Proposals for FY 2000; Correction

**AGENCY:** National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice; Correction.

**SUMMARY:** The National Sea Grant College Program (See Grant) published a document in the **Federal Register** on November 1, 1999, concerning a request for proposals on the ''Application of Marine Biotechnology to Assess the Health of Coastal Ecosystems: Request for Proposals for FY 2000.'' The document contained an incorrect statement regarding the funding that may be requested per year.

**FOR FURTHER INFORMATION CONTACT:** Linda Kupfer 301–713–2434 Ext 154.

### Correction

In the **Federal Register** of November 1, 1999, in FR Doc. 99–28574, on page 58817, in the third column, correct the last sentence in the **SUMMARY** paragraph to read:

**SUMMARY:** * * * ''Proposals may request up to $150,000 per year for a maximum of two years, and each proposal must include additional matching funds equivalent to at least 50% of the Federal funds requested.''

Dated: November 2, 1999.

**Julie Scanlon,**

*Federal Register Liaison, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 99–29106 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–KA–M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Meeting of the Public Advisory Committee for Trademark Affairs

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of meeting.

**SUMMARY:** The Patent and Trademark Office is announcing, in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), an open meeting of the Public Advisory Committee for Trademark Affairs.

**DATES:** The meeting will be held from 10:00 a.m. until 4:00 p.m. on Wednesday, December 8, 1999.

**ADDRESSES:** The meeting will take place at the U.S. Patent and Trademark Office, The Edison Room, 10th floor, Crystal Park 2, 2121 Crystal Drive, Virginia 22202.

**FOR MORE INFORMATION CONTACT:** Sharon Marsh by mail marked to her attention and addressed to Office of the Assistant Commissioner for Trademarks, Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Suite 10B10, Arlington, VA 22202–3513; by telephone at (703) 308–9100, ext. 45; by fax at (703) 308–9395; or by e-mail to sharon.marsh@uspto.gov.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to public observation. Accordingly, seating will be available to members of the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request. The agenda for the meeting is as follows:

(1) Trademark Operation Issues

(2) Policy Issues

(3) Trademark Trial and Appeal Board Issues

(4) Finance

(5) Automation

(6) Domestic Legislation

(7) International Trademark Issues

Dated: November 2, 1999.

**Q. Todd Dickinson,**

*Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 99–29227 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–16–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

November 2, 1999.

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

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

**EFFECTIVE DATE:** November 9, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59942, published on November 6, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 2, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 331 | 1,435,694 dozen pairs. |
| 334 | 175,418 dozen. |
| 335 | 198,506 dozen. |
| 338/339 | 1,803,579 dozen. |
| 340/640 | 3,691,022 dozen. |
| 341 | 2,662,841 dozen. |
| 342/642 | 508,528 dozen. |
| 351/651 | 840,202 dozen. |
| 352/652 | 12,185,314 dozen. |
| 363 | 31,317,869 numbers. |
| 634 | 613,707 dozen. |
| 635 | 393,913 dozen. |
| 638/639 | 1,744,730 dozen. |
| 641 | 492,515 dozen. |
| 645/646 | 255,040 dozen. |
| 847 | 288,040 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29188 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

November 2, 1999.

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

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

**EFFECTIVE DATE:** November 10, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limit for Category 443 is being increased for swing, reducing the limit for Category 315 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63031, published on November 10, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 2, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 315 | 25,919,294 square meters. |
| 443 | 138,916 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29189 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

November 3, 1999.

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

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

**EFFECTIVE DATE:** November 16, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67048, published on December 4, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 3, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 16, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group I | |
| 200–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669pt. [5] and 670, as a group. | 240,064,752 square meters equivalent. |
| Group II | |
| 237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group. | 864,119,832 square meters equivalent. |
| Sublevels in Group II | |
| 359(1) (coveralls, overalls and jumpsuits). | 661,344 kilograms. |
| 633/634/635 | 1,401,229 dozen of which not more than 524,090 dozen shall be in Categories 633/634 and not more than 1,073,486 dozen shall be in Category 635. |
| 644 | 77,651 numbers. |
| 648 | 1,190,600 dozen of which not more than 1,178,310 dozen shall be in Category 648–W [14]. |
| 659(1) (coveralls, overalls and jumpsuits). | 710,755 kilograms. |
| Within Group II subgroup | |
| 336 | 248,970 dozen. |
| 351 | 1,223,522 dozen. |
| 636 | 324,547 dozen. |
| 651 | 333,748 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

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

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

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

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

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

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.99–29193 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 2, 1999.

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

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

**EFFECTIVE DATE:** November 9, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limit for Category 638/639 is being increased by reducing previous special shift added to Category 338, reducing the limit for that category.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 2, 1999.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 338 | 6,054,757 dozen. |
| 638/639 | 271,482 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29187 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

November 3, 1999.

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

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** November 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

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

The current limit for Categories 340/640 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53878, published on October 7, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 3, 1999.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Laos and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to increase the current limit for Categories 340/640 to 181,830 dozen [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Lao People's Democratic Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29194 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 3, 1999.

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

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

**EFFECTIVE DATE:** November 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

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

The current limit for Categories 347/348 is being increased for swing, reducing the limit for Categories 341/

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

641 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59947, published on November 6, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 3, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 341/641 | 173,550 dozen. |
| 347/348 | 551,964 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.99–29195 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

November 3, 1999.

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

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

**EFFECTIVE DATE:** November 15, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69057, published on December 15, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 3, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 15, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group I | |
| 200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group. | 635,083,124 square meters equivalent. |
| Sublevels in Group I | |
| 300/301/607 | 1,835,142 kilograms of which not more than 1,529,285 kilograms shall be in Category 300; not more than 1,529,285 kilograms shall be in Category 301; and not more than 1,529,285 kilograms shall be in Category 607. |
| 363 | 12,996,360 numbers. |
| 619/620 | 15,490,147 square meters. |
| 625/626/627/628/629. | 20,186,396 square meters. |
| Sublevels in Group II | |
| 338/339 | 1,006,040 dozen. |
| 340 | 1,368,117 dozen. |
| 345 | 130,312 dozen. |
| 347/348 | 1,515,365 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W [10]. |
| 436 | 5,353 dozen. |
| 438 | 30,216 dozen. |
| 631 | 5,454,431 dozen pairs. |
| 638/639 | 6,627,128 dozen. |
| 642 | 932,405 dozen. |
| 647/648 | 5,456,952 dozen of which not more than 5,193,775 dozen shall be in Categories 647–W/648–W [11]. |
| Within Group II Subgroup | |
| 342 | 146,128 dozen. |
| 350/650 | 149,016 dozen. |
| 351 | 400,312 dozen. |

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 447/448 | 22,098 dozen. |
| 651 | 467,674 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

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

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[11] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29192 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

November 2, 1999.

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

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

**EFFECTIVE DATE:** January 1, 2000.

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

**SUPPLEMENTARY INFORMATION:**

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

The Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997, May 2, 1997 and December 10, 1997, as amended and extended, concerning textiles and textile products, produced or manufactured in Taiwan, establishes limits for the period January 1, 2000 through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2000 period.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 2, 1999.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997 and May 2, 1997, as amended and extended, between the Governments of the United States and Taiwan, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2000 and extends through December 31, 2000, in excess of the following levels of restraint:

| Category | Twelve-month limit |
|---|---|
| Group I | |
| 200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group. | 584,568,477 square meters equivalent. |
| Sublevels in Group I | |
| 218 | 22,202,235 square meters. |
| 225/317/326 | 39,408,907 square meters. |
| 226 | 7,151,459 square meters. |

| Category | Twelve-month limit |
|---|---|
| 300/301/607 | 1,740,812 kilograms of which not more than 1,450,677 kilograms shall be in Category 300; not more than 1,450,677 kilograms shall be in Category 301; and not more than 1,450,677 kilograms shall be in Category 607. |
| 363 | 12,206,862 numbers. |
| 369–L/670–L/870 | 49,978,771 kilograms. |
| 611 | 3,200,212 square meters. |
| 613/614/615/617 | 19,847,396 square meters. |
| 619/620 | 14,588,143 square meters. |
| 625/626/627/628/629. | 18,982,620 square meters. |
| 669–P | 345,097 kilograms. |
| 669–T | 1,121,640 kilograms. |
| 670–H | 19,138,212 kilograms. |
| Group I subgroup | |
| 200, 219, 313, 314, 315, 361, 369–S and 604, as a group. | 147,246,983 square meters equivalent. |
| Within Group I subgroup | |
| 200 | 717,396 kilograms. |
| 219 | 16,327,229 square meters. |
| 313 | 67,318,045 square meters. |
| 314 | 29,083,124 square meters. |
| 315 | 22,285,085 square meters. |
| 361 | 1,441,092 numbers. |
| 369–S | 487,599 kilograms. |
| 604 | 232,303 kilograms. |
| Group II | |
| 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [9], 359–H/659–H [10], 359–O [11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [12], 659–O [13], 831–844 and 846–859, as a group. | 755,000,000 square meters equivalent. |
| Sublevels in Group II | |
| 237 | 700,905 dozen. |
| 239 | 5,802,703 kilograms. |
| 331 | 512,300 dozen pairs. |
| 336 | 119,415 dozen. |
| 338/339 | 806,896 dozen. |
| 340 | 1,121,150 dozen. |
| 345 | 124,774 dozen. |
| 347/348 | 1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W [14]. |
| 352/652 | 3,168,186 dozen. |
| 359–C/659–C | 1,447,633 kilograms. |
| 359–H/659–H | 4,843,497 kilograms. |
| 433 | 15,392 dozen. |
| 434 | 10,689 dozen. |
| 435 | 25,379 dozen. |
| 436 | 5,053 dozen. |
| 438 | 28,522 dozen. |
| 440 | 5,525 dozen. |
| 442 | 43,783 dozen. |
| 443 | 43,095 numbers. |
| 444 | 61,377 numbers. |
| 445/446 | 136,778 dozen. |
| 631 | 5,064,470 dozen pairs. |
| 633/634/635 | 1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635. |
| 638/639 | 6,565,058 dozen. |
| 640 | 1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15]. |
| 642 | 777,133 dozen. |
| 643 | 512,857 numbers. |
| 644 | 760,376 numbers. |
| 645/646 | 4,107,691 dozen. |
| 647/648 | 5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W [16]. |
| 659–S | 1,601,702 kilograms. |
| 835 | 19,983 dozen. |
| Group II Subgroup | |
| 333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group. | 77,470,514 square meters equivalent. |
| Within Group II Subgroup | |
| 333/334/335 | 307,219 dozen of which not more than 166,411 dozen shall be in Category 335. |
| 341 | 341,620 dozen. |
| 342 | 213,411 dozen. |
| 350/650 | 138,079 dozen. |
| 351 | 355,046 dozen. |
| 447/448 | 21,032 dozen. |
| 636 | 387,350 dozen. |
| 641 | 731,811 dozen of which not more than 256,134 dozen shall be in Category 641–Y [17]. |
| 651 | 445,252 dozen. |
| Group III | |
| Sublevel in Group III | |
| 845 | 852,916 dozen. |

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

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

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

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

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

| Category | Twelve-month limit |
|---|---|

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement concerning imports of textile and apparel products from Taiwan.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated December 8, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

The conversion factors are as follows:

| Category | Conversion factors (square meters equivalent/category unit) |
|---|---|
| 300/301/607 | 8.5 |
| 333/334/335 | 33.75 |
| 352/652 | 11.3 |
| 359–C/659–C | 10.1 |
| 359–H/659–H | 11.5 |
| 369–L/670–L/870 | 3.8 |
| 633/634/635 | 34.1 |
| 638/639 | 12.5 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29191 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

November 2, 1999.

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

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

**EFFECTIVE DATE:** November 12, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limits for Categories 331 and 636 are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69057, published on December 15, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 2, 1999.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 12, 1999, you are directed to increase the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group II | |
| 331 | 496,702 dozen pairs. |
| Within Group II Subgroup | |
| 636 | 392,374 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29190 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

November 2, 1999.

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

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

**EFFECTIVE DATE:** November 10, 1999.

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

**SUPPLEMENTARY INFORMATION:**

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

The current limits for certain categories are being adjusted, variously, for carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 58369, published on October 30, 1998.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 2, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group II | |
| 237, 331–348, 350–352, 359–H [2], 359pt. [3], 431, 433–438, 440, 442–448, 459pt. [4], 631, 633–652, 659–H [5], 659pt. [6], 831, 833–838, 840–858 and 859pt. [7], as a group. | 325,975,858 square meters equivalent. |
| Sublevels in Group II | |
| 334/634 | 645,775 dozen. |
| 335/635/835 | 559,646 dozen. |
| 338/339 | 2,481,168 dozen. |
| 340 | 376,885 dozen. |
| 347/348/847 | 1,059,870 dozen. |
| 638/639 | 1,986,772 dozen. |
| 640 | 541,646 dozen. |
| 647/648 | 1,115,393 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[3] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

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

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

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

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

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–29186 Filed 11–5–99; 8:45 am]

BILLING CODE 3510–DR–F

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Meeting

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of meeting.

**SUMMARY:** The Corporation for National and Community Service gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The Board advises the Director of CCC concerning the administration of the program and assists in the development and administration of the Corps. At this meeting, the Board will discuss the general status of the program and its overall sustainability. The meeting will be open to the public.

**TIME AND DATE:** Tuesday, November 9, 1999, 9 a.m. to 5 p.m.

**PLACE:** The meeting will be held at Corporation Headquarters, 1201 New York Avenue, NW., Washington, DC 20525.

**FOR FURTHER INFORMATION CONTACT:** Ms. Merlene Mazyck, 1201 New York Avenue NW., 9th Floor, Washington, DC 20525. Telephone (202) 606–5000, ext. 137 (T.D.D. (202) 565–2799).

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Mazyck.

Dated: November 3, 1999.

**Thomas L. Bryant,**

*Associate General Counsel.*

[FR Doc. 99–29213 Filed 11–5–99; 8:45 am]

BILLING CODE 6050–28–U

## DEPARTMENT OF ENERGY

### Sandia National Laboratories/New Mexico Final Site-Wide Environmental Impact Statement

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Energy (DOE) announces the availability of the Sandia National Laboratories/New Mexico (SNL/NM) Final Site-Wide Environmental Impact Statement (Site-Wide EIS), DOE/EIS–0281. DOE proposes to continue operating SNL/NM, located in Albuquerque, New Mexico. The Site-Wide EIS evaluates the potential environmental impacts of continuing to operate SNL/NM and incorporates public comments received on the Draft Site-Wide EIS and DOE responses.

**ADDRESSES:** Requests for copies of the Final Site-Wide EIS or for information regarding the document should be directed to Julianne Levings, SNL/NM Site-Wide EIS Project Manager, U.S.

Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400 or by telephone at (505) 845–6201. The Site-Wide EIS is available under the NEPA Analyses Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/. A Spanish translation of the Summary is also available on the DOE NEPA Web Site. The Site-Wide EIS is available for public inspection at the following locations:

University of New Mexico, Government Document Collection, Zimmerman Library, Main Campus, Albuquerque, New Mexico

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, EH–42, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** The Site-Wide EIS incorporates comments received during the public comment period from April 16, 1999 through June 15, 1999. The Site-Wide EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*], the Council on Environmental Quality NEPA regulations [40 CFR part 1500], and the DOE NEPA regulations [10 CFR part 1021]. The Department proposes to continue operating the SNL/NM, which is located in Albuquerque, New Mexico.

DOE has identified and assessed three alternatives for the operation of SNL/NM: (1) No Action, (2) Expanded Operations, and (3) Reduced Operations. In the No Action Alternative, DOE would continue the status quo; that is, operating at planned levels as reflected in current DOE management plans. In the Expanded Operations Alternative, DOE would increase activity at SNL/NM to the highest reasonable level that could be supported by current facilities and includes the potential expansion/construction of new facilities specifically addressed in the Site-Wide EIS. Under the Reduced Operations Alternative, activities would be reduced to the minimum level of operations needed to maintain SNL/NM facilities and equipment in an operational readiness mode.

DOE's Preferred Alternative for SNL/NM, as identified in the Final Site-Wide EIS, is the Expanded Operations Alternative, exclusive of the Microsystems and Engineering Sciences Applications (MESA) Complex. In the Final Site-Wide EIS, DOE added discussion of a developing proposal for a new MESA Complex in order to share with the public information being assembled during the ongoing conceptual design. DOE will prepare an environmental assessment for the MESA Complex when the conceptual design is complete, to determine whether an EIS is required.

The analysis in the Site-Wide EIS indicates that all impacts from the Preferred Alternative would be small except water usage, which contributes to the general groundwater drawdown in the city of Albuquerque. There is little difference in the environmental impacts among the alternatives analyzed.

*Subsequent Document Preparation:* DOE intends to issue a Record of Decision no earlier than 30 days following publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability of the Final Site-Wide EIS, which appeared in the **Federal Register** on October 29, 1999. DOE will publish the Record of Decision in the **Federal Register**.

Issued in Washington, DC, on November 1, 1999.

**Henry Garson,**

*NEPA Compliance Officer, Defense Programs.*

[FR Doc. 99–29153 Filed 11–8–99; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–206–005]**

## Atlanta Gas Light Company; Notice of Technical Conference

November 2, 1999.

Take notice that a technical conference will be held on November 17, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29132 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP00–14–000, CP00–15–000, and CP00–16–000]**

## Buccaneer Gas Pipeline Company, L.L.C.; Notice of Applications for Certificates

November 2, 1999.

Take notice that on October 28, 1999, Buccaneer Gas Pipeline Company, L.L.C. (Buccaneer or Applicant), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP00–14–000 pursuant to and in accordance with Section 7(c) of the Natural Gas Act (NGA) and the optional certificate procedures of Part 157(E) of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline, compression, measuring and other related facilities. On that same date Buccaneer filed in Docket No. CP00–15–000 for a blanket certificate of public convenience and necessity to render firm and interruptible transportation services on an open access basis pursuant to Part 284(G) of the Commission's regulations and for approval of initial rates. Also, Buccaneer requests in Docket No. CP00–16–000 the issuance of a blanket certificate of public convenience and necessity under Part 157(F) of the Commission's regulations authorizing certain facility construction, operation and abandonment,[1] all as more fully set forth in the applications which are on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Pursuant to Section 157.102(b)(1) of the Commission's regulations, Buccaneer (i) requests that the instant application be considered under the optional procedures of Part 157(E) and (ii) agrees to comply with all terms and conditions specified in Section 157.103.

Buccaneer requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal

[1] On September 30, 1999, Buccaneer previously filed for certificate authorization to construct and operate these same facilities and for blanket authorization under Part 284, Subpart G and Part 157, Subpart F in Docket Nos. CP99–628–000, CP99–629–000, and CP99–630–000, respectively. These applications were rejected because of deficiencies in the environmental exhibits included in Docket No. CP99–628–000.

by February 1, 2000, and a final order granting the authorizations requested herein by December 15, 2000. Buccaneer states that this approval schedule is necessary to allow construction of the project to be completed by April 1, 2002, the proposed in-service date for the project. Buccaneer states that it is not currently engaged in any natural gas transportation operations. Upon commencement of operations proposed in this application, Buccaneer states that it will become a ''natural gas company'' within the meaning of Section 2(6) of the NGA and, as such, will be subject to the jurisdiction of the Commission. Buccaneer states that its natural gas pipeline project (''Buccaneer Project'' or the ''Project'') is being proposed in response to the rapidly growing market for natural gas service in the State of Florida, where the natural gas requirements are expected to nearly double by the year 2007. It is stated that the Project will be designed to transport up to 900,000 dekatherms (dt) of natural gas per day. Buccaneer estimates that the total cost of the Project will be $1,455,173,425. Buccaneer is proposing a 75/25 debt to equity capital structure and will seek non-recourse project financing.

Buccaneer states that the Project will consist of a new mainline system which will commence in Mobile County, Alabama, and cross the Gulf of Mexico to the west coast of Florida just north of Tampa. It is stated that onshore, the pipeline will branch out in an easterly direction to serve power generation plants and other markets across the central part of the state. Buccaneer indicates that the pipeline system will include a compressor station in Mobile County and a liquids separation facility in Pasco County, Florida.

Specifically, the Buccaneer states that the Project will consist of 532.67-miles of 36-inch mainline pipeline in three major mainline components: the Alabama Mainline, the Gulf of Mexico Mainline and the Florida Mainline. It is stated that the 36-inch, 16.66 mile Alabama Mainline will begin at Buccaneer's proposed Compressor Station 1 which will be co-located with the existing compressor station of Transcontinental Gas Pipe Line Corporation (Transco) in Mobile County, Alabama and will include a 4.14-mile segment in Mobile County and a 12.52-mile segment in Alabama state waters, and will end at the boundary between the Alabama state waters and federal waters in Mobile Block 822, Offshore Alabama. Buccaneer states that the Gulf of Mexico Mainline will consist of 376.77 miles of 36-inch mainline pipeline beginning in Mobile Block 822, traversing the Mobile, Pensacola, Destin Dome, Apalachicola, Florida, Middle Ground and Tarpon Springs Areas, and ending at the boundary between federal waters and Florida state waters in Tarpon Springs Block 901. Buccaneer indicates that the Florida Mainline will consist of 139.24 miles of 36-inch mainline pipeline beginning in Tarpon Springs Block 901, traversing Pasco, Polk and Osceola Counties, Florida, and ending at the Project's milepost 20.68 in Orange County, Florida, where the mainline will branch into 16-inch and 30-inch laterals.

Buccaneer states that the 36-inch mainline mileposts are continuous from Compressor Station 1 in Mobile County, Alabama to the liquids separation facility in Pasco County, Florida. It is indicated that the Florida Mainline consists of the Pasco, Polk, Osceola and Orange County Mainlines and has a milepost system that begins at the boundary of each Florida county. Buccaneer states that there will be three major lateral systems and five small laterals which will branch from the Florida Mainline. Buccaneer states that the 30-inch, 37.99-mile Tiger Bay Plant Lateral will begin at milepost 20.58 on the Polk County Mainline and will extend southward, where 20-inch extensions of the Tiger Bay Plant Lateral will be constructed to deliver gas to the Hines, Polk and Payne Creek Plants.

It is stated that the 24-inch, 46.60-mile Leesburg Plant Lateral will begin at milepost 32.87 on the Polk County Mainline and will extend northward into Lake County. It is further stated that the 34.68-mile Oleander Plant Lateral will consist of 30-inch and 24-inch pipeline beginning at milepost 20.68 on the Orange County Mainline and extending to the east into Brevard County. It is also indicated that the 18-inch Indian River and Cape Canaveral Plant Laterals will be extensions of the Oleander Plant Lateral at its eastern end. Buccaneer states that additional 16-inch laterals will be constructed from various portions of the Florida Mainline to deliver gas to the Anclote, Intercession City, Cane Island and Stanton Plants and to the City of Lakeland, Florida.

Buccaneer states that it also will construct a new 75,000 horsepower compressor station (referred to as Buccaneer's Compressor Station 1) which will be co-located with Transco's existing Compressor Station 82 in Mobile County, Alabama, and will include a compressor building with five 15,000 horsepower gas turbine-driven gas compressors. It is stated that a metering and regulating (M&R) station also will be constructed at the station to measure gas delivered into the Buccaneer mainline.

Buccaneer also proposes to construct a liquids separation facility at Anclote in Pasco County, Florida to collect liquids that have condensed in the pipeline due to temperature and pressure drop. The facility will be sited on a 68-acre tract, immediately north of Florida Power corporation's Anclote Plant, and a 290 foot, single-span bridge will be constructed across the Anclote Power Plant cooling water outflow channel to access the site. Buccaneer also proposes to construct M&R stations at each of the 13 proposed delivery points.

It is stated that the facilities will be constructed and operated by Buccaneer's affiliate, Buccaneer Operating Company. Buccaneer states that the construction and operation of the Buccaneer pipeline system will have no significant impact on the quality of human health or the environment. Buccaneer certifies that the proposed facilities will be designed, constructed, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection.

Buccaneer proposes to provide a firm transportation service under Rate Schedule FTS, an interruptible transportation service under Rate Schedule ITS and a parking and lending service under Rate Schedule PAL, under rates, terms and conditions in its pro forma tariff included with the application. Buccaneer states that the shippers subscribing to its firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under its firm rate schedule. Buccaneer proposes that the initial recourse rate for its firm transportation service under Rate Schedule FTS will be a daily reservation rate of $0.7690 per dt, which is based on the straight fixed-variable rate design methodology. It is stated that the initial recourse rate for interruptible transportation service under Rate Schedule ITS and parking and loan service under Rate Schedule PAL will be a commodity rate of $0.7690 per dt. Buccaneer states that its customers also will be charged fuel and retainage and the ACA surcharge as set forth in its tariff.

Buccaneer states that it is proposing a capital structure consisting of 75 percent debt and 25 percent equity. Buccaneer indicates that it assumes that the debt will bear interest at the rate of 4.0 percent for a term of 25 years. Buccaneer states, however, that it plans to seek the most favorable financing terms available in the marketplace at the time the project is financed. Buccaneer

proposes that the equity component of its capital structure earn a return of 14 percent, producing an overall after-tax return of 9.88 percent on Buccaneer's proposed capital structure. Buccaneer states that its proposed return on equity and capital structure are consistent with recent Commission orders on major construction projects, two of which (Vector Pipeline L.P. and Alliance Pipeline L.P.) involve optional certificate applications.

Buccaneer asserts that approval of the instant application is required by the public convenience and necessity for the following reasons:

A. As one of the fastest growing states in the country, Florida projects that it will need over 10,000 megawatts of additional electricity in the state by the year 2007 to keep up with its growing population. Additional power generation capacity will be required to meet this need and to avoid the electricity curtailments that Florida experienced during the summer of 1998. It is expected that a vast majority of this additional power generation will be fueled by natural gas, thus placing natural gas in a pivotal, growing role in the development of Florida's new and existing electric power generation plants. For natural gas to fulfill that role, the Florida Peninsula will require approximately twice the 1.5 million dt per day of pipeline capacity currently provided by its only existing interstate pipeline. The Buccaneer Project will help serve that requirement by providing 900,000 dt per day of new pipeline capacity to the state.

Moreover, the need for compliance with the Clean Air means that existing industrial and commercial plants, which are now coal or oil fueled, will be encouraged to switch to natural gas as their primary fuel source. An increased supply of clean burning natural gas can displace massive amounts of coal and heavy oil that would otherwise be required for heating, cooling and generating electricity. The environmental benefits are clear.

Natural gas emits virtually no sulfur dioxide or particulate matter, very little nitrogen oxides and much less carbon dioxide than other fossil fuels.

B. Section 157.104(c) of the Commission's regulations establishes a rebuttable presumption that an optional certificate applicant's project is required by the public convenience and necessity. Specifically, if an applicant complies fully with the requirements of Sections 157.102 and 157.103 of the regulations, it is presumed that:

(1) The applicant is qualified to perform all the activities for which certificate authorization is requested;

(2) The applicant is willing and able to perform acts and provide service, as proposed, and to comply with the NGA and any applicable regulations thereunder; and

(3) The proposed new service is or will be required by the present or future public convenience and necessity.

Buccaneer states that it has complied with the filing requirements of Section 157.102 and has satisfied the terms and conditions of Section 157.103. In addition to satisfying these specific requirements of the optional certificate regulations, Buccaneer indicates that the Buccaneer Project furthers the Commission's goals of the optional certificate program, which sought (1) to provide the full benefits of competition to consumers by facilitating easier entry and exit from services, (2) to ensure the most efficient scale of facilities by removing certification as a barrier to entry, and (3) to provide incentives for competition where none exists by maximizing the use of alternative market access for producers and consumers. Buccaneer states that it will promote these goals as a new market entrant, providing additional markets for producers and enhancing competition in the State of Florida.

It is further indicated that the Project will further enhance the security of natural gas supplies to Florida, given that Buccaneer has complied with the requirements and furthers the goals of optional certificate regulations.

Any person desiring to be heard or to make protest with reference to said application should on or before November 23, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party to parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service last maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. As intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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

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

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29101 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No RP99–220–002]**

### Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

November 2, 1999.

Take notice that on October 29, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Tenaska Marketing Ventures (Tenaska) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Tenaska commencing November 1, 1999.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

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 protest 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29133 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–40–000]**

### National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 2, 1999.

Take notice that on October 29, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective November 1, 1999:

Nineteenth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (''IG'') rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 13 cents per dth.

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, 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29136 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–39–000]**

### Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1999.

Take notice that on October 29, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective December 1, 1999.

Natural states that the filing has been submitted to reflect a series of changes to its Tariff in the following areas: access to DART; facilities reimbursement; nonconforming gas; and Rate Schedule DSS storage balances.

Natural requests any waivers which may be required to permit the tendered tariff sheets to become effective December 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 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. Protest 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 be come 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29135 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP93–151–027]**

### Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 2, 1999.

Take notice that on October 29, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of November 1, 1999:

**Fifth Revised Volume No. 1**

Thirteenth Revised Sheet No. 26
Thirteenth Revised Sheet No. 26A
Twenty-First Revised Sheet No. 26B

**Original Volume No. 2**

Thirty-Ninth Revised Sheet No. 5

Tennessee states that this filing is in compliance with the Stipulation and Agreement approved by the Commission in its April 16, 1997 Order Approving Settlement in the above-referenced docket. *Tennessee Gas Pipeline Company*, 79 FERC ¶ 61,031 (1997). Tennessee requests waiver of the Commission's thirty-day notice requirement to allow an effective date of November 1, 1999 for the tariff sheets. Tennessee submits that good cause exists for the waiver because (1) the proposed tariff sheets represent a reduction in these customers' existing rates; (2) all of Tennessee's customers were informed of the rates since such rates were set forth in the Stipulation and Agreement; and (3) the Commission previously approved implementation of the rates, effective November 1, 1999, in its orders approving the Stipulation and Agreement.

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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29131 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**Docket No. RP000–24–001]**

### Transcontinental Gas Pipe Line Corporation; Notice of Filing

November 2, 1999.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket on October 21, 1999 a revised tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1. The effective date for the revised tariff sheet is December 1, 1999.

Transco states that its Cash Out Modification filing of October 13, 1999 in Docket No. RP00–24 (October 13 Filing) inadvertently left out part of a phrase in the General Terms and Conditions Section 37.1(b) that describes how the imbalance percentage for a shipper is calculated. The imbalance percentage calculation process is currently in Transco's tariff and not among the cash out provisions that Transco proposes to modify in its October 13 filing. The purpose of the filing is to supplement the October 13 Filing to reflect the correct imbalance percentage calculations.

In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas. In addition, Transco is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, 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 my be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29134 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–41–000]**

### Trunkline Gas Company; Notice of Filing

November 2, 1999.

Take notice that on October 29, 1999, Trunkline Gas Company (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment. Trunkline further states that due to the minimal interruptible storage activity, no adjustment is required to Base Transportation Rates.

Trunkline 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 on or before November 9, 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29137 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG00–12–000, et al.]**

## FortisUS Energy Corporation, et al., Electric Rate and Corporate Regulation Filings

October 28, 1999.

Take notice that the following filings have been made with the Commission:

### 1. FortisUS Energy Corporation

[Docket No. EG00–12–000]

Take notice that on October 25, 1999, FortisUS Energy Corporation (Applicant), with its principal office at FortisUS Energy Corporation, c/o Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, NY 10019–6092, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it plans to acquire and thenceforth will be engaged in owning and operating two hydroelectric projects totaling approximately 16 MW located in Jefferson and Lewis Counties, New York (the Facilities). Electric energy produced by the Facilities will be sold by FortisUS exclusively at wholesale.

*Comment date:* November 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. White River Electric Association Incorporated

[Docket No. EL00–8–000]

Take notice that on October 25, 1999, White River Electric Association Incorporated (White River) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. White River's filing is available for public inspection at its offices in Meeker, Colorado.

*Comment date:* November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. Phibro Inc. and Phibro Power LLC

[Docket Nos. ER95–430–021, ER95–430–022]

Take notice that on October 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

### 4. Starghill Alternative Energy Corporation

[Docket No. ER97–4680–007]

Take notice that on October 21, 1999, Starghill Alternative Energy Corporation filed its quarterly report for the quarter ending September 30, 1999 for information only.

### 5. PECO Energy Company

[Docket No. ER99–1872–001]

Take notice that on October 22, 1999, PECO Energy Company filed a report of a change in status that reflects a departure from the facts relied upon by the Federal Energy Regulatory Commission in its grant of market-based rate authority to PECO in the above-referenced proceedings.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 6. Energy PM, Inc., Sonat Power Marketing L.P., Merrill Lynch Capital Services, Inc., Spokane Energy, L.L.C., Industrial Gas & Electric Services Company, GreenMountain.com, Sonat Power Marketing Inc., North American Energy, Inc., Coast Energy Group, InPower Marketing Corp., WPS-Power Development, Revelation Energy Resources Corporation, Elwood Marketing LLC

[Docket Nos. ER98–2918–005, ER96–2343–014, ER99–830–005, ER98–4336–005, ER95–257–018, ER99–4324–001, ER95–1050–019, ER98–242–008, ER99–3005–001, ER99–3964–001, ER96–1088–028, ER97–765–003 and ER99–1465–003]

Take notice that on October 25, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

### 7. Southern Indiana Gas and Electric Company

[Docket No. ER00–180–000]

Take notice that on October 21, 1999, Southern Indiana Gas and Electric Company filed its quarterly report for the quarter ending September 30, 1999.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 8. Central Hudson Enterprises Corporation CH Resources

[Docket No. ER00–214–000, ER00–215–000]

Take notice that on October 22, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

*Comment date:* November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 9. Tucson Electric Power Company, Tucson Electric Power Company, Mid-American Power LLC, Puget Sound Energy, Inc., Alliant Energy Corporate Services, Pacific Northwest Generating Cooperative, Kincaid Generation L.L.C., Consolidated Water Power Company, GEN–SYS Energy, Old Dominion Electric Cooperative

[Docket No. ER00–222–000, ER00–223–000, ER00–224–000, ER00–225–000, ER00–232–000, ER00–233–000, ER00–234–000, ER00–240–000, ER00–241–000, and ER00–242–000]

Take notice that on October 25, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

*Comment date:* November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 10. Direct Electric Inc., Alliance Power Marketing, Inc., TransCanada Power

[Docket Nos. ER94–1161–020, ER96–1818–015, and ER95–692–018]

Take notice that on October 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

### 11. Northbrook New York, LLC

[Docket No. ER99–3911–001]

Take notice that on October 22, 1999, Northbrook New York, LLC, a Delaware limited liability company (Northbrook), tendered for filing with the Commission an amendment to Northbrook's Rate Schedule FERC No. 2. Such filing is made in compliance with the Commission's order of September 15, 1999, in the above referenced docket. The amendment provides that Northbrook may sell ancillary electrical services into the PJM Power Exchange, the New York ISO market or the ISO New England market.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 12. APS Energy Services Company

[Docket No. ER99–4122–001]

Take notice that on October 25, 1999, APS Energy Services Company (APSES),

tendered for filing in compliance of the Commission's Order dated October 13, 1999, in Docket No. ER99–4102–000 *et al.*, a revised Rate Schedule FERC No. 1, for Market Based Rates, to allow for sales of ancillary services to the California Independent System Operator Corporation.

*Comment date:* November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Public Service Company of New Mexico**

[Docket No. ER00–186–000]

Take notice that on October 22, 1999, Public Service Company of New Mexico (PNM), tendered for filing a Master Power Purchase and Sale Agreement (dated June 1, 1999) between PNM and Reliant Energy Services, Inc. (RES), which provides for the purchase and sale of power at market-based rates.

Copies of this filing have been provided to RES and to the New Mexico Public Regulation Commission. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. New Century Services, Inc.**

[Docket No. ER00–187–000]

Take notice that on October 22, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. California Independent System Operator Corporation**

[Docket No. ER00–192–000]

Take notice that on October 22, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Merchant Energy Group of the Americas, Inc. (Merchant Energy) for acceptance by the Commission.

The ISO states that this filing has been served on Merchant Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective October 15, 1999.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. PECO Energy Company**

[Docket No. ER00–194–000]

Take notice that on October 22, 1999, PECO Energy Company (PECO), tendered for filing an amended service agreement between PECO and Commonwealth Edison Company (ComEd) to put into effect a rate cap for sales from PECO to ComEd in light of their announced intention to merge.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER00–198–000]

Take notice that on October 22, 1999, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (Companies), tendered for filing an unexecuted Bilateral Service Agreement between the Companies and TXU Energy Trading Company under the Companies Rate Schedule MBSS.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. Consumers Energy Company**

[Docket No. ER00–199–000]

Take notice that on October 22, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for unbundled wholesale power service with Virginia Electric and Power Company and Duke Energy Trading and Marketing, L.L.C., pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the respective service agreements.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**19. Alliant Energy Corporate Services, Inc.**

[Docket No. ER00–203–000]

Take notice that on October 22, 1999, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing InPower Marketing Corporation as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of October 11, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**20. Cincinnati Gas & Electric Company**

[Docket No. ER00–213–000]

Take notice that on October 25, 1999, The Cincinnati Gas & Electric Company (CG&E), tendered for filing its proposed changes in its FERC Electric Tariff, First Revised Volume No. 1, which cancel and supersede rate schedules WH–I, WS–P and WS–S in said tariff. The proposed changes would decrease revenues from jurisdictional sales and service by $5,325,213 based on the twelve (12)-month period ending December 31, 2000. The reasons stated by CG&E for the change in rate schedule is to satisfy requirements imposed in Docket Nos. EC93–6–000, EC93–6–001, and ER94–1015–000.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley, and the City of Lebanon municipalities in the State of Ohio; The Union Light, Heat and Power Company, a wholly-owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the Commonwealth of Kentucky; The West Harrison Gas and Electric Company, a wholly-owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana; the Public Utilities Commission of Ohio; the Kentucky Public Service Commission; and the Indiana Utility Regulatory Commission.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**21. Northwest Regional Transmission Association**

[Docket No. ER00–219–000]

Take notice that on October 25, 1999, Avista Corporation tendered for filing a Certificate of Concurrence to an amendment of the Northwest Regional Transmission Association's Governing Agreement, which would permit end use customers to become members of

NRTA and to revise the voting rules relating to individual class voting.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 22. Niagara Mohawk Power Corporation

[Docket No. ER00–220–000]

Take notice that on October 25, 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 New York State Electric & Gas Corp. This Transmission Service Agreement specifies that New York State Electric & Gas Corp., 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. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and New York State Electric & Gas Corp., to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for New York State Electric & Gas Corp., as the parties may mutually agree.

Niagara Mohawk requests an effective date of October 15, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and New York State Electric & Gas Corp.

*Comment date:* November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 23. New York State Electric & Gas Corporation

[Docket No. ER00–221–000]

Take notice that on October 26, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with the New York Power Authority (NYPA). This Agreement provides for NYSEG to install a 135 MVAR capacitor and its associated equipment (Facilities) on NYSEG's transmission facilities for the benefit of NYPA. NYPA will compensate NYSEG for such installation. Additionally, NYPA will pay monthly installments on NYSEG's annual charges for routine operation, maintenance, general expenses, and revenue and property taxes (O&M).

This rate filing is made pursuant to Article 12.10 (a) of the Agreement. The O&M charges will be revised annually based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31 of the immediately prior year. The O&M charge is levied on the cost of NYPA's use of NYSEG's transmission substation facilities required for the operation of NYPA's Facilities at NYSEG's Oakdale Substation.

NYSEG requests an effective date of October 19, 1999.

Copies of the filing were served upon the New York Power Authority and the Public Service Commission of the State of New York.

*Comment date:* November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 24. California Independent System Operator Corporation

[Docket No. ER00–193–000]

Take notice that on October 22, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and PECO Energy Company (PECO Energy) for acceptance by the Commission.

The ISO states that this filing has been served on PECO Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective October 17, 1999.

*Comment date:* November 10, 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29100 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–235–000, et al.]**

## Southwestern Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Southwestern Public Service Company

[Docket No. ER00–235–000]

Take notice that on October 27, 1999, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its delivery point listing with Deaf Smith Electric Cooperative, Inc., (Deaf Smith).

The proposed amendment reflects the addition of capacity to an existing delivery point for service to Deaf Smith.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 2. Dayton Power and Light Company

[Docket No. ER00–237–000]

Take notice that on October 27, 1999, Dayton Power and Light Company (Dayton), tendered for filing a Non-Firm Transmission Service Agreement establishing ProLiance Energy, LLC as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with ProLiance Energy, LLC and the Public Utilities Commission of Ohio.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. Nevada Power Company

[Docket No. ER00–238–000]

Take notice that on October 27, 1999, Nevada Power Company (Nevada Power), tendered for filing a Service Agreement (Service Agreement) with Dynegy Marketing & Trade, Inc., for Short-Term Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff). Nevada Power filed the executed Service Agreement with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations.

Nevada Power requests waiver of the Commission's notice requirements to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada and all interested parties.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**4. Detroit Edison Company**

[Docket No. ER00–243–000]

Take notice that on October 27, 1999, Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), and Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Carolina Power & Light Company.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**5. California Independent System Operator Corporation**

[Docket No. ER00–245–000]

Take notice that on October 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Entergy Power Marketing Corp. (Entergy Power), for acceptance by the Commission.

The ISO states that this filing has been served on Entergy Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective October 17, 1999.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**6. Niagara Mohawk Power Corporation**

[Docket No. ER00–246–000]

Take notice that on October 27, 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 October 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:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**7. Niagara Mohawk Power Corporation**

[Docket No. ER00–247–000

Take notice that on October 27, 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 October 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:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Niagara Mohawk Power Corporation**

[Docket No. ER00–248–000]

Take notice that on October 27, 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 October 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:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. DTE-CoEnergy L.L.C.**

[Docket No. ER00–252–000]

Take notice that on October 25, 1999, DTE-CoEnergy L.L.C. (DTE-CoEnergy), tendered for filing a Notice of Cancellation of DTE-CoEnergy's Rate Schedule FERC No. 1 and Supplement No. 1 to Rate Schedule FERC No. 1.

*Comment date:* November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Union Electric Company and Central Illinois Public Service Company**

[Docket No. ER00–255–000]

Take notice that on October 27, 1999, Union Electric Company (UE) and Central Illinois Public Service Company (CIPS) (collectively, the Applicants), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Federal Energy Regulatory Commission's Regulations and in Compliance with Terms and Conditions of Settlement Agreement, Principles Governing Charges and Loss Factors for Wholesale Direct Assignment Facilities, with supporting Attachments A, B, and C, and Conditional Request for Waiver of Filing Requirements.

Pursuant to the Stipulation among the Applicants and its wholesale electric customers referenced in the filing, principles governing direct assignment facility charges and loss factors were to be determined and agreed to among those parties. This filing submits those principles to the Commission, in compliance with the Stipulation.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Duke Energy Corporation**

[Docket No. ER00–258–000]

Take notice that on October 27, 1999, Duke Energy Corporation (Duke), tendered for filing a termination notice

pursuant to 18 CFR 35.15, to terminate the Standby Concurrent Exchange Agreement between Carolina Power and Light and Duke Energy Corporation.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. Commonwealth Edison Company**

[Docket No. ER00–259–000]

Take notice that on October 27, 1999, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing Illinova Power Marketing, Inc. (IPMI), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of October 27, 1999 for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on IPMI.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Tampa Electric Company**

[Docket No. ER00–260–000]

Take notice that on October 27, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Seminole Electric Cooperative, Inc., (Seminole) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on October 27, 1999.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Commonwealth Edison Company**

[Docket No. ER00–261–000]

Take notice that on October 27, 1999, Commonwealth Edison Company (ComEd), tendered for filing two Non-Firm Transmission Service Agreements with Illinova Power Marketing, Inc. (IPMI), and Peoples Energy Services Corporation (PESC), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd also submits name changes for current customer Strategic Energy Ltd, renamed Strategic Energy L.L.C (SEL); New Energy Ventures, Inc., renamed NewEnergy, Inc (NEI); FirstEnergy Trading and Power Marketing, Inc., renamed FirstEnergy Trading Services, Inc. (FET); and Electric Clearinghouse, Inc., renamed Dynegy Power Marketing, Inc. (DYN).

For informational purposes, ComEd further notes the following: On August 20, 1996, ComEd entered into Service Agreement No. 7, under the OATT, accepted by the Commission in Docket No. ER96–2759–000 to be effective September 20, 1996 with a company called Illinova Power Marketing, Inc. Pursuant to a notice of succession filed on May 2, 1997 in Docket No. ER97–2833–000, the company known as Illinova Power Marketing, Inc., that was a party to Service Agreement No. 7 changed its name to Illinova Energy Partners, Inc. (IEP).

ComEd requests an effective date of October 27, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on IPMI, PESC, SEL, NEI, FET, DYN, and IEP.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. South Glens Falls Energy, LLC**

[Docket No. ER00–262–000]

Take notice that on October 27, 1999, South Glens Falls Energy, LLC, tendered for filing a Notice of Succession in Ownership pursuant to Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 131.51.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)**

[Docket No. ER00–263–000]

Take notice that on October 27, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing three Firm Point-to-Point Transmission Service Agreements between NSP and NSP Wholesale Energy Marketing.

NSP requests that the Commission accept the Agreements effective November 1, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Avista Corp.**

[Docket No. ER00–264–000]

Take notice that on October 27, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with MIECO, Inc.

AVA requests the Service Agreements be given an effective date of October 4, 1999.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. Public Service Electric and Gas Company, PECO Energy Company, Atlantic City Electric Company, Delmarva Power & Light Company, PP&L, Inc., Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company and UGI Utilities, Inc.**

[Docket No. ER00–268–000]

Take notice that on October 27, 1999, PECO Energy Company (PECO), tendered for filing a revised schedule to the Extra High Voltage Transmission System Agreement on behalf of the parties to that Agreement. PECO states that the purpose of the filing is to reflect implementation of Section 4.2.6 of the Agreement as approved by the Commission on May 11, 1999.

*Comment date:* November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

**19. Atlantic City Electric Company and Delmarva Power & Light Company**

[Docket Nos. OA97–97–005 and OA97–467–005]

Take notice that the companies listed in the above-captioned dockets filed letters with the Commission on September 22, 1999, reporting that they have an unregulated affiliate, Conectiv Energy Supply Inc. (CESI), involved in the wholesale merchant function. The companies state that they have updated their standards of conduct to reflect that CESI is an affiliate and that the rules regarding wholesale merchant employees apply to CESI.

*Comment date:* November 16, 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29126 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–621–000]**

## Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Ironwood Lateral and Request for Comments on Environmental Issues

November 2, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Ironwood Lateral involving construction and operation of facilities by Texas Eastern Transmission Corporation (Texas Eastern) in Lebanon County, Pennsylvania.[1] These facilities would consist of about 3.6 miles of 16-inch-diameter pipeline, one meter station and dual 12-inch hot taps. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

### Summary of the Proposed Project

Texas Eastern wants to expand the capacity of its facilities in Pennsylvania to transport an additional 12,000 million British thermal units per day of natural gas to an electric cogenerating facility. Texas Eastern seeks authority to construct and operate:

- Approximately 3.6 miles of 16-inch-diameter pipeline in Lebanon County, Pennsylvania;
- One meter station in Lebanon County, Pennsylvania, and
- Dual 12-inch hot taps in Lebanon County, Pennsylvania.

The location of the project facilities is shown is appendix 2.

### Land Requirements for Construction

Construction of the proposed facilities would require about 37.2 acres of land. Following construction, about 0.3 acre would be maintained as a new aboveground facility site. The remaining 36.9 acres of land would be restored and allowed to revert to its former use.

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Land use
- Cultural resources
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

### Curently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would cross one perennial waterbody, Tulpehocken Creek. This creek was designated as part of the Pennsylvania Scenic Rivers Program in December 1992.
- A total of 23.2 acres of agricultural land would be impacted.
- The proposed project would cross the Union Canal which is eligible for listing in the National Register of Historic Places.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You

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[1] Texas Eastern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch. PR–11.2;
- Reference Docket No. CP99–621–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 29, 1999.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervernor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29127 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing

November 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2071–013.

c. *Date filed:* May 5, 1999.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Yale Hydroelectric Project.

f. *Location:* On the North Fork Lewis River in Cowlitz, Clark, and Skamania Counties, Washington, about 45 miles northeast of Portland, Oregon. The project boundary includes about 84 acres of land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David L. Leonhardt, Project manager, PacifiCorp, 825 N.E. Multnomah Street, Suite 1500, Portland, Oregon 97232 (503) 813–6658.

i. *FERC Contact:* Vince Yearick at (202) 219–3073 or vince.yearick@ferc.fed.us.

j. *Alternative Process:* Consistent with out April 1, 1999, letter approving the use of an alternative licensing process on four Lewis River hydroelectric projects, including the Yale Project, we have conducted an initial adequacy review on the Yale application and will process it only so far as this acceptance notice which does not solicit interventions.

k. *Status of environmental analysis:* The environmental analysis for the Yale Project is being coordinated with the environmental analysis of the Swift No. 1 (FERC No. 2111), Swift No. 2 (FERC 2213), and Merwin (FERC No. 935) hydroelectric projects through an alternative licensing process. Applications on those projects are due in 2004. Studies for all four projects are currently being coordinated through a collaborative group. Persons interested in participating in the collaborative group should contact Kristi M. Wallis, the groups facilitator, at (206) 726–1699.

l. *The project consists of the following existing facilities:* (1) a 1,305-foot-long, zoned embankment dam known as Yale dam, and an adjacent 1,600-foot-long, earth-fill structure known as Saddle dam; (2) a 10.5-mile-long reservoir known as Yale Lake, (3) a concrete, chute-type spillway; (4) a 1,530-foot-long diversion tunnel; (5) two penstocks; (6) a powerhouse located downstream of Yale dam, containing two generating units with a combined capacity of 134 megawatts; (7) a 10.5-mile, 115-kilovolt transmission line, and (8) related facilities.

m. 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) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29128 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Compliance Filings and Soliciting Comments, Motions To Intervene, and Protests

November 2, 1999.

Take notice that the following hydroelectric compliance filings have been filed with the Commission and are available for public inspection:

a. *Application Type:* License compliance filings.

b. *Project Nos:* 2671–018 and 2329–031.

c. *Date Filed:* February 1, 1999 and supplemented on July 28, 1999; and

February 2, 1999 and supplemented on July 27, 1999, respectively.

d. *Applicant:* Kennebec Water Power Company and FPL Energy Maine Hydro, LLC, respectively.

e. *Name of Projects:* Moosehead Lake (Storage) and Wyman, respectively.

f. *Location:* Both projects are located on the Kennebec River, Somerset County, Maine, The projects do not utilize federal or tribal lands.

g. *Filed Pursuant to:* Article 414 of Project 2671 and article 413 of project 2329.

h. *Applicant Contact:* Frank H. Dunlap, 100 Middle Street, Portland, ME 04101, (207) 771–3534.

i. *FERC Contact:* Any questions on this notice should be addressed to Jean Potvin, *jean.potvin@ferc.fed.us.* or (202) 219–0022.

j. *Deadline for filing comments and/or motions:* 30 days from the issuance of this notice.

Please include the project number (e.g. 2329–03) on any comments or motions filed.

k. *Description of Filings:* Project No. 2671–018—licensee has filed a land management plan along with an offer 9ofd Settlement signed by most of the consulted agencies. The settlement requires the licensee to purchase and donate to the State of Maine a 500-foot buffer strip on either side of the six mile long East Outlet, donate a conservation easement to the State of Maine on most of a 17-acre parcel of licensee-owned land abutting Moosehead Lake and East Outlet, and donate $500,000 to the State of Maine for the acquisition of additional lands.

Project No. 2329–031—licensee has filed a shoreline management plan along with an Offer of Settlement signed by most of the consulted agencies. The settlement requires that the licensee convey to an easement holder a permanent conservation easement on all licensee-owned lands within 200 feet of the high water elevation of Wyman Lake, and on all licensee-owned lands within 200 feet of the high water elevation of the Kennebeck River below Wyman dam.

l. *Locations of the applications:* Copies of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The applications may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the address in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings may bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29129 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–U

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of License Application Amendment for Applicant Name Change

November 2, 1999.

Take notice that the following hydroelectric application amendment has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Notice of License Application Amendment.

b. *Project No.:* 4628–001.

c. *Date Filed:* October 13, 1999.

d. *Applicant:* McGrew & Associates and the City of Tacoma, Washington—previous applicants; McGrew & Associates (DBA Renewables, Inc.)—new applicant.

e. *Name of Project:* Wells Creek Hydroelectric Project.

f. *Location:* Proposed to be located on Wells Creek, a tributary of the North Fork Nooksack River in Whatcom County, Washington. The project would occupy federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas R. Childs, McGrew & Associates (DBA Renewables, Inc.), P.O. Box 1691, Bellingham, WA, *renewables@worldnet.att.net,* (360) 734–0923.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* (202) 219–2778.

j. *Locations of the amendment to the application:* A copy is available for inspection and reproduction at the Commission's Public Reference and Files Management Branch, located at 888 First Street, NE., room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29130 Filed 11–5–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

November 3, 1999.

The following notice of meeting is published pursuant to section 3(A) of the Goverment in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** November 10, 1999, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street, NE, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**CONTACT PERSON FOR MORE INFORMAITON:** David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

**Note:** Items listed on the agenda may be deleted without further notice.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

**Consent Agenda—Hydro 729th—Meeting, November 10, 1999, Regular Meeting (10:00 a.m.)**

CAH–1.
DOCKET# P–2114 079, PUBLIC UTILILTY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON
CAH–2.
DOCKET# P–5984 004, NIAGARA MOHAWK POWER CORPORATION
CAH–3.
DOCKET# P–1494 171, GRAND RIVER DAM AUTHORITY
CAH–4.
DOCKET# P–2709 015, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY

**Consent Agenda—Electric**

CAE–1.
DOCKET# ER99–4355 000, MIDDLETOWN POWER LLC
OTHER#S ER99–4356 000, MONTVILLE POWER LLC, ER99–4357 000, NORWALK POWER LLC, ER99–4358 000, DEVON POWER LLC, ER99–4359 000, CONNECTICUT JET POWER LLC, ER99–4463 000, NORTHEAST GENERATION COMPANY, ER99–4503 000, PP&L GREAT WORKS, LLC, ER00–22 000, RELIANT ENERGY OSCEOLA, LLC
CAE–2.
DOCKET# ER99–4450 000, GEORGIA POWER COMPANY
CAE–3.
DOCKET# ER99–4455 000, SIERRA PACIFIC POWER COMPANY
CAE–4.
DOCKET# ER99–4462 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–5.
DOCKET# ER99–4513 000, IEC OPERATING COMPANIES
CAE–6.
DOCKET# ER99–4415 000, ILLINOIS POWER COMPANY
OTHER#S EL00–7 000, ILLINOIS POWER COMPANY
CAE–7.
DOCKET# ER99–4225 000, NORTHERN MAINE INDEPENDENT SYSTEM ADMINISTRATOR, INC.
CAE–8.
DOCKET# ER99–2285 001, DUKE ENERGY CORPORATION
OTHER#S ER99–2285 002, DUKE ENERGY CORPORATION
CAE–9.
DOCKET# OA96–200 007, EL PASO ELECTRIC COMPANY
CAE–10.
DOCKET# OA97–163 005, MID-CONTINENT AREA POWER POOL
OTHER#S OA97–658 005, MID-CONTINENT AREA POWER POOL, ER97–1162 004, MID-CONTINENT AREA POWER POOL
CAE–11.
DOCKET# ER95–1686 000, NORTHEAST UTILITIES SERVICE COMPANY
OTHER#S ER96–496 000, NORTHEAST UTILITIES SERVICE COMPANY
CAE–12.
DOCKET# EC99–81 000, DOMINION RESOURCES, INC. AND CONSOLIDATED NATURAL GAS COMPANY
CAE–13.
DOCKET# EC99–99 000, ILLINOVA CORPORATION AND DYNEGY INC.
CAE–14.
DOCKET# ER99–3468 001, DELMARVA POWER & LIGHT COMPANY
CAE–15.
DOCKET# ER99–1764 001, NIAGARA MOHAWK POWER CORPORATION AND ERIE BOULEVARD HYDROPOWER, L.P.
OTHER#S EC99–34 001, NIAGARA MOHAWK POWER CORPORATION AND ERIE BOULEVARD HYDROPOWER, L.P.
CAE–16.
DOCKET# ER98–3594 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–17.
DOCKET# AC96–180 002, IDAHO POWER COMPANY
CAE–18.
DOCKET# ER99–3508 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., LONG ISLAND LIGHTING COMPANY, NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
CAE–19.
OMITTED
CAE–20.
DOCKET# EL99–76 000, CENTRAL MAINE POWER COMPANY
CAE–21.
DOCKET# EL99–93 000, TURLOCK IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT V. CALIFORNIA INDEPENDENT SYSTSEM OPERATOR CORPORATION
CAE–22.
DOCKET# ER99–4449 000, PUBLIC SERVICE ELECTRIC & GAS COMPANY
CAE–23.
DOCKET# ER99–2340 001, PJM INTERCONNECTION, L.L.C.
CAE–24.
DOCKET# ER98–3968 002, CORAL POWER, L.L.C.

**Consent Agenda—Miscellaneous**

CAM–1.
DOCKET# RM99–9 000, DESIGNATION OF CORPORATE OFFICIALS OR OTHER PERSONS TO RECEIVE SERVICE

**Consent Agenda—Gas and Oil**

CAG–1.
DOCKET# RP00–22 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP00–21 000, CNG TRANSMISSION CORPORATION
CAG–3.
OMITTED
CAG–4.
DOCKET# RP99–176 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–5.
OMITTED
CAG–6.
DOCKET# RP00–17 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–7.
OMITTED
CAG–8.
DOCKET# RP98–407 000, EL PASO NATURAL GAS COMPANY
CAG–9.
OMITTED
CAG–10.
OMITTED
CAG–11.
OMITTED
CAG–12.
OMITTED
CAG–13.
DOCKET# OR99–5 000, COLONIAL PIPELINE COMPANY
CAG–14.
DOCKET# OR99–6 000, TE PRODUCTS PIPELINE COMPANY, L.P.
CAG–15.
DOCKET# RP95–363 015, EL PASO NATURAL GAS COMPANY
OTHER#S RP95–363 002, EL PASO NATURAL GAS COMPANY, RP95–363 016, El PASO NATURAL GAS COMPANY
CAG–16.
DOCKET# RP99–446 002, CNG TRANSMISSION CORPORATION
CAG–17.
DOCKET# RP99–282 002, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–18.
DOCKET# RP99–322 002, NORTHERN BORDER PIPELINE COMPANY
OTHER#S RP96–45 008, NORTHERN BORDER PIPELINE COMPANY
CAG–19.
OMITTED
CAG–20.
DOCKET# RP99–507 000, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
CAG–21.
DOCKET# CP99–564 000, CORAL MEXICO PIPELINE, LLC
CAG–22.
DOCKET# CP99–552 000, NORTHERN NATURAL GAS COMPANY
OTHER#S CP99–590 000, MCDAY ENERGY PARTNERS, LTD.
CAG–23.
DOCKET# CP98–554 002, NORTHWEST PIPELINE CORPORATION
CAG–24.

OMITTED
CAG–25.
DOCKET# RP99–471 000, WILLIAMS FIELD SERVICES GROUP, INC. V. EL PASO NATURAL GAS COMPANY
CAG–26.
OMITTED
CAG–27.
DOCKET# CP98–49 004, KN WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY

**Hydro Agenda**

H–1.
RESERVED

**Electric Agenda**

E–1.
OMITTED

**Oil and Gas Agenda**

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–29252 Filed 11–4–99; 11:25 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6472–1]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emergency Planning and Release Notification Requirements (EPCRA Sections 302, 303, and 304)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emergency Planning and Release Notification Requirement (EPCRA sections 302, 303, and 304), OMB Control No. 2050–0092, expires January 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before December 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1395.04.

**SUPPLEMENTARY INFORMATION:**

*Title:* Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304), OMB Control No. 2050–0092, ICR No. 1395.04, expiring January 31, 2000. This information collection is an extension of a currently approved collection.

*Abstract:* EPCRA established broad emergency planning and facility reporting requirements. Section 302 (40 CFR 355.30) requires any facility where an extremely hazardous substance (EHS) is present in an amount at or in excess of the threshold planning quantity (TPQ) to notify the state emergency response commission (SERC) by May 17, 1987. This activity has been completed; only new facilities are subject to this requirement. Section 303 (40 CFR 355.30) requires local emergency planning committees (LEPCs) to prepare emergency plans for facilities that have EHSs in excess of the TPQs in their local planning district. Facilities are required to provide local planners with information necessary for the preparation of emergency plans. Section 303 requires LEPCs to complete their emergency plans by October 17, 1988. This activity has been also completed; this ICR only covers any updates for these emergency response plans. Section 304 (40 CFR 355.40) requires facilities to report to SERCs and LEPCs releases in excess of quantities established by EPA. Facilities are required to report releases above the reportable quantity (RQ) of any EHS. This ICR covers the notification and the written follow-up required under this section.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 5, 1999 (64 FR 42687); one comment was received.

*Burden Statement:* The average reporting burden for emergency planning under 40 CFR 355.30 is 17.65 hours for new and newly regulated facilities and 12.5 hours for existing facilities.

For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities. For certain existing facilities, this burden includes the time required to inform the LEPC of any changes at a facility that may affect emergency planning, and provide information to the LEPC for planning purposes. The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are not recordkeeping requirements for facilities under EPCRA Sections 302–304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours. The total burden to facilities over the three-year information collection period is estimated to be 269,200 hours, at a cost of $7.8 million. The total burden for SERCs and LEPCs over the three-year information collection period is estimated to be 486,000 hours at a cost of $11.6 million.

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.

*Respondents/Affected Entities:* Facilities where EHS's are present, LEPCs and SERCs.

*Estimated Number of Respondents:* 99,170.

*Frequency of Response:* Section 302 respondents will comply with requirements once unless new information becomes available. Section 303 respondents will comply with requirements as requested by LEPCs; LEPCs may have to update their local emergency response plans as new

facilities or other information such as new chemicals present at or above a TPQ. Section 304 respondents will comply when there is a release of an EHS above the RQ.

*Estimated Total Annual Hour Burden:* 251,700 hours.

*Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:* $64,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1395.04 and OMB Control No. 2050–0092 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 3, 1999.

**Richard T. Westlund,**

*Acting Director, Regulatory Information Division.*

[FR Doc. 99–29182 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–00281; FRL–6389–5]**

## Notice of Availability of FY 2000 Grant Funds for Technical Studies

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of funds availability.

**SUMMARY:** EPA is soliciting pre-application grant proposals for technical studies to minimize lead hazards to occupants from home improvement projects, repainting projects, renovation projects and remodeling projects. EPA anticipates that approximately $700,000 will be available in Fiscal Year 2000, with individual grants/cooperative agreements awarded in the range of $60,000 to $100,000. Decisions on awarding of these grant funds will be made based on the evaluation of pre-application grant proposals. The primary purpose of this grant program is to fund technical studies to gain knowledge that will lead to the minimization of lead hazards to occupants from home improvement projects, repainting projects, renovation projects, and remodeling projects. EPA will consider awarding these grant funds for technical studies of the topics listed in Unit V. of this notice. EPA will also consider awarding these grant funds for technical studies that are not specifically mentioned in this notice, but are relevant to the minimization of lead hazards to occupants from home improvement projects, repainting projects, renovation projects, and remodeling projects. In such instances, the applicant should describe how the proposed technical study addresses the primary purpose of this notice.

**DATES:** All pre-application grant proposals must be post-marked by January 12, 2000, and must be received by January 19, 2000.

**ADDRESSES:** Submit pre-application proposals to: John Schwemberger, Mail Code 7404, Environmental Protection Agency, 401 M St., SW., Room E-813B, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** John Schwemberger, Technical Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Rm. E–813B, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460, (202) 260–7195, fax: (202) 260–0001, e-mail: schwemberger.john@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons or organizations that wish to obtain funding from the Federal government to conduct or complete a technical study related to lead hazards from renovation and remodeling (R&R)[1]. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

### II. Scope and Purpose of this Grant Program

*A. Findings from EPA Research on Renovation and Remodeling Activities*

Over the past several years, EPA has engaged in a series of data collection efforts to investigate lead exposure associated with R&R activities. These studies, collectively referred to as the R&R Study, have focused on lead exposure associated with a wide variety of work activities typically conducted during R&R.

Analysis of environmental data from the R&R Study indicates that substantial quantities of lead can be produced or released during R&R activities. The cleanup methods commonly employed by R&R workers (broom or ''shopvac'') are generally not effective in reducing the environmental lead to levels considered safe by EPA. In addition, examination of blood lead measurements of child occupants has demonstrated significant associations between some R&R activities and elevated blood lead levels.

The results of the EPA R&R Study have been published in a series of reports available free of charge from the National Lead Information Center by calling 1–800–424–LEAD. Request the reports ''Lead Exposure Associated with Renovation and Remodeling Activities: Summary Report'' (EPA Report 747–R–96–005); ''Lead Exposure Associated with Renovation and Remodeling Activities: Environmental Field Sampling Study, Volume I: Technical Report'' (EPA Report 747–R–96–007); ''Lead Exposure Associated with Renovation and Remodeling Activities: Environmental Field Sampling Study, Volume II: Appendices'' (EPA Report 747–R–96–008); and ''Lead Exposure Associated with Renovation and Remodeling Activities: Worker Characterization and Blood Lead Study'' (EPA Report 747–R–96–006).

*B. Recent NHANES Study*

Data from the Third National Health and Nutrition Examination Survey (NHANES III) confirm the findings of earlier surveys that children who live in older housing are more vulnerable to lead poisoning, and have blood-lead levels that are elevated above the national average. Older residences tend to contain both lead-based paint and lead depositions from the fallout of vehicle exhaust that have accumulated over several decades. In addition, large or extensive R&R projects are often conducted in older houses. Since older houses contain more lead, conducting R&R activities in them can create an exposure hazard to the occupants.

*C. Benefits of the Evaluation Program for Renovation and Remodeling*

Every year thousands of residential R&R activities are conducted across the United States in homes which contain lead-based paint. In many of these cases, exposure to hazardous levels of lead

[1] In the rest of this notice, the terms ''renovation and remodeling activities,'' ''renovation and remodeling,'' and ''R&R'' will be used to refer to home improvement projects, repainting projects, renovation projects, and remodeling projects.

may be a serious problem. The efforts supported by this grant will involve the investigation of approaches, methods, and technologies which can minimize the potential for lead hazards to occupants from R&R activities. This grant effort applies to R&R activities conducted by either home owners or home improvement contractors. Findings generated by grantees are intended to be published in scientific publications, and the data (other than confidential information such as names and addresses) made available to the scientific community at the time of publication.

## III. EPA Quality Assurance Requirements

EPA has quality assurance requirements that must be addressed once a grant has been awarded. After a grant is awarded, the grantee must submit a Quality Assurance Project Plan (QAPjP) to EPA for approval before the generation of any new data or the evaluation of any existing data can occur.

Quality assurance project plan requirements are stated in the document ''EPA Requirements for Quality Assurance Plans'' (EPA QA/R5). Guidance for the development of QAPjPs can be found in the EPA document entitled, ''Guidance for Quality Assurance Project Plans'' (EPA QA/G-5). QAPjPs for studies which generate new data must develop data quality objectives (DQOs) for the study. Guidance for developing DQOs can be found in the EPA publication, ''Guidance for the Data Quality Objective Process, EPA QA/G4'' (EPA/600/R–96/055). Grantees who use existing data must state the data acceptance criteria as a part of the required QAPjP. Guidance for performing data quality assessments (DQA) can be found in the EPA publication entitled, ''Guidance for Data Quality Assessment-Practical Methods for Data Analysis, EPA QA/G9'' (EPA/600/R-96-084). Copies of all of the quality assurance related documents noted above can be downloaded from the EPA Quality Assurance Division web site at http://es.epa.gov/ncerqa/qa/index.html.

EPA intends to establish an assistance program for grantees to help them develop quality assurance plans for the awarded study. However, the responsibility for completing the quality assurance requirements remains with the applicants. If for some reason EPA cannot carry out the assistance program, the applicants will be required to meet the quality assurance requirements or risk losing funding.

## IV. Human Subjects Approval and Data Confidentiality

Research supported by EPA that uses human subjects must comply with 40 CFR part 26, Protection of Human Subjects (referred to as ''the Common Rule''). If there are child research subjects, the research must also comply with 45 CFR part 46, subpart D.

If a study involves humans, including just asking them questions, human subjects approval by EPA may be required before the study can be funded. If the study is exempt from human subjects approval (40 CFR 26.101(b) lists the exemptions), the exempt finding must be confirmed by EPA. One important exemption is for studies which involve the analysis of existing data sets, documents, or specimens where either these data sets, documents, or specimens are publicly available or recorded in such a manner that the subjects cannot be identified.

For non-exempt studies, the approval process typically involves: (1) Documenting that the applicant holds a multiple project assurance (MPA) which is approved and on file with the Department of Health and Human Services (DHHS) (If the applicant does not hold an DHHS MPA, EPA may issue a single project assurance (SPA) provided the applicant meets the requirements of the Common Rule.); (2) documenting approval from the applicant's Institutional Review Board; (3) submitting a copy of the study proposal and protocols for data collection; and (4) submitting a copy of the consent form and a description of procedures for obtaining informed consent.

Formal human subjects approval or a finding of an exemption from human subjects approval will be made by EPA's Review Official as part of the formal grant application process for those applicants who are selected for funding. For purposes of the pre-application process, applicants should be sure to address the mandatory requirements described in Unit VIII. regarding human subjects approval, data confidentiality, and study restrictions.

## V. Activities

This NOFA covers whose goal is minimizing lead hazards to occupants from R&R activities. Several studies on R&R will be funded up to the amount of funding available, and the exact number of studies will depend upon the mix of dollar values of the most highly rated proposals.

The list below is only provided to describe examples of possible topics for study in this area, and the ordering below should not be construed as in any particular order. Other ideas related to R&R are openly encouraged. The best proposals will be selected regardless of category. More than one organization might possibly be funded in the same topic area.

Examples of possible topics for a study are as follows:

1. Efficacy of cleaning techniques: For example, an evaluation of vacuuming technology to reduce dust lead loading on carpeted and/or smooth surfaces after R&R. This could include but not be limited to a comparison of high efficiency particulate air (HEPA) vacuums, shop vacuums, other special purpose vacuums or vacuum bags, and regular vacuums. Also of interest are effective cleaning techniques for cleaning lead-contaminated carpets and other irregular surfaces.

2. Portable field testing: This could include an evaluation of portable field testing units to analyze dust, paint, and/or soil before or after R&R. Dust sampling and analysis could be useful in verifying that dust cleanup has been properly done after R&R, paint sampling and analysis could be useful for determining whether paint contains lead and would need special precautions to prevent lead contamination due to R&R, and soil sampling and analysis could determine whether lead contamination was generated from external scraping, for example. Examples could include but are not limited to the following: portable XRF, for dust, soil or paint analysis, or alternative field testing technologies, such as colorimetric devices, anodic stripping voltametry or laser technology.

3. Field kit: including testing instructions and a mailer to send samples to a laboratory. A major cost in sampling and analysis before undertaking R&R activities is the cost of sending a professional to the home. If a reliable program could be developed for a homeowner to take samples and mail them to an EPA-recognized laboratory, this could greatly reduce testing costs and potentially result in much greater testing to prevent lead poisoning due to R&R activities.

4. Build upon previously conducted studies by EPA or other organizations to further advance the state of knowledge of the control of lead hazards created by R&R activities.

5. Clearance testing after R&R: examine the performance of various methods on different surfaces for clearance after R&R.

6. Studying the effects of R&R on outdoor dust lead levels.

7. Studying the safe use of heat guns for paint removal.

## VI. Grant Term

The applicant's proposed project period should start on October 1, 2000, and may last for up to 2 years. Successful applicants may be granted time extensions of 6 months beyond the 2–year period, but those decisions will be made on a case-by-case basis, if and when they become necessary. Awards of additional funds beyond the initial funding award are very unlikely.

## VII. Eligibility

Eligible recipients include, but are not limited to, non-profit organizations, institutions of higher learning, state and local associations, states, federally-recognized Indian Tribes and tribal organizations, for-profit organizations, trade and professional associations, labor unions and joint labor/management trust funds. However, as a result of the Lobbying Disclosure Act of 1995, EPA (and other Federal agencies) may not award grants to non-profit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a section 501(c)(4) organization without distinguishing between lobbying funded by Federal money and lobbying funded by other sources.

In addition, the following conditions apply:

1. There are no requirements for matching funding under this grant program.

2. No applicant can receive two grants from this NOFA for the same project at one time. Applicants may submit more than one application so long as the applications are for separate and distinct projects.

3. If applicants will use funding from other sources (private or public) in carrying-out their proposed projects, the applicants must disclose those sources of funding and any restrictions due to funding from other sources in the pre-application. Evidence of other funding, if applicable, is required in the pre-application.

4. The grants under this program will be awarded as cooperative agreements to allow for the substantial involvement anticipated between EPA and the recipients during the post-award period for these projects.

## VIII. Criteria For Selection

*Mandatory Requirements and Evaluation Factors*

Pre-application proposals will be rated based on the following mandatory requirements and evaluation factors. There are three mandatory requirements. The maximum points for each evaluation factor are provided below. The maximum number of points from all evaluation factors is 100. Applicants will be required to submit a Study Plan with an Appendix to be considered. The Study Plan will be divided into Sections A through J, as indicated in Unit IX. If more than 10 pages are submitted for either the Study Plan or the Appendix, only the first 10 pages of each will be rated.

*Mandatory Requirements*

1. If the study will include human subjects, the applicant must demonstrate that the study will be done in compliance with 40 CFR part 26, that the study will also be done in compliance with 45 CFR part 46, subpart D if there are child research subjects, and that the applicant will be able to complete EPA human subjects approval or have an exempt finding confirmed by EPA.

2. The applicant must demonstrate the study will maintain the confidentiality of personal information, such as preventing linkage between names/addresses and data.

3. Restrictions on the study and on the release of non-confidential data must be judged reasonable and appropriate for a study funded by EPA.

The applicant's response to Section E of the Study Plan will be used to rate the applicant on these mandatory requirements.

*Evaluation Factors*

1. Does the proposed study address the goals of this NOFA and provide needed and important information to the scientific community? (25 points)

The applicant's response to Sections A, B, C, and H of the Study Plan will be used to rate the applicant on this factor.

2. Is the study sound from scientific and practical perspectives? (35 points)

The applicant's response to Sections D, F, and G of the Study Plan will be used to rate the applicant on this factor.

3. Does the applicant have the resources and organization to carry out and complete the study as proposed? (20 points)

The applicant's response to Section I of the Study Plan and to the Appendix will be used to rate the applicant on this factor.

4. Are the time line and budget realistic and developed sufficiently? (20 points)

The applicant's response to Section J of the Study Plan will be used to rate the applicant on this factor.

If two or more pre-applications receive the same score, and it is necessary to break ties, the following procedure will be used successively as necessary to resolve tie scores:

(1) Pre-application with highest score in factor 1.

(2) Pre-application with the highest score in factor 2.

(3) Pre-application with the highest score in factor 3.

(4) Pre-application with the highest score in factor 4.

## IX. Pre-Application Procedure

*A. Overall Requirements for Submission*

Applicants must submit a proposal for the pre-application procedure. The Agency will use applicants' submissions to select projects to be funded under this grant program. After EPA conducts a review of all submitted pre-applications, successful applicants will be contacted and requested to submit other documents (such as the ''Application for Federal Assistance'' form (Standard Form 424 or SF424), and the ''Budget Information: Non-Construction Programs'' form (SF424A)), human subjects approval materials where applicable, and other required forms to complete the application process. However, for the purposes of the pre-application process, applicants must submit only what is described below.

Applicants must submit one original and two copies of the pre-application (double-sided copies are encouraged). Pre-applications must be reproducible (for example, stapled in the upper left-hand corner, on white paper, and with page numbers). The pre-application consists of the following two parts.

1. *Study Plan*. A study plan describes the applicant's proposed project. A Table of Contents with page numbers should be included. Study plans must be no more than 10 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8½'' x 11''), with normal type size (10 or 12 cpi) and must have margins that are at least 1 inch. The study plan must respond to the format described below in Section B of this unit.

2. Appendix. The only items that EPA will accept in the Appendix are resumes of key personnel and the title, description, and reference name with phone number for work on previous or current grants or contracts with the Federal government within the last 5 years. The appendix must be no more than 10 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8½'' x 11''), with normal type size (10 or 12 cpi) and must have margins that are at least 1 inch.

*B. Format for the Study Plan*

Applicants must submit a Study Plan in the following format, with, as stated

above, a maximum of 10 pages in total for the Study Plan:

A. *Title, synopsis, and table of contents.* Pre-applications should include a title, a synopsis of the proposal, and a table of contents. The title and the synopsis should accurately and concisely describe the proposed study to the point that a person not familiar with the study could describe it to someone else who is not familiar with the study.

B. *Need for study and relationship of study to other activities.* The applicant should explain why the proposed study should be done and how it will improve the understanding of ways to minimize lead exposure to occupants from R&R activities. In addition, the applicant should indicate why the proposed study is likely to produce useful information. Finally, the relationship, if any, between the proposed study and the applicant's ongoing or previous data collection/research activities should be described.

C. *Study objectives.* The study objectives should be stated clearly. Examples of study objectives would be to compare two methods, to compare a method to a clearance standard, to obtain information on the characteristics of a method, or to take a survey of certain practices such as cleanup methods. Any variables used in the description of the study objectives should be clearly defined.

D. *Study design and data specifics.* The study design describes how the study will be executed, what data will be collected, and what characteristics the data will have. This element covers the design or plan for the proposal. The study design is critical to the success of any project since it addresses how well the proposal will answer the question being examined. The proposal should clearly describe:

- How the study design will achieve the objectives of the study.
- ''Real-world'' applicability of the design. For example, if variability is carefully controlled, but the conditions are so strained as to make the applicability of the results for further use less straightforward to generalize to other settings, the proposal will receive a lower score than if the design is more generalizable.
- The feasibility and practicality of the project. For example, can all groups involved follow the plan?
- Ways to control unwanted effects and variability, such as seasonal variation in blood-lead levels.
- Sample size/power determinations.
- How the samples were/will be selected? Was a randomized sampling plan followed?
- The process used to obtain the data. For example, what type of chemical analysis was used? Or, if a survey, what questions were or will be asked?
- The presence of a control group where applicable.

E. *Human subjects approval, data confidentiality, and study restrictions.* If the study will include human subjects, the applicant must demonstrate that the study will be done in compliance with 40 CFR part 26, that the study will also comply with 45 CFR part 46, subpart D if there are child research subjects, and that the applicant will be able to complete EPA human subjects approval or have an exempt finding confirmed by EPA. In addition, the applicant must describe plans to maintain the confidentiality of personal information.

The applicant must also describe any restrictions on the study and associated data. This includes, for example, restrictions due to other sources of funding, rules of the applicant's institution, or guarantees made to cooperating human subjects.

F. *Quality assurance.* In order to have confidence in the product of a study, the quality of the data sets in support of the study should be determined and demonstrated to be adequate. This demonstration of data quality assurance applies to both newly generated data and existing data sets which are to be used as a part of the study. Some of the areas of data quality assurance which need to be taken under consideration include evaluations of data bias, precision, and representativeness.

Pre-applications should include a description of the process to be used to evaluate the quality of newly generated data and/or existing data. This description should identify key areas of data quality assurance which will be taken under consideration in order to have confidence in the final study product.

G. *Statistical analysis plan.* The statistical analysis plan should include the translation of the study objectives to appropriate statistical terms, such as a test of hypotheses or estimation of confidence limits around a point estimate. The statistical analysis plan should also mention the statistical approach used to evaluate the data. If a hypothesis is to be evaluated, the alternative hypothesis, the type I error and the statistical tests that will be used should be described. In the case of descriptive statistics, the procedure for calculating an appropriate confidence interval, with the level of confidence, for the point estimates should be described. If a model, such as a regression model, is to be developed, the description of the model and the assumptions underlying the model should be stated.

The analysis plan should also include the statistical software that will be used. Other items to consider are: graphical analyses to be carried out; data transformations and the reason for these transformations; consideration of confounding variables; and data assumptions, such as normality and independence.

H. *Products and dissemination.* Products from grantees should include articles on study findings in scientifically peer reviewed publications. Pre-applications need to state what products will be produced, and what means of product information dissemination will be used in order to make study findings and study data available to the scientific community.

I. *Organizational resources.* The pre-application must include a description of the applicant's organizational resources. The applicant should demonstrate that these resources are sufficient to implement the proposed activity in a timely manner and within budget while meeting the proposed study objectives. The applicant should document the knowledge and experience of the project director and staff, including the day-to-day program manager(s), staff members, consultants, and contractors. In particular, the experience of key staff in relevant areas such as personnel management, administrative support, data management and statistical analysis, chemical analysis, quality assurance, and report writing should be documented. Resumes of key personnel should be included in the Appendix.

If the applicant has received other grants or contracts from the Federal government in the last 5 years, the applicant must furnish a title and description of the previous work, and the name and phone number of a Federal government employee who is familiar with the applicant's performance on that grant or contract. This information should be included in the Appendix.

J. *Time line, financial plan, and sources of other funding.* Pre-applications should include a time line or schedule for completing the proposed study, a financial plan which estimates all costs associated with the proposed study on a yearly basis with totals for the entire study, and identification of other sources of funding for the proposed study. The financial plan should include the following categories of costs: personnel, fringe benefits, travel, equipment, supplies, contractual, construction, other, total direct charges (sum of personnel, fringe benefits,

travel, equipment, supplies, contractual, construction and other), indirect charges and total (sum of total direct charges and indirect charges.) A part of the study schedule should include a provision for verbal and written updates to EPA.

Sources of other funding, either pending or already established, must be identified. Information sufficient to verify sources of any other funding already established must be included in this section.

**List of Subjects**

Environmental protection, Lead.

Dated: November 3, 1999.

**William H. Sanders III,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 99–29265 Filed 11–5–99; 8:45 am]

BILLING CODE 6560–50–F

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATES AND TIMES:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 10, 1999, from 9:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

—October 14, 1999 (Open)

*B. New Business*

—Policy Statement on Borrower Privacy

*** Closed Session**

*A. Report*

—OSMO Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: November 4, 1999.

**Vivian L. Portis,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 99–29253 Filed 11–4–99; 11:30 am]

BILLING CODE 6705–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1292–DR]**

### North Carolina; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1292–DR), dated September 16, 1999, and related determinations.

**EFFECTIVE DATE:** November 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective November 2, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–29170 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1999.

**EFFECTIVE DATE:** October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $13,900 for all disasters declared on or after October 1, 1999.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $48,900 for all disasters declared on or after October 1, 1999.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.3 percent for the prior 12-month period. The information was published by the Department of Labor during September 1999.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**James L. Witt,**

*Director.*

[FR Doc. 99–29171 Filed 11–5–99; 8:45 am]

BILLING CODE 6718–02–P

## 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 December 3, 1999.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. Heritage Bancshares, Inc.*, Lucama, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Heritage Bank, Lucama, North Carolina.

**B. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. The Leaders Group, Inc.*, Oak Brook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Leaders Bank (in organization), Oak Brook, Illinois.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Walden Financial Group, Inc.*, Pocahontas, Arkansas; to merge with Rainbow Investment Company, Inc., Tuckerman, Arkansas, and thereby indirectly acquire Bank of Tuckerman, Tuckerman, Arkansas.

Board of Governors of the Federal Reserve System, November 2, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–29105 Filed 11–5–99; 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 December 3, 1999.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. First Citizens Bancorporation of South Carolina*, Columbia, South Carolina; to acquire up to 10 percent of Heritage Bancorp, Inc., Laurens, South Carolina, and Heritage Federal Bank, Laurens, South Carolina, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

*2. First Citizens Bancorporation of South Carolina*, Columbia, South Carolina; to acquire up to 10 percent of Great Pee Dee Bancorp, Inc., Cheraw, South Carolina, and First Federal Savings and Loan Association of Cheraw, Cheraw, South Carolina, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–29104 Filed 11–5–99; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Advisory Committee on Head Start Research and Evaluation; Notice of Report Availability

**AGENCY:** Administration on Children, Youth and Families (ACYF)—Head Start Bureau, ACF, DHHS.

**ACTION:** Notice.

**SUMMARY:** The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); Section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form a independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The Advisory Committee met three times during 1999 and has issued its recommendations to the Secretary in a report entitled ''Evaluating Head Start: A Framework for Studying the Impact of the Head Start Program.'' This report is available on the Advisory Committee on Head Start Research and Evaluation web site *http://www.acf.dhhs.gov/programs/hsreac.*

**FOR FURTHER INFORMATION CONTACT:** ACF Office of Public Affairs at 202/401–9215 for press inquires.

Dated: October 3, 1999.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 99–29151 Filed 11–5–99; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99P–4648]**

### Grated Parmesan Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Sartori Foods Corp. to market test a product designated as ''Grated Parmesan Cheese'' that deviates from the U.S. standards of identity for parmesan cheese and grated cheeses. The purpose of the temporary permit is to allow the applicant to measure consumer

acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for parmesan cheese.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act ( 21 U.S.C. 341), FDA is giving notice that it has issued a temporary permit to Sartori Foods Corp., 107 Pleasant View Rd., P.O. Box 258, Plymouth, WI 53073.

The permit covers 28 million pounds of interstate marketing test products identified as ''grated parmesan cheese'' that deviate from the U.S. standard of identity for parmesan cheese (21 CFR 133.165) and grated cheeses (21 CFR 133.146) in that the product is formulated by using a different enzyme technology that fully cures the cheese in 6 months rather than 10 months. The test product meets all the requirements of the standards with the exception of this deviation. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States. Under this temporary permit, the parmesan cheese will be test marketed as grated parmesan cheese. The test product will bear the name ''Grated Parmesan Cheese.''

This permit provides for the temporary marketing of 28 million pounds of grated parmesan cheese in 2, 3, 5, 6, 10, 15, 18, 20, and 50-pound sizes. The test product will be manufactured at 12 West Main, Plymouth, WI 53073, 2 East Main, Plymouth, WI 53703, and 9001 North Lander Ave., Hilmar, CA 95324. The product will be aged, grated, and packaged for distribution at 12 West Main, Plymouth, WI 53073, and 2 East Main, Plymouth, WI 53703. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101.

This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 7, 2000.

Dated: November 2, 1999.

**Gerad L. McGowin,**

*Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.*

[FR Doc. 99–29082 Filed 11–5–99; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–1093–N]**

### Medicare Program; Request for Nominations for the Practicing Physicians Advisory Council

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

**ACTION:** Notice.

**SUMMARY:** This notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council (the Council).

Section 4112 of the Omnibus Budget Reconciliation Act of 1990 established the Council to advise the Secretary of the Department of Health and Human Services on proposed regulations and manual issuances related to physicians' services. There will be four Council vacancies on February 28, 2000.

**EFFECTIVE DATE:** Nominations will be considered if they are received no later than December 15, 1999, at 5 p.m., e.s.t.

**ADDRESSES:** Mail or deliver nominations to Paul Rudolf, MD, JD, Executive Director, Practicing Physicians Advisory Council, Center for Health Plans and Providers, Office of Professional Relations, Health Care Financing Administration, Room 435 H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7418.

**FOR FURTHER INFORMATION CONTACT:** Paul Rudolf, MD, JD, Executive Director, Practicing Physicians Advisory Council, (202) 690–7418.

**SUPPLEMENTARY INFORMATION:** Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary of the Department of Health and Human Services (the Secretary) on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Section 1868(a) of the Act requires that the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors.

The Council must include both participating and nonparticipating physicians, as well as physicians practicing in rural and underserved urban areas. In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

This notice is an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in year 2000 will be considered for reappointment if they are renominated. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter to discuss proposed changes in regulations and manual issuances that relate to physicians' services identified by the Secretary. Council members are expected to participate in all meetings.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human

Services provides management and support services to the Council.

**Authority:** Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, section 10(a)); 45 CFR part 11.

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

Dated: November 2, 1999.

**Michael M. Hash,**

*Deputy Administrator, Health Care Financing Administration.*

[FR Doc. 99–29150 Filed 11–5–99; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1999.

*Name:* Council on Graduate Medical Education (COGME)

*Date and Time:* December 1, 1999; 8:30 a.m.–5:30 p.m., December 2, 1999; 8:30 a.m.–12:00 p.m.

*Place:* The Latham Hotel, Georgetown—Presidential Ballroom, 3000 M Street, N.W., Washington, D.C. 20007.

The meeting is open to the public.

*Agenda:* The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions, and the Acting Executive Secretary of COGME. There will be presentations on a Specialty Supply and Requirements Study, and the National Health Service Corps. There will be a panel on State Centers for Health Workforce Studies. There will also be presentations on Medicare Teaching Physician Payment Issues; Osteopathic Medical Education Issues; and the Department of Defense GME Issues. An update will be given on the Advisory Committee on Training in Primary Care Medicine and Dentistry. The Council will hear the reports of its work groups on Ambulatory Programs and Financing, and Physician Workforce.

Anyone requiring information regarding the subject should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Executive Secretary, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Dated: November 2, 1999.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 99–29118 Filed 11–5–99; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project.*—Use of Treatment Improvement Protocols (TIPs) and Technical Assistance Publications (TAPs) by Faculty and Curriculum Developers Associated with the Addiction Technology Transfer Centers (ATTCs)—New—The ATTC Study is a special study under the ongoing TIPs Evaluation Project. Since 1992, SAMHSA's Center for Substance Abuse Treatment (CSAT) has published 33 Treatment Improvement Protocols, or TIPs, which provide administrative and clinical practice guidance to the substance abuse treatment field; and 23 Technical Assistance Publications (TAPs), which are publications, manuals, and guides developed by experts with first-hand experience to offer practical responses to emerging issues and concerns in the substance abuse treatment field.

Configured as a mixed methodologies, multi-site case study, the ATTC study will elicit process and descriptive data related to assessing both actual use, and usefulness, of TIPs and TAPs in developing curricula and other knowledge application products for ATTCs. Data will be collected through on-site activities at six of the 13 ATTCs. Those activities will include intensive, on-site interviews with both ATTC curriculum developers and faculty/trainers identified by directors of the selected ATTC sites and through ''snowball'' sampling techniques; additional, brief interviews with curriculum developers and faculty/trainers identified by directors of the selected sites and through snowball sampling techniques; a brief demographic survey form to be filled out by all respondents; list-building/ranking and other special techniques, to be incorporated into the more intensive interviews; and small group discussions. Measures will be primarily descriptive and process, for example, whether, and if so, which, TIPs and TAPs have been or are being used in development of ATTC curricula; how and to what extent TIPs and TAPs are used; faculty/trainers' and curriculum developers' perceptions regarding the advantages and disadvantages of using TIPs and TAPs; and their impressions and suggestions concerning the content and format of TIPs and TAPs.

Burden for faculty/trainers and curriculum developers includes written responses to a brief demographic questionnaire, including faxing or mailing it back (est.10–15 minutes); subsequent participation in a brief (½ hour) or longer one-on-one, semi-structured interview (est.1–1 ½ hours), or in a small group discussion on site (1 hour); and round-trip travel to the interview/group discussion site. Burden attributed to Facility Directors for the 13 ATTCs includes time spent assisting the study team before and during the site visit, including identifying and discussing possible participants for interviews and group discussions. Burden for the National ATTC involves time spent assisting the study team in tracking ATTCs' replies to a request for information and sample products.

| Respondents | Number of respondents | Number. of responses/respondent | Hours/response | Total burden hours |
|---|---|---|---|---|
| Faculty/trainers | 54 | 2 | *1.125 | 122 |
| Curriculum developers | 54 | 2 | *1.125 | 122 |
| Facility Director | 13 | 1 | .5 | 7 |
| National ATTC | 1 | 1 | 1 | 1 |
| Total | 122 | | | 252 |

*Includes travel time

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 1, 1999.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Administration.*

[FR Doc. 99–29109 Filed 11–5–99; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4520–N–03]**

### Notice of Proposed Information Collection for Public Comments for Resident Opportunities Self-Sufficiency (ROSS) Program: Application Requirements, Evaluation, and Assessment

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* January 7, 2000.

**ADDRESSES:** Interested persons are invites to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238 Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Titlel of Proposal:* Resident Opportunities and Self-Sufficiency (Ross) Program.

*OMB Control Number:* 2577–0229.

*Description of the need for the information and proposed use:*

The information will be used to select applicant for ROSS Program funding and will provide recordkeeping and reporting requirements for recipients of funding. The ROSS Program will provide linkages to public housing residents by providing supportive services, resident empowerment activities and Under the ROSS program HUD will fund successful models which will link services and public housing residents to enhance their quality of life while promoting self-sufficiency and personal responsibility in communities.

*Members of affected public:* State, or Local Government; Individuals or households; Not-for-profit institutions.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 850 applicants, with an average application completion time of 40 hours each; 33,200 hours will be the total annual reporting burden.

*Status of the proposed information collection:* Extension of emergency approval. The information collection requirements contained for the ROSS program were submitted to the Office of Management and Budget for emergency review and approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0229. An agency may not conduct or sponsor, and a person is not required to respond to, a collection or information unless the collection displays a valid control number.

**Authority:** Sect. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 2, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 99–29217 Filed 11–5–99; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4441–N–52]**

### Submission for OMB Review: Accountability in the Provision on HUD Assistance ''Applicant and Recipient Disclosure and Update''

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 102 of The HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD, assistance from States and units of local government, and other assistance to be used with respect to the activities to be

carried out with the assistance. The disclosure includes the financial interests of persons in the activities, the sources of funds to be made available for the activities, and the proposed uses of the funds.

**DATES:** *Comments Due Date:* December 8, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number 2510–0011 and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number; if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Accountability in the Provision of HUD Assistance Applicant and Recipient Disclosure and Update.

*OBM Approval Number:* 2510–0011.

*Form Number:* HUD–2880.

*Descripton of the Need for the Information and its Proposed Use*

Section 102 of HUD Reform Act of 1989 requires applicants for assistance for certain projects to disclose information which will include other government assistance being requested, names, and financial interests of all interested parties, and a report of expected sources and uses of funds. A $200,000 threshold applies to this disclosure requirement.

*Respondents:* Individuals or Households Business or Other For-Profit Not-for-Profit Institutions, State, Local or Tribal Government.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Initial Applications | 13,500 | | 1.2 | | 2.0 | | 32,400 |
| Updates | 3,400 | | 1.2 | | 2.0 | | 8,160 |

*Total Estimated Burden Hours:* 40,560.

*Status:* Reinstatement, with change.

**Authority:** Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 1999.

**Wayne Eddins,**

*Departmental Reports, Management Officer, Office of the Chief Information Officer.*

[FR Doc. 99–29218 Filed 11–5–99; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. FR–4521–N–01]**

### Funding for Fiscal Year 1999: Capacity Building for Community Development and Affordable Housing

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of funding for fiscal year 1999.

**SUMMARY:** A recently enacted appropriation provided $15 million in Fiscal Year 1999 funds for activities authorized in section 4 of the HUD Demonstration Act of 1993 as in effect immediately before June 12, 1997. The funds are to be used for capacity building for community development and affordable housing—provided that at least $5,000,000 of the funding is used in rural areas, including tribal areas.

Section 4 authorizes the Secretary to establish by notice such requirements as may be necessary to carry out its provisions. This notice, which takes effect upon issuance, indicates that HUD will equally divide the $15 million appropriated for this capacity building initiative between the Enterprise Foundation (Enterprise) and the Local Initiatives Support Corporation (LISC). Each organization will match the HUD assistance provided with resources from private sources in an amount equal to three times its share, as required by section 4. Each organization will use at least $2.5 million of its $7.5 million share for activities in rural areas, including tribal areas.

This notice also provides details regarding administrative and other requirements which shall apply to this program.

**FOR FURTHER INFORMATION CONTACT:** Penelope G. McCormack, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7216, Washington DC 20410, telephone number (202) 708–3176 Ext. 4391; persons with hearing or speech impediments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339, or they may call: (202) 708–2565 (except for the ''800'' number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### 1. Authority

The Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105–276, 112 Stat. 2461, October 21, 1998) (VA/HUD FY 1999 Appropriations Act) makes $15 million available from the community development grants program for capacity building for community development and affordable housing as authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148,

October 27, 1993) (42 U.S.C. 9816 note). HUD will provide this assistance through Enterprise and LISC ''to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.''

**2. Background**

In Fiscal Year 1994, HUD provided $20 million to Enterprise and LISC through The National Community Development Initiative (NCDI) as authorized by section 4 of the HUD Demonstration Act of 1993. In FY 1996, $10 million for NCDI was authorized by section 12(b)(3) of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 845, March 28, 1996). In accordance with these statutes, HUD divided both appropriations equally between Enterprise and LISC. HUD published a notice on March 30, 1994, at 59 FR 14988, which sets forth the requirements for these funds.

In FY 1997, $30.2 million was authorized by the FY 1997 Emergency Supplemental Appropriations Act (Pub. L. 105–18, 111 Stat. 198 and 201, June 12, 1997). HUD published a notice on January 30, 1998, 63 FR 5220, which contained requirements for these funds which were made available to Enterprise, LISC, Habitat for Humanity and Youthbuild USA. On May 29, 1998 at 63 FR 29418, HUD published a revision to the January 30, 1998 notice. Under these notices, Enterprise and LISC were allocated funding to be used either for new activities or to continue NCDI activities which received funding under the notice dated March 30, 1994 and grant agreements pursuant to it. Funding used to continue NCDI activities was governed by the requirements of the **Federal Register** funding notice dated March 30, 1994.

In FY 1998, the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105–65, 111 Stat. 1344, October 27, 1997) (VA/HUD FY 1998 Appropriations Act) provided $15 million for activities authorized by section 4. On September 11, 1998, at 63 FR 48984, HUD published a notice which contained requirements for these funds which were made available to LISC and Enterprise.

Today's notice contains requirements for the newly appropriated $15 million. These funds may be used for new activities or to continue NCDI activities that received funding under the notice dated March 30, 1994 and grant agreements pursuant to it. Funding used to continue NCDI activities is governed by the requirements of the March 30, 1994, **Federal Register** funding notice.

**3. Allocation and Form of Awards**

The VA/HUD FY 1999 Appropriations Act provides $15 million for activities authorized by section 4. In accordance with congressional intent, Enterprise and LISC will each be awarded $7.5 million. HUD has determined that LISC and Enterprise were the appropriate organizations to be funded prior to the amendments made effective on June 12, 1997. Therefore, the $15 million made available by the FY 1999 Appropriations Act is limited to LISC and Enterprise. In addition, each of the two organizations will use $2.5 million of its share for activities in rural areas, including tribal areas.

**4. Eligible Activities**

Eligible activities under this award include:

(a) Training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations (CDCs) and community housing development organizations (CHDOs) including the capacity to participate in consolidated planning including fair housing planning and continuum of care homeless assistance efforts that help ensure community-wide participation in assessing area needs, consulting broadly within the community, cooperatively planning for the use of available resources in a comprehensive and holistic manner, and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

(b) Loans, grants, development assistance, predevelopment assistance, or other financial assistance to CDCs/CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities which create jobs for low-income persons; and

(c) Such other activities as may be determined by Enterprise and LISC in consultation with the Secretary or his designee.

**5. Matching Requirements**

As required by section 4 of the 1993 Act, this $15 million appropriation is subject to each award dollar being matched by three dollars in cash or in-kind contributions to be obtained from private sources. Each of the organizations receiving these funds will document their proportionate share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee after October 27, 1997 to conduct activities.

In-kind contributions shall conform to the requirements of 24 CFR 84.23.

**6. Administrative and Other Requirements**

The award will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A–122 (Cost Principles for Nonprofit Organizations), and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations).

Other requirements will be detailed in the terms and conditions of the grant agreement provided to grantees, including the following:

(a) Each grantee will submit to HUD a specific work and funding plan for each community showing when and how the federal funds will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 30 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters which need to be addressed prior to approval, or the work plan shall be construed to be approved. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities are also subject to the environmental requirements in paragraph 6(f) of this notice.

(b) The grantees shall submit to HUD an annual performance report due 90 days after the end of each calendar year, with the first report due on March 31, 2000. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. Additional information or increased frequency of reporting, not to exceed twice a year, may be required by HUD any time during the grant agreement if HUD finds such reporting to be necessary for monitoring purposes.

To further the consultation process and share the results of progress to date, the Secretary may require grantees to

present and discuss their performance reports at annual meetings in Washington, DC during the life of the award.

(c) The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan such as: the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of these units. Provided, however, that when the activity described in a work plan is not to be undertaken in a single community that a report indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives, will be provided when that information is available. The performance reports will also include a discussion of the reasonableness of the unit costs; the reasons for slippage if established objectives and goals are not met; and additional pertinent information.

(d) A final performance report, in the form described in paragraph (c) above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

(e) Financial status reports (SF–269A) shall be submitted semiannually.

(f) Environmental review. Individual projects to be funded by these grants may not be known at the time the overall grants are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or local funds to a HUD-assisted project may be made until HUD has completed an environmental review to the extent required under applicable regulations and has given notification of its approval in accordance with 24 CFR 50.3(h).

**8. Application Content**

Grantees will be required to file an application containing the following:

(a) Application for Federal Assistance (OMB Standard Form 424), Non-construction Assurances (SF–424B), Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying and the Fair Housing and Equal Opportunity certification described in section 9(f) of this notice;

(b) A Summary Budget for the amount of funds being requested as described in section VI (10) of the ''NOFA for Consolidated Technical Assistance for Community Planning and Development (CPD) Programs; Notice,'' published at 59 FR 33842, 33848, on June 30, 1994 and specifying any amounts to be committed to NCDI activities under the notice dated March 30, 1994 and grant agreements pursuant to it.

**9. Other Matters**

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

(b) *Wage Rates.* Unless triggered by other Federal funds for a project under this grant, the requirements of the Davis-Bacon Act do not apply.

(c) *Relocation.* The Uniform Relocation Act applies to anyone who is displaced as a result of acquisition, rehabilitation, or demolition, for a HUD-assisted activity.

(d) *Federalism.* The General Counsel, as the Designated Official under section 7(a) of the Executive Order 12612, *Federalism,* has determined that the policies contained in this funding notice will not have substantial direct effects on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government. Specifically, this notice makes funds available through specific entities for specific activities, as required by statute, and does not impinge upon the relationships between the Federal government, and State and local governments.

(e) *Prohibition Against Lobbying Activities.* Applicants for funding under this notice 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) and to the provisions of the Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this notice. Therefore, applicants must file with their application a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(f) *Fair Housing and Equal Opportunity.* Applications must contain a certification that the applicant and all subgrantees shall 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.

**Authority:** Sec. 4 of the HUD Demonstration Act of 1993, (Pub. L. 103–120, 42 U.S.C. 9816 note), as amended and Pub. L. 105–276, 112 Stat. 2461.

Dated: October 4, 1999.

**Cardell Cooper,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 99–29219 Filed 11–5–99; 8:45 am]

BILLING CODE 4210–29–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Migratory Bird Permits; Notice of Intent To Prepare an Environmental Impact Statement and National Management Plan for the Double-Crested Cormorant

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Fish and Wildlife Service is issuing this notice to advise the public that we are initiating efforts to prepare an Environmental Impact Statement (EIS) and accompanying national management plan aimed at

addressing impacts caused by population and range expansion of the double-crested cormorant in the contiguous United States. This notice describes a range of possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom you may direct questions and comments. Locations, dates, and times of public scoping meetings have yet to be determined.

**DATES:** We will publish the formal closing date for receiving scoping comments when the notice of public scoping meetings is published in the **Federal Register**. We anticipate **Federal Register** publication of the locations, dates, and times of public scoping meetings to occur within two months of this notice of intent.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203. You may also comment via the internet to: cormorant__eis@fws.gov. Please submit internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation that we have received your message, contact us directly at (703) 358–2334. Finally, you may hand-deliver comments to: Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We have yet to determine potential sites of public scoping meetings. We will publish a notice of public meetings with the locations, dates, and times in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714; or John L. Trapp, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1965.

**SUPPLEMENTARY INFORMATION:** The double-crested cormorant (Phalacrocorax auritus) has been protected by the Migratory Bird Treaty Act since 1972. Populations of this large fish-eating waterbird, which is native to all 48 of the contiguous United States, have increased dramatically during the past three decades. In many parts of the United States, this has culminated in conflicts with resources of value to humans.

## Cormorants and Their Impacts

The size of the North American breeding population of the double-crested cormorant has been estimated at about 372,000 pairs, or 852 colonies (Tyson *et al.* 1997). Using values of one to four non-breeding birds per breeding pair yields an estimated total population of 1–2 million birds (Hatch 1995). The double-crested cormorant breeds widely throughout much of the coastal and interior portions of the United States. It has been found breeding in 46 of the 48 contiguous United States. However, it is not uniformly distributed across this broad area. Sixty-one percent of the breeding birds belong to the Interior population and it is the fastest growing of the six major North American breeding populations (Hatch 1995). From 1970–1991, in the Great Lakes region (American and Canadian), which lies within the range of the Interior population, the number of double-crested cormorant nests increased from 89 to 38,000, an average annual increase of 29 percent (Weseloh *et al.* 1995). For the contiguous United States as a whole, the breeding population increased at an average rate of 6.1 percent per year from 1966–1994 (Sauer *et al.* 1996).

Cormorant wintering populations are concentrated in coastal States, from North Carolina to Texas in the east and from California to Washington in the west. In the south, there also are appreciable concentrations inland from the coast (*e.g.*, east Texas, eastern Oklahoma, southeastern Arkansas, west-central Mississippi, and northeastern Alabama). Cormorants nesting in Canada and the northern United States from Alberta to the Gulf of St. Lawrence (*i.e.*, the Atlantic and Interior populations) migrate in winter primarily to the southern United States between Texas and Florida.

Cormorants have been implicated as being responsible for: (1) Economic losses at commercial aquaculture facilities; (2) damage to trees and other vegetation associated with breeding colonies and roosting sites; (3) impacts to other species of migratory birds in the vicinity of cormorant breeding colonies; (4) declines in economic revenues associated with outdoor (primarily fishing-related) recreational activities; (5) declines in populations of sport fish; and (6) lowering of private property values.

## Past Management Actions

Formal efforts by the Service and others to control double-crested cormorant populations date to the 1940s. Since 1972, we have issued depredation permits to persons who can document injury to ''crops or other interests'' by migratory birds, including cormorants (50 CFR 21.41). In the last decade, requests for depredation permits to control damages caused by double-crested cormorants have increased dramatically.

In response to published evidence of significant economic losses at commercial aquaculture facilities due to predation by double-crested cormorants, we implemented a depredation order on March 4, 1998 (63 FR 10560). The depredation order allows commercial aquaculturists in 13 States to take unlimited numbers of double-crested cormorants ''* * * when found committing or about to commit depredations to aquaculture stocks * * *'' (50 CFR 21.47).

In early spring 1999, we received applications for permits to conduct cormorant control activities at Little Galloo Island, Lake Ontario, New York (oiling of eggs in up to 7,500 nests); and Young Island, Lake Champlain, Vermont (oiling of eggs in up to 3,000 nests). Environmental Assessments of the proposed actions concluded that they would have no significant environmental effects, and permits were subsequently issued (USFWS 1999a and b).

The Atlantic States Legal Foundation (ASLF) challenged the issuance of a permit to the New York State Department of Environmental Conservation in United States District Court in a complaint filed August 16, 1999. The ASLF argued that our decision to issue a permit in this instance was a violation of the Migratory Bird Treaty Act and the National Environmental Policy Act and was arbitrary and capricious.

Although the District Court has taken no action on the ASLF complaint, the action highlights the need for scientific inquiry into the nature of the problems caused by double-crested cormorants and an assessment of the utility of management actions most likely to resolve resulting conflicts.

### Alternatives

After the scoping process, we will develop alternatives to be included in the EIS, basing them on our mission and the comments received during scoping. Examples of alternatives that we might consider range from ''No Action'' to ''Large-scale Population Control on Breeding Grounds, Wintering Grounds, and Migration Areas in the United States.''

As a precursor to the national management plan, the Service has contracted for the development of a cormorant status assessment. A draft is currently under review. Availability of this document for public review will be announced at a later date.

We are soliciting your comments on issues, alternatives, and impacts we might address in the EIS. Of particular value will be comments that: (1) Identify and, where possible, quantify impacts caused by increasing cormorant populations; (2) suggest management strategies to resolve such conflicts; and (3) identify determining factors in justifying the need for control, if any.

### Issue Resolution and Environmental Review

The primary issue that we will address during the scoping and planning process for the EIS is to determine which alternatives for managing double-crested cormorant populations we will analyze. We will prepare a discussion of the potential effects, by alternative, which will include the following areas:

(1) Double-crested cormorant populations and their habitats;

(2) Other bird populations and their habitats;

(3) Effects on other species of flora and fauna; and

(4) Socioeconomic effects.

We will conduct an environmental review of the management actions in accordance with the requirements of the National Environmental Policy Act (NEPA), as appropriate. We are furnishing this notice in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the spring of 2000.

### Public Scoping Meetings

A schedule of public scoping meetings is not available at this time. We encourage suggestions of potential dates, times, and locations for the meetings. We will then publish notice of the meetings in the **Federal Register**.

### References Cited

A complete list of all references cited herein is available from the Office of Migratory Bird Management (see **ADDRESSES** section).

Dated: October 26, 1999.

**Jamie Rappaport Clark,**

*Director, U.S. Fish & Wildlife Service.*

[FR Doc. 99–28814 Filed 11–5–99; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Notice of Availability of a Final Environmental Impact Statement for the Proposed Forest Management Plan for the Flathead Indian Reservation, Pablo, MT

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** A Final Environmental Impact Statement (FEIS) for the proposed Forest Management Plan for the trust forest lands of the Flathead Indian Reservation, Pablo, Montana, is now available for public review and comment. A description of the proposed action follows as supplemental information.

**DATES:** Comments on the FEIS must arrive by December 6, 1999.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Mr. Ernest ''Bud'' Moran, Superintendent, Flathead Field Office, Bureau of Indian Affairs, P.O. Box 40, Pablo, Montana 59855. You may also comment via the Internet to BudMoran@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (406) 675–0242.

Comments, including names and home addresses of respondents, will be available for public review at the Flathead Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Copies of the FEIS will be available at the public libraries in Arlee, St. Ignatius, Ronan, Polson, and Hot Springs, Montana, and at the Salish and Kootenai Cultural Centers in St. Ignatius and Elmo, Montana. Comments, responses, and changes and additions to the DEIS will be mailed out to all those who commented on the DEIS. Individuals wishing copies of the FEIS may contact Mr. Ken Trickey, Tribal Forestry, Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855, telephone (406) 676–3755.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Trickey, 406–676–3755.

**SUPPLEMENTARY INFORMATION:** There are approximately 451,391 acres of forest trust land on the Flathead Indian Reservation. The Forest Management Plan (the proposed action) takes an interdisciplinary, ecosystem approach to forest management and seeks to restore and maintain the long-term ecological integrity of the reservation's forests in a manner consistent with tribal values. The Plan describes resource management practices and levels of production, establishes management standards, allocates land, and prescribes management practices to achieve balanced forest ecosystems. Its purpose is to provide long-term direction for the tribes' forest resources. The Plan is needed to: (1) Satisfy tribal goals and objectives; (2) Ensure that management activities are compatible with sustainable forest ecosystems; (3) Balance tribal cultural, social, economic and environmental values; and (4) Establish a basis for an adaptive management and monitoring process that incorporates tribal member values.

The FEIS includes five alternatives, including a no action alternative. Alternatives 1, 2 and 3 take an ecosystem approach to management. They focus on the overall vegetative structure and composition of the forest rather than on individual stands or on the needs of individual species. They seek to restore, to varying degrees, more natural structures, processes and functions to the forest in order to achieve more sustainable conditions over the long term. Of the three, Alternative 1 seeks the highest levels of

restoration, followed by Alternative 2 and then 3. Alternative 5 takes a passive approach to management, in which timber harvesting would be limited to salvage operations after fires, wind throw, or insect and disease outbreaks. Alternative 4, no action, would continue the management practices of the last forest management plan, which was adopted in 1987.

Alternative 2, the 1996 Draft Forest Plan with updates and revisions made in response to modeling refinements and new information, is both the proposed action and the preferred alternative. It is preferred because it best balances social, cultural, economic and environmental concerns and best meets the stated purpose and need.

Changes between the DEIS and the FEIS include, but are not limited to the following:

- Under Alternatives 2 and 3, habitat effectiveness for elk will be improved in the nonlethal and mixed fire regimes by reducing the number of miles of open road per square mile from five to four.
- Under Alternative 2, 100 percent rather than 80 percent of the road sections that are severely degrading aquatics will be abandoned.
- The Water and Fish section of the Affected Environment chapter has been expanded to include updated information on fluvial geomorphology, water quality, wetlands, and monitoring.
- A socio-economic section has been added to the Affected Environment chapter.
- The safe use of herbicides and the restoration and maintenance of the chemical, physical, and biological integrity of streams have been added as objectives of the Forest Management Plan.

This notice is furnished in accordance with Section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 29, 1999.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 99–29116 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–960–99–1220–PH]**

## Resource Advisory Council Meeting, Butte, Montana

**AGENCY:** Butte Field Office, Bureau of Land Management, DOI.

**ACTION:** Notice of meeting.

**SUMMARY:** The Western Montana Resource Advisory Council will convene at 9:00 a.m., Wednesday, December 8, 1999, at the Butte Field Office, 106 North Parkmont, Butte, Montana. Issues will include an overview of Landscape Analysis planning, a discussion on the Montana/Dakotas Off-Highway Vehicle Environmental Impact Statement and an update on the Whitetail-Pipestone Environmental Impact Statement.

The meeting is open to the public and written comments can be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

**FOR FURTHER INFORMATION CONTACT:** BLM Butte Field Manager Merle Good at the above address or telephone number.

Dated: October 27, 1999.

**Merle Good,**

*Field Manager.*

[FR Doc. 99–29094 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CA–320–1820–XQ]**

## Notice of Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Northwest California Resource Advisory Council, Ukiah, California.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, December 9 and 10, 1999, for a business meeting and field tour. The meeting and tour are open to the public, but anyone attending must provide their own transportation and lunch.

**SUPPLEMENTARY INFORMATION:** The meeting begins at 10 a.m. Thursday, December 9, at the U.S. Bureau of Reclamation's Lake Berryessa headquarters office, 5320 Knoxville Rd., Napa, California. Members will depart shortly after 10 a.m. for a driving tour of the Lake Berryessa area, and the BLM's Knoxville Off Highway Vehicle Area. On Friday, December 10, the council will convene at the Marriott Hotel, 3425 Solano Ave., Napa, for a business meeting. Agenda items include Lake Berryessa management, the status of recovery from the Lowden Fire, status of Headwaters Forest Management, status of the BLM California Strategic Plan, and reports from the BLM's Arcata, Redding and Ukiah field mangers.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

**FOR ADDITIONAL INFORMATION:** Contact Rich Burns, BLM Ukiah Field Manager, at (707) 468–4000.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 99–29110 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CA–942–5700–00]**

## Filing of Plats of Survey; California

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

**EFFECTIVE DATE:** Unless otherwise noted, filing was effective at 10 a.m. on the next federal work day following the plat acceptance date.

**FOR FURTHER INFORMATION CONTACT:** Lance J. Bishop, Chief, Branch of Geographic Services, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825, (916) 978–4310.

**SUPPLEMENTARY INFORMATION:** The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, California.

**Humboldt Meridian, California**

Ts. 7 & 8 N., R. 5 E. and T. 8 N., R. 6 E.,

Dependent resurvey and metes-and-bounds survey of a portion of tract 39, (Group 1308) accepted January 13, 1999, to meet certain administrative needs of the BIA, Sacramento Area, Northern California Agency.

T. 3 N., Rs. 1 E. & 1 W.,

Retracement and centerline survey, (Group 1300) accepted February 10, 1999 to meet certain administrative needs of the BLM, Arcata Field Office.

T. 11 N., R. 7 E.,

Metes-and-bounds survey of tract 40, (Group 1305) accepted September 27, 1999, to meet certain administrative needs of the USDA, Forest Service, Klamath National Forest.

**Mount Diablo Meridian, California**

T. 7 N., R. 10 E.,

Supplemental Plat of the South ½ of section 11 and the North ½ of section 14, accepted November 2, 1998, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 28 N., R. 10 E.,

Supplemental Plat of the South ½ of section 29 and North ½ of section 32, accepted October 27, 1998, to meet certain administrative needs of the USDA, Forest Service, Lassen National Forest.

T. 26 S., R. 33 E.,

Supplemental plat of the West ½ of section 18, accepted November 23, 1998, to meet certain administrative needs of the BLM, Bakersfield Field Office.

T 3. S., R. 27 E.,

Dependent resurvey, subdivision and metes-and-bounds survey, (Group 1253) accepted November 13, 1998, to meet certain administrative needs of the USDA, Forest Service, Inyo National Forest.

T. 27 S., R. 40 E.,

Dependent resurvey, corrective dependent resurvey and metes-and-bounds survey, (Group 1282) accepted January 15, 1999, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Field Office.

T. 39 N., R. 13 E.,

Dependent resurvey, subdivision and metes-and-bounds survey, (Group 1312) accepted January 27, 1999, to meet certain administrative needs of the BLM, Alturas Field Office.

T. 46 N., R. 15 E.,

Dependent resurvey and subdivision of section 17, (Group 1298) accepted February 10, 1999 to meet certain administrative needs of the USDA, Modoc National Forest.

T. 10 S., R. 23 E.,

Supplemental plat of the NE ¼ of section 24, accepted February 22, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 31 N., R. 6 W.,

Supplemental Plat of sections 17, 18, 19 and 20, accepted April 28, 1999, to meet certain administrative needs of the BLM, Redding Field Office.

T 43 N., R. 16 E.,

Dependent resurvey and metes-and-bounds survey of tract 37, (Group 1307) accepted April 27, 1999 to meet certain administrative needs of the BLM, Surprise Field Office.

T. 39 N., R. 10 W.,

Metes-and-bounds of tracts 37 and 38, (Group 1242) accepted June 24, 1999 to meet certain administrative needs of the USDA, Forest Service, Klamath National Forest.

T. 45 N., R. 14 E.,

Metes-and-bounds survey of tract 37, (Group 1306) approved March 29, 1999 to meet certain administrative needs of the BLM, Alturas Field Office.

T. 33 N., R. 5 W.,

Supplemental Plat of section 33, accepted March 31, 1999 to meet certain administrative needs of the BLM, Redding Field Office.

T. 31 N., R. 5 W.,

Supplemental Plat of section 5, accepted March 31, 1999 to meet certain administrative needs of the BLM, Redding Field Office.

T. 4 N., R. 13 E.,

Supplemental Plat of sections 21, 22 and 27, accepted August 24, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 16 N., R. 16 E.,

Dependent resurvey and survey, (Group 1314) accepted August 24, 1999, to meet certain administrative needs of the BLM, Folsom Office.

T. 4 N., R. 14 E.,

Supplemental plat of section 20, accepted September 13, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 4 N., R. 13 E.,

Memorandum of Modification to Master Title Status Records within section 33, accepted September 16, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

T., 31 N., R. 6 W.,

Supplemental plat of section 20, accepted September 24, 1999, to meet certain administrative needs of the BLM, Redding Field Office.

T. 4 N., R. 13 E.,

Memorandum of Modification to Master Title Status Records within section 26, accepted September 27, 1999, to meet certain administrative needs of the BLM, Folsom Field Office.

**San Bernardino Meridian, California**

T. 6 S., R. 3 W.,

Supplemental plat of the NW¼ of section 30, accepted October 21, 1998 to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Field Office.

T. 3 S., R. 15 E.,

Amended supplemental plat of sections 14, 15, 19, 20, 23, 24 and 30, accepted November 23, 1998, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Field Office.

T. 16 N., R. 12 E.,

Dependent resurvey and subdivision of section 28, (Group 1153), accepted January 20, 1999, to meet certain administrative needs of the BLM, California Desert District, Needles Field Office.

T. 10 S., R. 2 W.,

Dependent resurvey and subdivision of sections 1, 4, 10, 11 and 12, (Group 1073) accepted February 10, 1999 to meet certain administrative needs of the BIA, Sacramento Area, Southern California Agency.

T. 2 N., R. 3 W.,

Supplemental plat of the north ½ of section 28, accepted June 17, 1999 to meet certain administrative needs of the USDA, Forest Service, San Bernardino National Forest.

T., 11 S., R. 1 E.,

Dependent resurvey and subdivision, (Group 1250) accepted July 16, 1999 to meet certain administrative needs of the BIA, Sacramento Area, Southern California Agency.

T. 12 S., R. 10 E.,

Supplemental plat of sections 14 and 18, accepted August 24, 1999, to meet certain administrative needs of the BLM, California Desert District, El Centro Field Office.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: October 27, 1999.

**James B. McCavitt,**

*Chief, Branch of Geographic Services.*

[FR Doc. 99–29095 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–40–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Advisory Commission for the San Francisco Maritime National Historical Park; Public Meeting

## Agenda for the December 8, 1999 Public Meeting

Presidio Golden Gate Club, 10:00 A.M.–11:45 P.M.

10:00 a.m. Welcome—Neil Chaitin, Chairman, Opening Remarks—Neil Chaitin, Chairman

10:15 a.m.—Update General Management Plan, Phase II Implementation, William Thomas, Superintendent

10:30 a.m.—Update Staff Reports, Ships, Wayne Boykin, Operations, Marc Hayman, Collections, Tom Mulhern
11:00 a.m.—Update National Maritime Museum Association, Projects, Kathy Lohan, Chief Executive Office
11:30 a.m.—Public Comments and Questions
11:45 a.m.—Agenda items/Date for next meeting

**William G. Thomas,**

*Superintendent.*

[FR Doc. 99–29119 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Federal Land Managers' Air Quality Related Values Work Group (FLAG)

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Department of Agriculture Forest Service, is announcing the availability of, and accepting comments on, the draft FLAG Phase I Report.

The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed to develop a more consistent approach for the Federal Land Managers (FLMs), *i.e.*, National Park Service, U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, to evaluate air pollution effects on their resources. The FLAG effort focuses on the effects of the air pollutants that could affect the health and status of resources in areas managed by the three agencies, primarily such pollutants as ozone, particulate matter, nitrogen dioxide, sulfur dioxide, nitrates, and sulfates. In Phase I, FLAG formed subgroups that concentrated on four issues: (1) terrestrial effects of ozone; (2) aquatic and terrestrial effects of wet and dry pollutant deposition; (3) visibility; and (4) process and policy issues. The draft report contains issue-specific technical and policy analyses, recommendations for evaluating air quality related values, and guidelines for completing and evaluating new source review permit applications. These recommendations and guidelines are intended for use by the FLMs, permitting authorities, permit applicants, and other interested parties.

**DATES:** Written comments on the FLAG report must be received by January 7, 2000.

The FLMs will conduct a public meeting to discuss the FLAG report on December 15, 1999, from 8:00 a.m. to 5:00 p.m. at the Holiday Inn Lakewood, 7390 W. Hampden Avenue, Lakewood, CO 80227; (303) 980–9200. The meeting agenda is as follows: 8:00 a.m. to 10:00 a.m.—Process and Policy Issues, 10:00 a.m. to 12:00 noon—Visibility Issues, 1:00 p.m. to 3:00 p.m.—Ozone Issues, and 3:00 p.m. to 5:00 p.m.—Deposition Issues. Each session will include a 30-minute overview of the FLAG recommendations, followed by one and one-half hours for questions and discussion. To aid in meeting planning, please contact John Bunyak at the address below if you plan to attend the public meeting.

**ADDRESSES:** A copy of the draft FLAG Phase I Report can be obtained from John Bunyak or downloaded from the Internet at: http://www.aqd.nps.gov/ard/flagfree/ Mail comments to: John Bunyak, Air Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado, 80225. E mail comments can be sent to john__bunyak@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** John Bunyak at the above address or by calling (303) 969–2818.

Dated: October 25, 1999.

**John Bunyak,**

*Acting, Chief, Air Resources Division.*

[FR Doc. 99–28971 Filed 11–5–99; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

## Investigation No. TA–201–70

## Circular Welded Carbon Quality Line Pipe

**AGENCY:** United States International Trade Commission.

**ACTION:** Amendment of scope of the investigation to exclude certain merchandise described as arctic-grade line pipe.

**SUMMARY:** On October 28, 1999, the Commission, at the request of petitioners in the investigation, amended the scope of investigation No. TA–201–70, Circular Welded Carbon Quality Line Pipe, to remove from the scope of investigation certain merchandise described as arctic-grade line pipe, defined as follows—

welded line pipe that (1) Has an outer diameter of 4.5 inches or more and a wall thickness equal to or less than 0.75 inches; and (2) When subjected to a Charpy V-notch test performed at minus 50 degrees Fahrenheit or below applied to three specimens taken from the well area, has a ft-lbs rating of no less than 17 ft-lbs for each sample, with an average for all three at no less than 19 ft-lbs; and (3) Using at least three samples, has a minimum average shear area of 85 percent in the base metal and 50 percent in the weld; and (4) When subjected to a hydrogen induced cracking test to be performed as per NACE (National Association of Corrosion Engineers) TM0284 test with solution A, has a crack length ratio that does not exceed 15 percent, a crack sensibility ratio that does not exceed 2 percent, and a crack thickness ratio that does not exceed 5 percent.

The Commission action amending the scope was taken prior to the vote in the injury phase of the investigation, which also occurred on October 28, 1999. Accordingly, imports of such line pipe were not part of the Commission's affirmative injury determination made later that day.[1] Notice of institution of the investigation was published in the **Federal Register** of August 4, 1999 (64 F.R. 42414).

**EFFECTIVE DATE:** October 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Issued: November 2, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99–29209 Filed 11–5–99; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–224 (Review)]**

## Live Swine From Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of five-year review.

**SUMMARY:** On October 29, 1999, the Department of Commerce released its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with the subject five-year review. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the five-year review of the countervailing duty order concerning live swine from Canada (investigation No. 701–TA–224 (Review)) is terminated.

**EFFECTIVE DATE:** October 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Karen Taylor (202–708–4101), Office of

[1] Commissioner Carol T. Crawford made a negative determination.

Investigations, US International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**Authority:** This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

Issued: November 3, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99–29210 Filed 11–5–99; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 177–99]**

## Privacy Act of 1974; System of Records

**AGENCY:** Department of Justice.

**ACTION:** Notice of Modified Systems of Records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the United States Marshals Service (USMS), Department of Justice, is issuing public notice of its proposal to modify its systems of records. This notice publishes updates to those systems of records, last published in the **Federal Register** on October 13, 1989 (54 FR 42100), except as otherwise set forth below under the caption **SUPPLEMENTARY INFORMATION.** Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the systems modifications. The public, OMB and Congress are invited to comment on the modifications to these systems.

**DATES:** The proposed changes will be effective December 20, 1999, unless comments are received that result in a contrary determination.

**ADDRESSES:** Submit written comments to the Department of Justice (DOJ), ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530 (Room 1400, NPB).

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill at (202) 307–1823.

**SUPPLEMENTARY INFORMATION:** Modifications to the USMS systems of records include changes to correct the office designations for systems locations and titles of systems managers, to reflect nomenclature changes, to more accurately describe the systems purposes, categories of records and safeguards, to revise sections on notification and access procedures, to clarity existing routine uses, to add routine uses, to update the retention and disposal section, to add data elements omitted from previous notices, and to further exempt one system from certain provisions of the Privacy Act. Specific changes for each USMS system of records notice are set forth below:

USMS Badge & Credentials File, Justice/USM–001: To correct the office designation for system location, title of system manager and personnel with authorized access; to add data elements omitted from previous notice; to clarify an existing routine use; to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions, and to correct the notification procedure.

USMS Internal Affairs System, Justice/USM–002: To rename the system; to correct the office designation for system location and title of system manager; to add data elements omitted from previous notice; to more accurately described categories of records, storage, and safeguards; to update retention and disposal section; to correct the notification procedure; to clarify an existing routine use; and to add four new routine uses for disclosure to complainants of alleged civil rights violations or to victims of such violations, for disclosure to other Federal agencies in connection with decisions on employment, licensing or contract issues, for disclosures to obtain cooperation in USMS investigations of alleged misconduct, and for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions. Also, a proposed rule to further exempt this system from subsections (e)(1) and (e)(5) of the Privacy Act can be found in the Proposed Rules Section of today's **Federal Register.** The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled ''Internal Inspection System, Justice/USM–002,'' and add of DOJ's compilation the modified system of records entitled ''Internal Affairs System, Justice/USM–002.''

Special Deputation Files, Justice/USM–004: To rename the system; to correct the office designation for system location and title of system manager; to add data elements omitted from previous notice; to expand categories of individuals; to more accurately describe categories of records, storage, and safeguards; to update retention and disposal section; to correct the notification and records access procedures; and to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions. The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled ''Special Deputy File, Justice/USM–004,'' and add to DOJ's compilation the modified system of records entitled ''Special Deputation Files, Justice/USM–004.''

USMS Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), Justice/USM–005, last published in the **Federal Register** on February 3, 1992 (57 FR 4059): This system has been revised to rename the system; to correct the office designation for system location and title of system manager; to identify the location of decentralized segments of the system at USMS district offices; to add data elements omitted for previous notice; to expand the description of medical records in the system; to clarify the purpose of medical records; to correct the notification procedure; and to add two new routine uses. The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled ''U.S. Marshals Service Prisoner Processing and Population Management System, Justice/USM–005,'' and add to DOJ's compilation the modified system of records entitled ''U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), Justice/USM–005 .''

USMS Training Files, Justice/USM–006, last published on October 13, 1989

(54 FR 42103): To correct the office designation for system location and title of system manager; to add data elements omitted from the previous notice; to correct the notification procedure; to clarify an existing routine use; and to add to new routine uses for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions, and for disclosure to other Federal agencies in connection with decisions on employment, retention, licensing or contract issues.

Warrant Information Network (WIN), Justice/USM–007: This system has been revised to rename the system; to correct the office designation for system location and title of system manager; to add data elements omitted from previous notice; to expand the categories of individuals covered by and records in this system; to correct the notification procedure; to more accurately describe retrievability and safeguards; and to update retention and disposal section. The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled ''Warrant Information System, Justice/USM–007,'' and add to DOJ's compilation the modified system of records entitled ''Warrant Information Network (WIN), Justice/USM–007.''

Witness Security Files Information System, Justice/USM–008: To correct the office designation for system location and title of system manager; to correct authority cited for maintenance of the system; to add data elements omitted from the previous notice; to more accurately describe storage, retrievability and safeguards; to update retention and disposal section; and to clarify record sources.

Inappropriate Communications/Threat Information System (IC/TIS), Justice/USM–009: This system has been revised to rename the system; to correct the office designation for system location and title of system manager; to identify the location of decentralized segments at USMS district offices; to add data elements omitted from previous notice; to expand the categories of individuals, records and the purpose of this system; to correct the notification procedure; to more accurately describe storage and safeguards; and to clarify an existing routine use. The office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled ''Threat Analysis System, Justice/USM–009,'' and add to DOJ's compilation the modified system of records entitled ''Inappropriate Communications/Threat Information System (IC/TIS), Justice/USM–009.''

Judicial Facility Security Index System, Justice/USM–010: To correct the office designation for system location and title of system manager; to correct authority cited for maintenance of the system; to add data elements omitted from the previous notice; to clarify an existing routine use; and to correct notification procedure.

Judicial Protection Information System, Justice/USM–011: To correct the office designation for system location and title of system manager; to correct authority cited for maintenance of the system; to add data elements omitted from the previous notice; to clarify an existing routine use; and to correct the notification procedure.

Freedom of Information Act/Privacy Act (FOIA/PA) Files, Justice/USM–012: To correct the office nomenclature for system location and title of system manager; to expand the categories of individuals in this system; to add data elements omitted from the previous notice; to more accurately describe storage, retrievability and safeguards; to correct the notification procedures; to clarify an existing routine use; and to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

Administrative Proceedings, Claims, and Civil Litigation Files, Justice/USM–013: To correct the office nomenclature for system location and title of system manager; to expand the categories of individuals in this system; to add data elements omitted from the previous notice; to more accurately describe storage, retrievability and safeguards; to update retention and disposal section; to correct notification procedures; to correct or clarify two existing routine uses; and to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records, Justice/USM–015, last published in the **Federal Register** on May 2, 1994 (59 FR 22684): To correct the office designations for system location and title of system manager; to change the nomenclature for the location of certain records contained in the system; to expand the categories of records and identify the location of certain duplicate records; to add data elements omitted from the previous notice; and to make other minor changes for greater clarity.

USMS Key Control Record System, Justice/USM–016, last published in the **Federal Register** on February 23, 1994 (59 FR 8660): To correct the office designation for system location and title of system manager; to add data elements omitted from the previous notice; to add a new routine use for disclosure to student volunteers and other non-federal workers when they perform work for USMS as authorized and they need access to personally identifiable information in USS records in order to perform their assigned USMS functions; and to correct the notification procedure.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on the modified systems to OMB and the Congress. Descriptions of these systems are required below.

Dated October 22, 1999.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

## JUSTICE/USM–001

### SYSTEM NAME:

U.S. Marshals Service Badge & Credentials File.

### SECURITY CLASSIFICATION:

Limited official use.

### SYSTEM LOCATION:

Human Resources Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Marshals Service (USMS) personnel.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to USMS personnel which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

### PURPOSE(S):

The Badge & Credentials File system assists in controlling the issuance of badges and credentials to USMS personnel which are used for

identification purposes in the performance of official duties.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

This file serves as a record of issuance of credentials. Information from this file may be disclosed:

(a) To the appropriate law enforcement agency, *e.g.*, FBI, Secret Service, State, county and municipal police responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation, or order, to the extent that the information is relevant to the recipient's functions or where there is an indication of an actual or potential violation of civil or criminal law, statute, rule, regulation, or order within the jurisdiction of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To student volunteers and other workers, who technically do not have the status of federal employees, when they are performing work for the USMS as authorized by law, and they need access to personally identifiable information in USMS records in order to perform their assigned agency functions;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are kept in standard folders.

**RETRIEVABILITY:**

Indexed by name of individual and numerical order of badges and credentials.

**SAFEGUARDS:**

Access restricted to personnel of the Background and Suitability Team, Human Resources Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.

**RETENTION AND DISPOSAL:**

Records are kept for duration of employee's tenure in the service.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Human Resources Division, USMS, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked ''privacy Act Request.'' It should clearly indicate the name of requester, the nature of the record sought and the approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

**CONTESTING RECORD PROCEDURES:**

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

**RECORD SOURCE CATEGORIES:**

Record of Notification of Employment by U.S. Marshals Service, Human Resources Division.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

## JUSTICE/USM–002

**SYSTEM NAME:**

Internal Affairs System.

**SECURITY CLASSIFICATION:**

Limited Official Use.

**SYSTEM LOCATION:**

United States Marshals Service (USMS), Executive Services Division, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

USMS employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The Internal Affairs System contains statements of the investigator and witnesses interviewed, exhibits and reports of investigations prepared by the Office of Internal Affairs, USMS, on findings of alleged misconduct of USMS employees, and records on the disposition of the investigation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

28 U.S.C. 509, and 510; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n).

**PURPOSE(S):**

The Internal Affairs system is maintained in order to carry out the responsibility of investigating allegations of improper conduct on the part of USMS employees, and to support adverse personnel actions and proceedings which may result based on the findings of the investigation.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records or information may be disclosed:

(a) To complainants of alleged civil rights violations and/or victims of civil rights violations to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the civil rights investigation, and discipline imposed in substantiated cases.

(b) To the extent that investigations reveal actual or potential violations of criminal or civil laws, to the appropriate Federal, State or local law enforcement agencies for further investigations, or to the appropriate agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation or order, to the extent the information is relevant to the recipient's function.

(c) To public and private organizations, individuals, and Federal, State, local, and foreign agencies to the extent necessary to obtain information

or cooperation in investigations of alleged misconduct by USMS employees.

(d) To students volunteers or other workers, who technically do not have the status of Federal employees, when they are performing work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

(e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of grant, license or other benefit by the requesting agency, to the extent the information is relevant and necessary to the requesting agency's decision on the matter.

(f) In a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation; the USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity, where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(i) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Originals stored in standard file folders. Duplicate copies are maintained on compact discs.

**RETRIEVABILITY:**

Information is retrieved by name of employee and case file number.

**SAFEGUARDS:**

Records are stored in locked safe. Access to automated records is protected by user identification and passwords.

**RETENTION AND DISPOSAL:**

Records are transferred to the Washington National Records Center three years after close of case or investigation, and destroyed 10 years after close of case or investigation.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Office of Internal Affairs, Executive Services Division, U.S. Marshals Services, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as the ''Records access procedures.''

**RECORD ACCESS PROCEDURES:**

To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Act Request.'' It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

**CONTESTING RECORD PROCEDURES:**

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager identified above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

**RECORD SOURCE CATEGORIES:**

Information derived from investigation of alleged malfeasance by USMS, Office of Internal Affairs.

**EXEMPTION CLAIMED FOR THE SYSTEM:**

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**.

## JUSTICE/USM–004

**SYSTEM NAME:**

Special Deputation Files.

**SECURITY CLASSIFICATION:**

Limited Official Use.

**SYSTEM LOCATION:**

United States Marshals Service (USMS), Executive Services Division, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Special Deputies, who are selected law enforcement officers and employees of the U.S. Government, and selected employees of private security companies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Special Deputation files contain the oath of office and credential of persons utilized as deputy marshals and include identifying data on the special deputy, expiration date of special deputation, requests for special deputation submitted by the employing agency, and certification of firearms qualification.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

28 CFR subpart T, § 0.112, 28 U.S.C. 562.

**PURPOSE(S):**

The USMS is authorized to deputize selected persons to perform the functions of a Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require, to provide courtroom security for the Federal judiciary, and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records of information may be disclosed:

(a) To Federal agencies for whom the USMS has deputized employees.

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) To student volunteers or other workers, who technically do not have the status of Federal employees, when they are performing work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USM functions.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are filed in standard file cabinets. Duplicate copies of paper records are stored on magnetic discs.

**RETRIEVABILITY:**

Files are indexed by name and by government department.

**SAFEGUARDS:**

Records are kept in a locked file. Computerized records are password protected.

**RETENTION AND DISPOSAL:**

Records and closed annually upon expiration of special deputation and destroyed when give years old.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Executive Services Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURES:**

Same as the ''Records access procedures.''

**RECORDS ACCESS PROCEDURES:**

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly, marked ''Privacy Act Request.'' It should clearly indicate name of the requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

**CONTESTING RECORD PROCEDURES:**

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager identified above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

**RECORD SOURCE CATEGORIES:**

Federal agencies requesting special deputations provide all necessary information required by the USMS in making the special deputations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

## JUSTICE/USM–005

**SYSTEM NAME:**

U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS).

**SECURITY CLASSIFICATION:**

Limited Official Use.

**SYSTEM LOCATION:**

Primary System: Prisoner Services Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the U.S. Marshalls Service (USMS) maintains files on prisoners taken into custody of the U.S. Marshal for the respective district. The addresses of USMS district offices are on the Internet (www.usdoj.gov/marshals/usmsofc.html).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Prisoners taken into U.S. Marshal custody.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Any and all information necessary to complete administrative processes, safekeeping, health care, and disposition of individual Federal prisoners who are in custody pending criminal proceedings, together with any law enforcement related records generated during such custody. Records include a compilation of basic information on each prisoner taken into custody of the U.S. Marshal covering identifying data, the reason for U.S. Marshal custody (*e.g.*, Federal indictment, complaint, or writ) the court disposition of charges, dates of custody, and institutions to which committed or housed. Also included are Form USM–129, Prisoner Custody, Detention and Disposition Record (formerly DJ–100; prisoner photograph; personal history statement; fingerprint card; identification record; detainer notice; speedy trial notice; prisoner remand or order to deliver prisoner, and receipt for U.S. prisoner; property receipt; court records including writs, bail/bond release information, judgment and commitment and other court orders; prisoner alert notice; prisoner complaints or serious incident reports (and related investigatory information) filed by either the prisoner or by officials or by other individuals at the institution where the prisoner is housed and covering a wide range of potentially serious issues, *e.g.*, medical treatment of prisoners, and attempted escapes or alleged prisoner misconduct or criminal activity; designation requests to Bureau of Prisons (BOP) and BOP responses; information identifiable to informants, protected witnesses, and confidential sources; access codes and data entry codes and message routing symbols used to communicate with law enforcement officials regarding the custody and safekeeping of prisoners; and prisoner transportation requests to the Prisoner Transportation Division (and any related records) which may include sensitive security data. Medical records included in this system consist of nurses notes of medical problems, diagnosis, treatment recommended;

names of health care providers at the housing unit, social workers, attorneys, family members and USMS contact personnel; special issue or treatment notices; name and address of treatment facility, dates of service, provider tax identification numbers; medical care given, cost of care, and billing records. Medical records generated by health care providers maybe included in this system as authorized by the prisoner for treatment purposes or infectious disease control.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

18 U.S.C, 3149, 3193, 3604, 3621, 4002, 4006, 4086, 4285; 28 U.S.C. 509, 510, 568, 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111.

**PURPOSE(S):**

The Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS) is maintained to cover law enforcement and security related records which are generated in the local USMS district offices in connection with the processing, safekeeping, and disposition of Federal prisoners who are in custody pending criminal proceedings. Medical records included in this system assist consultation and coordination between the USMS district office, the housing unit, treatment facility, transportation facility, and other Federal agencies, *e.g.*, BOP, to ensure that prisoners in custody of the U.S. Marshal are given proper treatment. Through USMS nursing staff, districts are assisted in determining medical treatment necessary while the prisoner is in custody of the U.S. Marshal and in ensuring the prisoner's medical clearance for travel. Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Relevant records or information may be disclosed under subsection (b)(3) of the Privacy Act as follows:

1. To other Federal, State, local or foreign law enforcement agencies, contract detention or medical facilities (1) who provide temporary custody or housing or care of prisoners, or who otherwise require information (a) to protect the safety and/or health of the prisoners, the public, and of law enforcement officials or (b) to otherwise ensure fair and proper treatment of prisoners during custody and transfer of custody or (2) who may also assist the USMS in pursuing any necessary inquiry/investigation of complaints, alleged misconduct or criminal activity. For example, relevant records or information may be disclosed to secure their safe and efficient transfer to other jurisdictions, to court appearances, or to the designated institution for service of sentence; to ensure that appropriate credit for time in custody is given; that appropriate medical treatment is provided; that all rights of the prisoner, whether statutory, humanitarian, or otherwise, are provided and protected; and to elicit information from which to initiate an inquiry/investigation and/or respond to prisoner complaints and reports of alleged misconduct or criminal activity; or, conversely, to enable those entities to respond to, or provide information relating to, such prisoner complaints or reports of misconduct or criminal activity.

2. To the appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation, or order to the extent that the information is relevant to the recipient's law enforcement function.

3. To the appropriate Federal, State, local or foreign law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency.

4. To Federal, State or local public health agencies for infectious disease control.

5. In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

6. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case should constitute an unwarranted invasion of personal privacy.

7. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record

8. To the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is stored in standard file cabinets. Duplicate copies of certain paper records are stored on magnetic discs.

**RETRIEVABILITY:**

Information is retrieved by name of prisoner and/or prisoner number.

**SAFEGUARDS:**

Paper records are stored in locked files. Access to computerized data is restricted through user identification and discrete password functions. In addition, USMS district and headquarters offices are secured behind locked doors around the clock and access is restricted to USMS personnel with official identification.

**RETENTION AND DISPOSAL:**

Records are kept in active files until a prisoner has been transferred out of the district's custody or until his/her judicial proceedings have been completed. Records are then transferred to inactive files. The USMS is reviewing a proposed disposition schedule for these records. Upon approval by the USMS Records Management Officer and NARA, this section of the notice will be revised to identify the approved schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Prisoner Services Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Act Request.'' It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the system manager listed above, Attention: FOI/PA Officer.

**CONTESTING RECORD PROCEDURES**

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, Attention: FOI/PA Officer, stating clearly and concisely what information is being

contested, the reasons for contesting it, and the proposed amendment sought.

RECORD SOURCE CATEGORIES:

Information is received from the prisoner, the courts, Federal, State, local and foreign law enforcement agencies, and medical care professionals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (e)(5) and (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

## JUSTICE/USM–006

SYSTEM NAME:

United States Marshals Service Training Files.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

a. Primary system: Human Resources Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

b. Decentralized segments: Individual training files and the Fitness in Total (FIT) Program training assessment files, identified as items (1) and (3) under ''Category of Records in the System,'' are located also at the USMS Training Academy, Department of Justice, Building 70, Glynco, Georgia 31524. Each district office of the USMS maintains FIT files only on their respective participants in the FIT Program. The addresses of USMS district offices are on the Internet (www.usdoj.gov/marshals/usmsofc.html).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual training files contain information on the individual's educational background and employee training history, and an individual career development plan; (2) skills files identify languages and other special skills possessed by the individual USMS employee; and (3) individual FIT Program training assessment files contain records on physical and medical examinations, blood tests, health histories, physical assessments, and administrative records on participation, goal setting and progress while in the program. The Certificate of Medical Examination (SF–78) is maintained in the primary system at USMS headquarters only unless obtained and placed in the district file by the individual FIT participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

PURPOSE(S):

Individual training files are used to make employment, promotion, or retention determinations for all Deputy U.S. Marshals; to develop training histories; and to determine training and/or promotion eligibility. In addition, FIT Program training assessment files are used to make hiring/retention determinations for Deputy U.S. Marshal personnel entering on duty as of July 1, 1984 and later; to determine employees' eligibility to participate in the program; to tailor an individual fitness program for each employee; to chart employee progress in the program; to determine the need for and to chart progress toward weight reduction; to develop physical fitness standards for performance appraisal purposes; and to examine statistically the physical fitness level of the USMS workforce against law enforcement populations and the general population of the United States. Skills files re used to identify special skills and language abilities possessed by personnel to aid in staffing special assignments which require such skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed as a routine use:

(a) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) To student volunteers and other workers, who technically do not have the status of federal employees, when they are performing work for the USMS as authorized by law, and they need access to personally identifiable information in USMS records in order to perform their assigned agency functions.

(c) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) To congressional members or staff on behalf of and at the request of the constituent who is the subject of the record.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of title 44 of the United States Code.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records contained in this system are kept in standard file cabinets. Skills files, summaries of FIT Program training assessment records, and duplicates of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in metal filing cabinets which are locked during nonduty hours. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification. Entry to the Training Academy and district offices is restricted generally to trainees/employees with official identification. Access to computerized records in this system is restricted to the responsible headquarters employees by assigned code.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the USMS at which time paper records are shredded and magnetic discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelop ''Freedom of Information Act/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information Act/ Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, training personnel, the Combined Federal Law Enforcement Training Academy, examining physicians, fitness coordinators, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## JUSTICE/USM–007

SYSTEM NAME:

Warrant Information Network (WIN)

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Investigative Services Division, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the USMS maintains their own files. The addresses of USMS district offices are available on the Internet at www.usdoj.gov/marshals/usmsofc.html.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals for whom Federal warrants have been issued; individuals for whom State or local warrants have been issued when the warrant is part of a USMS sponsored multi-agency task force; and associates who may provide information, assistance or leads in USMS fugitive investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records in this system consist of information related to the warrant, including dates, issuing Federal district, nature of the offense, investigative notes; information related to subjects, including biographical data, physical description, and criminal history, and their association with other individuals, dangerous gangs, extremist groups, or other organizations; information on associates including physical description, photographs, numerical identifiers, addresses, and driver's license information; and investigative information furnished by other Federal, State or local law enforcement or other government agencies and non-government sources. In addition to the abbreviated data described above, the complete file contains the warrant and other court records and internal correspondence related to the warrant; photograph; wanted flyers/posters and investigative reports reflecting patterns of activity, leads developed and statements of witnesses and other persons cooperating with USMS fugitive investigations. Investigative reports and criminal record information from other Federal, State, local and foreign law enforcement agencies participating in or cooperating with USMS fugitive investigations and apprehension efforts are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.*; 28 CFR 0,111(a) and (q).

PURPOSE(S):

The USMS is responsible for ensuring the effective operation of the judicial system through the execution of Federal arrest warrants, parole violator warrants, Federal custodial and extradition warrants, and for investigating fugitive matters, domestic and foreign, involving escaped federal prisoners, and probation, parole, mandatory release, and bond default violators. The WIN system facilitates the efficient management and administration of USMS fugitive investigations through the collection, flow, analysis, dissemination and maintenance of records and information necessary to accomplish this mission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed: (a) To public and private organizations, individuals, and Federal, State, local and foreign agencies to the extent necessary to obtain information or cooperation in USMS fugitive investigations and apprehension efforts.

(b) Upon request, to the appropriate Federal, State, local or foreign law enforcement agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule; regulation; or order, to the extent that the information is relevant to the recipient's function.

(c) Without a request, to an appropriate Federal, State or local law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency.

(d) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(f) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(g) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in standard file folders. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by individual names or identifying numbers.

SAFEGUARDS:

Except as otherwise noted in paragraph (b) under ''Routine uses,''

access is restricted to personnel in the Investigative Services Division and in each USMS district office. Access to computerized records is safeguarded by user identification and password restrictions. Paper records are maintained in filing cabinets within supervised areas of the U.S. Marshals' offices. District and headquarters offices are locked during working and non-duly hours and entry is restricted to employees with official identification.

**RETENTION AND DISPOSAL:**

Records are kept in an operating file until warrant is executed and then transferred to closed file. Closed files are retained for one year after file is closed, then transferred to the Federal Records Center and destroyed after 55 years. Computerized records are retained indefinitely as an operating file or as a closed case file.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Investigative Services Division, U.S. Marshals Service, U.S. Department of Justice, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.41(d). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the envelope ''Freedom of Information/ Privacy Act Request.''

**RECORD SOURCE CATEGORIES:**

Information is obtained from the courts, Federal, State, local and foreign law enforcement agencies, public and private organizations, witnesses, informants, and other persons interviewed during the course of the fugitive investigation.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

## JUSTICE/USMS–008

**SYSTEM NAME:**

Witness Security Files Information System.

**SECURITY CLASSIFICATION:**

Limited Official use.

**SYSTEM LOCATION:**

Witness Security Program, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Government witnesses who are participants in the Federal Witness Security Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Authorization to enter the program; (2) background information (education, experience, medical history, names, relatives, etc.); (3) funding information; (4) moving information; (5) documentation of all of the above.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

28 U.S.C. 509, 510, 524 and 561 *et seq.*; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 18 U.S.C. 3521.

**PURPOSE(S):**

The USMS provides for the security, health and safety of government witnesses and their immediate dependants whose lives are in danger as a result of their testimony against organized crime, drug traffickers, terrorists and other major criminals. The Witness Security Files are used to plan and accomplish the major functions involved in the protection of government witnesses and their families. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records or information may be disclosed as follows:

(a) In a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions, any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(b) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(c) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(d) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are kept in file folders and in a computerized database.

**RETRIEVABILITY:**

Filed and retrieved by special ID number.

**SAFEGUARDS:**

Access is restricted to Witness Security personnel using locks and alarm devices, passwords and/or encrypting data communications. The records are located in a restricted area of USMS Headquarters under 24-hour guard protection with entry controlled by official and electronic identification.

**RETENTION AND DISPOSAL:**

All records at this time are being indefinitely maintained with the exception of financial records, which are destroyed after three years and three months in accordance with General Records Schedules 6, 7 and 8.

Chief, Witness Security Program, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as the ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing and clearly mark letter and envelope

''Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Privacy Act Request.''

RECORD SOURCE CATEGORIES:

All identifying background criteria of individual: (1) Education; (2) job history; (3) medical history; (4) history of residence; (5) relatives, etc., is provided by the individual, the court, other Federal, State, local and foreign law enforcement agencies, and medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

## JUSTICE/USM–009

SYSTEM NAME:

Inappropriate Communications/ Threat Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Investigative Services Division, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the USMS maintains their own files. The addresses of USMS district offices are available on the Internet at www.usdoj.gov/marshals/usmsofc.html.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have inappropriately communicated with, directly threatened, or pose a threat to USMS protectees, including Federal judges, prosecutors, and other court officials. U.S. Marshals, deputies and other law enforcement officers, courtroom security, and federal property and buildings; associates of such individuals; and individuals reported by State or local agencies to the USMS who have threatened to harm State or local judicial officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated records which consist of information related to the inappropriate communication or threat, including type of communication, the means by which it was issued, and information contained in the communication such as dates, locations, and events; analysis of the communication or threat and other in internal USMS correspondence related the communication; biographical data including physical description, photograph, and criminal history information—in particular, known history of violence and skills related to the nature of the threat; investigative information including associations with other individuals and dangerous gangs, extremist groups, or other organizations; information on associates including physical descriptions, photographs, numerical identifiers, address(es), driver's license information; and investigative information furnished by other Federal, State and local law enforcement or other government agencies and non-government sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 561 *et seq.;* 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 111(c) through (f).

PURPOSE(S):

The USMS is required to protect government witnesses, U.S. Attorneys and their assistants, Federal jurists and other court officers; to provide for courtroom security; and to assist in protecting Federal property and buildings. The USMS also conducts Federal law enforcement activities itself, *e.g.,* warrant apprehension investigations, which subject its officers to security danger. These operations require acquiring information to allow an accurate assessment of the existence and extent of the dangers posed, including specific threats, to aid in responding to specific security assignments and needs, as well as developing protective measures and plans in advance. With the information collected, officials determine and carry out operating plans, funding, personnel, and any special resources needed to counteract threat situations.

Individuals reported by State and local agencies to the USMS who have threatened to harm State or local judicial officials often appear before the Federal bar as a result of appeals, civil rights suits, continuing criminal behavior, *etc.* Such individuals may continue their inappropriate communications or threats at the Federal level. In that event, information concerning these individuals provided by the State and local agencies assists the USMS in assessing the dangers they pose to Federal Officials and in developing protective measures and responding to specific security requirements. This information also assists in researching inappropriate communications directed toward judicial officials of all jurisdictions to gain a full and comprehensive picture of the diverse circumstances involved, to analyze trends based upon a statistically reliable study, and to more fully address the problem.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To other appropriate Federal, State and local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative of litigative responsibilities of the recipient agency, or to the extent that disclosure is necessary to obtain additional case-related information or to develop protective measures.

(b) To other law enforcement agencies to develop protective measures where a specific threat is posed to their members; and to an individual or organization where the recipient is or could become the target of a specific threat.

(c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguable relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) As is necessary to appropriately respond to congressional inquiries on behalf of and at the request of the constituent who is the subject of the record.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are kept in file folders. Duplicate copies of paper records are stored on magnetic discs.

**RETRIEVABILITY:**

Records are retrieved by name and identifying number or a combination of the name and number.

**SAFEGUARDS:**

Except as otherwise noted in paragraphs (a) and (b) under ''Routine uses,'' access to computerized records is restricted to personnel in the Investigative Services Division and in each district office by user identification and password. Paper records are maintained in filing cabinets within supervised areas. District and headquarters offices are locked during working and non-duty hours and entry is restricted to employees with official identification.

**RETENTION AND DISPOSAL:**

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARA and the USMS.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Investigative Services Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as ''Record access procedure.''

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

**RECORD SOURCE CATEGORIES:**

Information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

## JUSTICE/USMA–010

**SYTEM NAME:**

Judicial Facility Security Index System.

**SECURITY CLASSIFICATION:**

Limited Official Use.

**SYSTEM LOCATION:**

Judicial Security Division, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals employed, or offered employment as contract court security officers (CSO's) by companies contracting with the USMS to provide judicial area security in Federal courthouses.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

An alphabetical index contains the name, date of birth and social security number of the CSO, name of the contracting security firm (employer), completion dates and cost data for limited background investigation and orientation, district of employment, dates contract performance started and ended, posts and hours of duty and the status of employment, *i.e.*, active or inactive. For inactive CSO's, the index contains the reason for inaction, e.g., CSO resigned; applicant rejected based on the preliminary records check; CSO removed based on Office of Personnel Management (OPM) background investigation; etc. In addition to providing abbreviated date, the index assists in locating records on the CSO related to the initial screening process for eligibility, *e.g.*, application and preliminary checks for arrest records, which are filed under the contract number and name of the contracting security firm (employer). The index also assists sin locating files containing OPM reports on the limited background investigation and internal suitability memoranda which are segregated by categories ''active'' and ''inactive.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

28 U.S.C. 509, 510 and 561 *et seq.;* 5 U.S.C. 301; 44 U.S.C. 3101 and 28 CFR 0.111.

**PURPOSE(S):**

The USMS administers and implements courtroom security requirements for the federal judiciary and provides assistance in the protection of federal property and buildings. The Judicial Facility Security Program provides uniformed security officers and security systems and equipment for judicial area security in Federal courthouses throughout the country. It is funded by the Judiciary through the Administrative Office of the U.S. Courts (AOUSC) and is managed by the USMS. This system of records is used to make security/suitability determinations in the hiring of CSO's to monitor orientation completed, to track costs related to background investigations and attendance at Government-sponsored orientation, and to monitor contractor performance. It enables program officers to compile data for reports to AOUSC on actual and projected expenses, to list CSO's their posts and hours of duty, and to determine turnover and reemployment ratios among CSO's.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be disclosed as follows: Individual cost data may be disclosed to the contractor (employer) in connection with billing and recovering reimbursable costs. In addition, records or information also may be disclosed as follows:

(a) To an appropriate Federal, State or local law enforcement agency to the extent necessary to obtain information on arrest, or to the extent relevant to an actual or potential criminal or civil investigation, litigation or enforcement proceedings of that agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation

or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To congressional members or staff on behalf of and at the request of the constituent who is the subject of the record;

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on magnetic disks and original paper records are kept in file folders.

RETRIEVABILITY:

Records are retrieved by name of the contract CSO.

SAFEGUARDS:

Records are stored in locked metal filing cabinets during off-duty hours. Access to computerized records is controlled by restricted code to personnel on a need-to-know basis. Entry to USMS Headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the National Archives and Records Administration and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Judicial Facility Security Program, Judicial Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURES:

Same as the ''Records access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all request to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all request to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, USMS orientation records, other law enforcement agencies, OPM and from the contractor (employer).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

## JUSTICE/USM–011

SYSTEM NAME:

Judicial Protection Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Judicial Security Division, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been directly threatened or are subject to violent threat by virtue of their responsibilities within the judicial system, *e.g.*, U.S. Attorneys and their assistants, Federal jurists and other court officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, *e.g.*, case number, name of protected subject, name of control district and district number, an indication of the type and source of threat, and the means by which the threat was made. In addition to the abbreviated data named above, the complete file may contain descriptive physical data of the protectee, and other information to identify security risks and plan protective measures in advance of or during periods of active protection, *e.g.*, individual practices and routines, including associational memberships. Information regarding the expenditure of funds and allocation of resources assigned to the protectee may also be included in the file to enable officials to develop operating plans to counteract threat situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.*, 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111 (c) through (f).

PURPOSE:

The USMS is required to protect U.S. Attorneys and their assistants, Federal jurists and other court officers; to provide for courtroom security, and to assist in protecting federal property and buildings. This operation requires obtaining information to allow an accurate assessment of the individual security needs of such threatened persons to aid in developing protective measures and advance planning of specific security assignments. With the information collected, USMS officials determine and carry out operating plans, funding, personnel assignments and any special resources needed to counteract specific threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To other Federal, State and local law enforcement agencies to the extent that disclosure is necessary to develop and/or implement protective measures;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employees; or the United

States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To congressional members or staff on behalf of and at the request of the constituent who is the subject of the record;

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

An index record is stored on index cards and magnetic tape. Original paper records are kept in file folders.

**RETRIEVABILITY:**

Records are indexed and retrieved by name of protectee.

**SAFEGUARDS:**

Access to computerized records is restricted to Court Security Program personnel by assigned user code and password. In addition, records are stored in locked metal cabinets during off-duty hours. The records are located in a restricted area, and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

**RETENTION AND DISPOSAL:**

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the National Archives and Records Administration and the USMS.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Court Security Program, Judicial Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as the ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

**RECORD SOURCE CATEGORIES:**

Information is obtained from individual protectees. Where information is maintained in this system on identified threat sources to a particular protectee, such information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies, and is not retrievable by name or other identifying particular assigned to the threat source.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

## JUSTICE/USM–012

**SYSTEM NAME:**

U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files.

**SECURITY CLASSIFICATION:**

Limited Official Use.

**SYSTEM LOCATION:**

Office of General Counsel, U.S. Marshal Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who request disclosure of U.S. Marshals Service (USMS) records pursuant to the Freedom of Information Act (FOIA); individuals who request access to or correction of records maintained in USMS systems of records pursuant to the Privacy Act (PA); individuals whose FOIA or PA requests have been referred to the USMS by another Department of Justice component or another agency; and USMS FOIA/PA Specialists assigned to process requests.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A computerized case tracking system is maintained to aid in the orderly processing of requests and to prepare annual reports. Data items include the name and address of the requester; the type of request; dates on which the request was conceived, acknowledged, and answered; type of final responses; exemptions used to deny access to records, when applicable, and the name of the USMS FOIA/PA Specialist assigned to process the request. Identifying data, *i.e.*, date and place of birth, and social security number, is maintained on PA requesters to verify their identity and ensure proper disclosure. Files contain a record of the FOIA/PA request, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and 44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

**PURPOSE(S):**

As a component of the Department of Justice, the U.S. Marshals Service is required to respond to requests under the Freedom of Information Act for records maintained in and under the control of the Service; and requests to access or amend records in systems of records pursuant to the Privacy Act. 5 U.S.C. 552 and 552a. To effectively carry out this responsibility, records retrievable by individual identifiers are necessary to respond to individual requesters, to consult with the Office of Information and Privacy, Department of Justice, on administrative appeals of USMS action, to participate in litigation regarding agency action on requests, and to compile data to report to the Department, OMB and Congress on activities implementing the Acts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

A record maintained in this system may be disseminated as a routine use:

(a) To any Department of Justice component for consideration in connection with an FOIA or PA request, appeal or civil suit pursuant to the Acts.

(b) To a Federal, State or local agency which furnished the record to permit that agency to make a decision as to access or correction, or to consult with that agency to enable the USMS to determine the propriety *of* access or correction.

(c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation

or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions. In addition, records or information which is relevant to the subject matter involved in a pending judicial or administrative proceeding may be disclosed in response to a request for discovery or for appearance of a witness.

(d) To student volunteers or other workers, who technically do not have the status of Federal employees, when they perform work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions.

(e) To the news media and the public pursuant to 28 CFR 50.2 unless is it determined that the release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(f) To congressional members or staff on behalf of the constituent who is the subject of the records.

(g) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

#### DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Request files are stored in standard file cabinets. The computerized case tracking system and duplicate copies of some paper records are maintained on magnetic discs.

#### RETRIEVABILITY:

Records are retrieved by name of requester, USMS FOIA/PA Specialist, or request control number.

#### SAFEGUARDS:

Access to computerized records is restricted to Office of General Counsel personnel by user identification and passwords. In addition, request files are stores in metal filing cabinets and in designated file rooms within the Office of General Counsel, USMS Headquarters during off-duty hours. Access to USMS Headquarters is restricted to employees with official identification.

#### RETENTION AND DISPOSAL:

Records are destroyed 6 years after final response or appeal determination by the Department of Justice, Office of Information and Privacy; or 3 years after final adjudication by the courts.

#### SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

#### NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

#### RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention FOI/PA Officer, and provide a return address for transmitting the information.

#### CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information Act/ Privacy Act Request.''

#### RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, the systems of records searched in the process of responding to requests, and other agencies who have referred to the USMS those requests for access to or correction of USMS records.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5), (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). The system is exempted pursuant to subsections (j)(2) and (k)(2) only to the extent that the records there reflect criminal and civil law enforcement and investigative information. The system is exempted pursuant to subsections (k)(5) only to the extent necessary to protect confidential sources. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (3) and have been published in the **Federal Register**.

### JUSTICE/USM–013

#### SYSTEM NAME:

U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files

#### SECURITY CLASSIFICATION:

Limited Official Use

#### SYSTEM LOCATION:

Office of General Counsel, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort and employee claims against the USMS; individuals who have initiated administrative proceedings against the USMS; individuals who have filed civil suits naming the USMS and/or personnel as defendants, including those suits arising from authorized criminal law enforcement activities; individuals named as defendants in Federal court actions initiated by the USMS; and USMS attorneys assigned to defend such claims and litigation.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the names of individuals covered by the system and the title of cases, a computerized case tracking system contains certain summary data, *e.g.*; a summary of correspondence and pleadings received in a case, names of parties involved; names of attorneys handling the case or matter, court in which action is brought, and civil action number, thereby facilitating location of the complete file. Cases or matters include adverse actions, grievances, unfair labor practice charges, tort claims, Equal Employment Opportunity and other employee claims, and suits against USMS employees in their official capacities, etc. Files contain correspondence/claim forms submitted by claimants and internal reports and related documents concerning the merits of the claim, attorney or staff recommendations and findings related to the claim; records on actions taken by USMS giving rise to appeals, attorney notes, recommendations and strategy for defending appeals; copies of civil actions filed and criminal investigative records related to the action e.g.,

criminal investigative reports relating the underlying criminal matter which relates to or constitutes the basis of the claim or suit (including those from on-Federal law enforcement participants in USMS criminal or civil law enforcement activities), witness statements, reports of interviews, exhibits, attorney notes, pleadings, and recommendations and strategy for defending civil actions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and 44 U.S.C. 3101.

**PURPOSE(S):**

Among other responsibilities, the Office of General Counsel, U.S. Marshals Service, provides legal representation to USMS management in all administrative matters including, but not limited to, adverse actions, grievances, unfair labor practices, EEO, tort and employee claim proceedings; represents the Service and its employees in district court actions brought against them for acts taken in the course of official duties; and represents the Service in other actions in which its interests are involved. Effective representation in such matters requires that records be retrievable by individual identifiers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records maintained in this system of records may be disseminated as follows:

(a) To any component of the Department of Justice for consideration in connection with the case or matter to which the record related;

(b) To the appropriate Federal, State or local agency responsible for investigating, prosecuting or defending an action where there is an indication of actual or potential violation of criminal or civil laws or regulations or civil liability of any government agency;

(c) To any Federal, State or local agency, organization or individual to the extent necessary to elicit information or witness cooperation if there is reason to believe the recipient possesses information related to the case or matter;

(d) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(f) To respond to a request for discovery or for appearance of a witness when the information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

(g) To student volunteers or other workers, who technically do not have the status of Federal employees, when they perform work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions;

(h) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(i) To Congressional members or staff on behalf of the constituent who is the subject of the record;

(j) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Administrative claim, appeal, and litigation files are stored in standard file cabinets. The computerized case track system and duplicate copies of some paper records are stored on magnetic discs.

**RETRIEVABILITY:**

Records are retrieved by name of claimant, litigant or USMS attorney, or by caption of civil action or administrative proceeding.

**SAFEGUARDS:**

Access to computerized records is restricted to Office of General Counsel personnel by user identification and passwords. In addition, files are stored in metal filing cabinets within the Office of General Counsel, USMS Headquarters during off-duty hours. Access to USMS Headquarters is restricted to employees with official identification.

**RETENTION AND DISPOSAL:**

Records in the case tracking system are retained indefinitely. Claim files are destroyed after 7 years. Litigation files are destroyed after 10 years. Cases designated by the General Counsel as significant or precedential are retained indefinitely.

**SYSTEM MANAGER(S) AND ADDRESS:**

General Counsel, Office of General Counsel, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/ Privacy Act Request.''

**RECORD SOURCE CATEGORIES:**

The sources of information contained in this system are the individual claimant/litigant, USMS officials, law enforcement agencies, statements of witnesses and parties, transcripts of depositions and court proceedings, administrative hearings and arbitrations, and work product of staff attorneys and legal assistants working on a particular case or matter.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(2) and (3); (e)(4)(G) and (H); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(5). The system is exempted pursuant to subsection (j)(2) only to the extent that information in a record pertaining

to a particular individual relates to a criminal investigation which relates to or constitutes the basis of a particular suit or claim. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect a confidential source. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

## JUSTICE/USM–015

### SYSTEM NAME:

U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records.

### SECURITY CLASSIFICATION:

Limited official use.

### SYSTEM LOCATION:

Records of the Employee Assistance Program Office, Health and Safety Team, Human Resources Division, are located at 600 Army Navy Drive, Arlington, Virginia 22202–4210. Records of the contractor with whom the USMS has contracted for health services and records of individual licensed mental health providers with whom the contractor has subcontracted for health services, are located at the respective offices of these licensed providers. Addresses of these service providers may be obtained by contacting the USMS Employee Assistance Program (EAP) Office.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS (and in limited cases, immediate family members) who have sought counseling or have been referred for counseling or treatment through the USMS EAP.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records of the USMS EAP Office, the contractor, and the subcontractors include written consent forms used to manage referrals and the exchange or flow of personal information, and account information such as billings and payments. (Where relevant, certain records may be duplicated in these offices.) Other records generally maintained by the USMS EAP Office, the contractor and subcontractors are described as follows:

A. Records located in the USMS EAP Office include only records which may assist in managing and monitoring self referrals or management referrals, and participation in the EAP. Examples of such records are: The name, location and telephone number(s) of the employee, family member or supervisor manager who makes the initial contact with the EAP staff; the date and manner of initial contact, i.e., by telephone or in person; notes of presenting problem(s) upon initial contact with EAP staff; documents received from supervisors or personnel on work-lace problems or performance; insurance data; name and address of treatment facilities; number of sessions attended by the participating employee or family member; leave records; written consent forms, and abeyance/back-to-work agreements (made to mitigate adverse actions based upon treatment); information on confirmed, unjustified positive drug tests provides by the Drug Free Workplace Program and the Medical Review Officer under E.O. 12564; and ''sanitized'' audit records of the EAP/Contractor/Subcontractors Program. Records may also include any records which may assist in (1) assessing and counseling the individual on a short-term basis, and (2) identifying those individuals who may need long-term professional counseling, treatment and/or rehabilitation services. Records may also contain date of intake at the contractor and/or subcontractors; pertinent psychological, medical, employment and/or financial histories; address(es) and credentials of subcontractors providing short-term counseling; attendance at short-term counseling sessions; prognosis information; information of problem resolution through short-term counseling, and, if applicable, date closed. Records may also include recommendations and referrals to community resources for long-term counseling, treatment and/or rehabilitation programs beyond the services provided by the USMS EAP, contractor and/or subcontractors, including referrals for other assistance not related to financial concerns, or psychological or medical health.

B. Records of the contractor and/or subcontractors include a statement of understanding, diagnostic evaluation, treatment plan, and a termination summary of all active clients. They may also include any records which may assist in (1) assessing and counseling the individual on a short-term basis, and (2) identifying those individuals who may need long-term professional counseling, treatment and/or rehabilitation services. Records of the contractor may also include any records which may assist in monitoring and evaluating the performance of various subcontractors outside the Washington, DC metropolitan area. Examples of contractor and/or subcontractor(s) records are: Personal identifying data on the employee and/or family member such as name, social security number, gender, home address and telephone number(s); notes and documentation of problem(s) presented upon initial contact with the contractor and/or subcontractor(s), date of intake at the contractor and/or subcontractor(s); pertinent psychological, medical, employment and/or financial histories; address(es) and credentials of subcontractor(s) providing short-term counseling; clinical notes and documentation on short-term counseling; attendance at short-term counseling sessions; prognosis information; information of problem resolution through short-term counseling, if applicable; date the case closed; information on confirmed, unjustified positive drug tests; and client employee/family member evaluations of services provided by the USMS EAP, the contractor and/or subcontractor(s). Records may also include recommendations and referrals to community resources for long-term counseling, treatment and/or rehabilitation programs beyond the services provided by the USMS EAP, contractor and/or subcontractor(s), including referrals for other assistance not related to financial concerns, or psychological or medical health.

C. Other records included in the system (and which may be duplicated by the USMS EAP and the contractor and/or subcontractor(s) offices, when relevant, necessary, and proper) are those obtained from specialized service providers (SSPs) with the written consent of the subject individuals.[1] Generally, such records are limited to those which relate to attendance at sessions, prognosis for recovery, motivation, and progress toward recovery. However, where the record subject deems it necessary or desirable to furnish additional records, such records could include: medical tests and screenings; treatment and rehabilitation plans as well as behavioral improvement plans; notes and documentation on counseling; and relevant information pertaining to assistance provided on matters other

[1] SSPs are health service, community-based organizations, which offer long-term treatment and rehabilitation services. The USMS EAP and/or the contractor and/or subcontractors may recommend that the individual seek professional assistance beyond that provided by the USMS EAP Program contracted out with the contractor and/or subcontractors. Where the individual chooses to pursue further treatment, he may elect to provide the USMS EAP and/or the contractor and/or subcontractor(s) with such information as may be relevant to the back-to-work agreement.

than financial concerns, or psychological or medical health.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 290dd, et seq. and 290ee, et seq.; 42 CFR 2.1, et seq.; E.O. 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. 100–71, sec. 503 (July 11, 1987).

**PURPOSE(S):**

The EAP is a voluntary program designed to assist the employee in obtaining necessary help in handling personal problem(s) affecting job performance, and to provide emotional support and assistance during periods of crises, including those arising from traumatic work-related incidents. No records are maintained on traumatic work-related incidents. Records are maintained to document participation in the EAP program; the nature and effects of the employee's personal problem(s); and efforts to counsel the employee. Records may be used also to monitor compliance with abeyance and back-to-work agreements made to mitigate adverse actions based upon treatment. Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

In addition to those disclosures permitted by the Privacy Act itself, 5 U.S.C. 552a(b),[2] permissive disclosures, without individual consent, are as follows:

1. To the extent that it is appropriate, relevant, and necessary to enable the contractor and/or subcontractor(s) to perform counseling, referral and program performance evaluation responsibilities, the USMS will provide those records—identified in paragraph A of the ''Category of Records in the System'' to the contractor and/or subcontractor(s) who, on behalf of the USMS, maintain and operate a portion of this system of records—identified in paragraph B of the same caption.

2. Either the USMS or the contractor and/or subcontractor(s) may disclose as follows: (a) To the appropriate State or local agency or authority to the extent necessary to comply with the laws governing reporting incidents of suspected child abuse or neglect, and (b) to Federal, State and/or local authorities or to any other entity or person to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is stored in locked metal safes.

**RETRIEVABILITY:**

Records are retrieved by name of employee and, in limited cases immediate family members.

**SAFEGUARDS:**

In accordance with the requirements of 42 CFR 2.16, USMS EAP and contractor and subcontractors records are stored in secure environment. Access to USMS EAP records is restricted to designated USMS EAP personnel, except as otherwise permitted by law or with the written consent of the individual. Vouchers prepared to effect payment for services rendered by the contractor and/or subcontractors in performance of the contract do not contain individual identifiers. Invoices prepared by contractor and/or subcontractors located outside the Washington, DC metropolitan area are sent by first-class mail to the designated member(s) of the local contractor and/or subcontractors contracted with the USMS. In turn, invoices or other records prepared in support of payment vouchers which contain individual identifiers are hand-carried by the local contractor and/or subcontractors to the EAP Administrator who retains the supporting documentation. Records are maintained in locked metal safes. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

Access to contractor and/or subcontractors records is restricted to a designated member(s) of the contractor and/or subcontractors, except as otherwise provided by law or with the written consent of the individual. Contractor and/or subcontractors records are stored in locked files also.

**RETENTION AND DISPOSAL:**

Records are retained for three years after the individual ceases contact with the USMS EAP and/or the contractor and/or subcontractor(s) unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. At that time the records are destroyed by shredding (General Records Schedules 26 and 36).

**SYSTEM MANAGER(S) AND ADDRESS:**

Employee Assistance Program Administrator, Health and Safety Team, Human Resources Division, United Stats Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as ''Record access procedures.''

**RECORD ACCESS PROCEDURES:**

Address all requests for access to the USMS EAP records (identified in paragraphs A and C of ''Category of records in the system'') in writing to system manger identified above. Address all requests for records maintained by the contractor and/or subcontractors (identified in paragraph B of the same caption) to these service providers. Address(es) of these service providers may be obtained by contacting the USMS EAP Office. Clearly mark the envelope and letter ''Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, and approximate date of the record. In addition, provide the required verification of identity (28 CFR 16.41(d)) and a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information in accordance with the procedures outlined under ''Record access procedures.'' State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Privacy Act Amendment Request.''

**RECORD SOURCE CATEGORIES:**

Records are generated by the employee who is the subject of the record; USMS EAP personnel; the contractor and/or subcontractor(s), and the SSP; the USMS Human Resources Division; and the employee's supervisor. In the case of a confirmed, unjustified positive drug test, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

## JUSTICE/USM–016

**SYSTEM NAME:**

U.S. Marshal Service (USMS) Key Control Record System.

**SECURITY CLASSIFICATION:**

Limited Official Use.

**SYSTEM LOCATION:**

Office of Security, Executive Services Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former employees of the USMS who have been issued office keys for USMS Headquarters locations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records contained in this system consist of an automated index which includes the name of the employee to whom a key is issued; the social security number (only when two or more employees have identical names, including middle initial); unique key identification code number; key type (*e.g.*, grand master, master, submaster, change); storage container hook number; description (*e.g.*, number identification) of door(s), room(s), and/or area(s) the key opens or accesses; transactions type and/or status (*e.g.*, key issued, transferred, retrieved, lost, broken) and transaction date; and, any other appropriate comment, *e.g.*, comments regarding key, door, room, area, etc. In addition, a manual index with abbreviated data is maintained as a backup system. This manual index includes the room/suite number, the name of the employee to whom a key is issued, the key identification code number, and date(s) of issuance and retrieval.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and 44 U.S.C. 3101.

**PURPOSE(S):**

The USMS Key Control Record System serves as a record of keys issued and facilitates continuing security at USMS Headquarters locations. Records are maintained to assist in restricting office and work area access to authorized USMS personnel by controlling, monitoring and tracking keys issued. In addition, the records assist in identifying any repairs, changes, or additional security measures that may be necessary as a result of lost or broken keys.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records or information may be disclosed:

(a) In the event that a record(s) indicate a violation of potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto, the relevant record(s) may be disclosed to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation, and/or charged with enforcing or implementing such statute, rule, regulation or order;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions;

(c) To student volunteers or other workers, who technically do not have the status of Federal employees, when they are performing work for the USMS as authorized by law and they need access to personally identifiable information in USMS records in order to perform their assigned USMS functions;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Records in this system are not appropriate for disclosure to consumer reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated index records are stored on magnetic disks. Paper copies of automated records are kept in file folders and original paper records of the manual index are stored in card files.

**RETRIEVABILITY:**

Records are retrieved by name of the individuals covered by the system.

**SAFEGUARDS:**

Access to these records is restricted to personnel of the USMS, Office of Security. Computerized records may be accessed only by assigned code and password. Paper records are located in a restricted area and are maintained in metal filing cabinets or safes which are locked during non-duty hours.

**RETENTION AND DISPOSAL:**

Records are retained for three years after turn-in of the key at which time they are destroyed (General Records Schedule 18).

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Office of Security, Executive Services Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

**NOTIFICATION PROCEDURE:**

Same as the ''Records access procedures.''

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

**RECORD SOURCE CATEGORIES:**

Information contained in this system is collected from the individual and the system manager.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 99–28631 Filed 11–5–99; 8:45 am]

BILLING CODE 4410–AR–M

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## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 176–99]**

## Privacy Act of 1974; System of Records

**AGENCY:** Department of Justice.

**ACTION:** Notice of New Systems of Records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the United States

Marshals Service (USMS), Department of Justice, proposes to establish two new systems of records entitled ''Judicial Security Staff Inventory, Justice/USM–017,'' and USMS Alternative Dispute Resolution (ADR) Files and Database Tracking System, Justice/USM–018,'' and proposes routine uses for the new systems. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed systems. The public, OMB and Congress are invited to comment on the proposed systems of records.

**DATES:** The proposed systems of records will be effective December 20, 1999, unless comments are received that result in a contrary determination.

**ADDRESSES:** Submit written comments to the Department of Justice, ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Room 1400, National Place Building, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill at (202) 307–1823.

**SUPPLEMENTARY INFORMATION:** The USMS is responsible for ensuring the effective operation of the judicial system through the administration and implementation of courtroom security requirements, the protection of Federal jurists, court officers, and other threatened persons, the execution of Federal arrest warrants, and other law enforcement functions. The proposed system, Judicial Security Staff Inventory, Justice/USM–017, will be used by management of the Judicial Security Division (JSD) to assist in the effective control of accountable property and to ensure that JSD personnel maintain equipment necessary and in proper working order to perform their functions, especially law enforcement functions, and to respond quickly to urgent operational law enforcement activities as they develop.

The USMS Alternative Dispute Resolution (ADR) process offers an alternative to employees to established channels for addressing formal grievances and Equal Employment Opportunity complaints which may result in a simpler, quicker less expensive, and less adversarial resolution of disputes. The proposed ADR system of records is used to facilitate the effective operation of the ADR process in resolving grievances and complaints, to track case activity, and to compile data for required reports.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on the proposed systems of records to OMB and the Congress. Descriptions of the Systems are printed below.

Dated: October 22, 1999.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

## JUSTICE/USM–017

### SYSTEM NAME:

Judicial Security Staff Inventory.

### SECURITY CLASSIFICATION:

Limited Official Use.

### SYSTEM LOCATION:

Judicial Security Division (JSD), U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210. Categories of individuals covered by the system: USMS employees assigned to JSD.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records contained in this computerized system consist of (1) an individual's name, date of birth, social security number, and type of passport with expiration date; (2) inventory of accountable property assigned to individual, including: Weapon, protective body armor with expiration date of warranty, vehicle, credit cards, cell phone, pager, and office equipment.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 28 U.S.C. 509 and 510; 44 U.S.C. 3101 and 28 CFR 0.111.

### PURPOSE(S):

This system will be used to assist JSD management in the effective control of accountable property and to ensure that JSD personnel maintain equipment necessary and in proper working order to perform their functions, especially law enforcement functions, and to respond quickly to urgent operational law enforcement activities as they develop.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) to appropriate Federal, State or local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity, where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions:

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are kept in a computerized database.

### RETRIEVABILITY:

Informatiion is retrieved by name and social security number.

### SAFEGUARDS:

Access is limited to designated staff of JSD by assigned user code and password. JSD is located in a restricted area of USMS Headquarters which is under 24-hour guard protection with entry controlled by official and electronic identification.

### RETENTION AND DISPOSAL:

Files are maintained until the employee leaves JSD at which time all records on the individual will be erased from the database.

### SYSTEM MANAGER(S) AND ADDRESS:

Assistance Director, Judicial Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as the ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information is obtained from subject JSD employees and office and records on accountable property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## JUSTICE/USM–018

SYSTEM NAME:

United States Marshals Service Alternative Dispute Resolution (ADR) Files and Database Tracking System.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

Human Resources Division, United States Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the USMS who are designated as complainants who select ADR mediation as the mechanism to resolve disagreements and designated respondents to such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

ADR files contain a statement of issue(s) which include type of dispute, parties involved, and date ADR requested or notified by complainant; mediator appointed; correspondence or letters which may include ground rules, acknowledgement of time requirements and issues related thereto; pre-conference agreements; minutes of ADR activity; written agreement, and dispute resolution and date resolved.

The ADR data tracking system contains names of complainant and respondent; type of dispute, *e.g.*, job assignment, leave, promotion; source of complaint, *e.g.*, Equal Employment Opportunity (EEO) or grievance; process utilized, *e.g.*, mediation, conciliation, fact finding; district/office; ADR contact individual; date ADR request received; date resolved; and calculation of time spent in resolving matters and, if applicable, name of mediator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The ADR process is a parallel system to the grievance process and Equal Employment Opportunity (EEO) complaint process which offers the possibility of a simpler, quicker, less expensive, and less adversarial resolution of disputes. The ADR files are used to facilitate the effective operation of the ADR process in resolving discrimination complaints and workplace grievances by USMS employees and applicants for employment. The ADR database is used to track case activity, primarily for completion of reports. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information from this file may be disclosed:

(a) To appropriate Federal, State or local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivision; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigaton is likely to affect it or any of its subdivisions;

(c) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and

(e) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in standard file cabinets. Computerized records are stored in a database server in a secured file room.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Access is restricted to authorized personnel with the need to know in the Human Resources Division, Equal Employment Opportunity Division, and the Office of General Counsel. Computerized records may be accessed only by assigned code and password. In addition, records are stored in metal file cabinets within the Human Resources Division and access to USMS headquarters is controlled by 24-hour guard services.

RETENTION AND DISPOSAL:

Records are maintained for 7 years and then data in the system, as well as hard copies, are purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, 600 Army Navy Drive, Arlington, Virginia 22202–4210.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all request for access in writing and clearly mark letter and envelope ''Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide

a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the system manager in accordance with the procedures outlined above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

**RECORD SOURCE CATEGORIES:**

Employee complainants who select the ADR process to resolve their disputes, respondents, and ADR mediator.

**EXEMPTION CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 99–28632 Filed 11–5–99; 8:45 am]

BILLING CODE 4410–AR–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

November 1, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 395–7316), within 30 days from the date of this publication in the **Federal Register**.

This OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Title:* Temporary Labor Camps.

*OMB Number:* 1218–0096.

*Frequency:* On occasion.

*Affected Public:* business or other for-profit; Federal Government; State, Local or Tribal government.

*Number of Respondents:* 838.

*Estimated Time Per Respondent:* Five minutes per response.

*Total Burden Hours:* 67.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The purpose of the Temporary Labor Camp standard is to eliminate the incidence of communicable disease among temporary labor camp residents. The standard requires camp superintendents to report immediately to the local health officer (1) the name and address of any individual in the camp known to have or suspected of having a communicable disease or suspected food poisoning, or (2) an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99–29111 Filed 11–5–99; 8:45 am]

BILLING CODE 4510–26–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 99–139]**

### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Biomedical and Behavioral Research Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Biomedical and Behavioral Research.

**DATES:** Thursday, November 18, 1999, 8:30 a.m. to 5:00 p.m.; and Friday, November 19, 1999, 8:00 a.m. to 10:30 a.m.

**ADDRESSES:** National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC–5A, Room 5H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joan Vernikos, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Life Sciences Division Update
—LSAS and LMSAAC Reports
—Flight Status
—NASA-NIH Joint Activities
—NCI Unconventional Innovations Programs
—NASA Biology Inspired Technology
—NASA-NCI Joint Program
—Joint Workshops
—Discussions of Finding and Recommendations
—Discussions of Actions
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 2, 1999.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 99–29113 Filed 11–5–99; 8:45 am]

BILLING CODE 7510–01–U

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 99–140]**

### NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National

Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

**DATES:** Tuesday, November 30, 1999, 8:30 a.m. to 5:00 p.m. and Wednesday, December 1, 1999, 8:00 a.m. to 12:00 Noon.

**ADDRESSES:** Langley Research Center, Building 1219, Room 225, Hampton, VA 23681–2199.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Pathways to the Future of Engineering
—Collaborative Engineering Environment Implementation Plans
—Technology Implementation at Langley Research Center

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 2, 1999.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 99–29114 Filed 11–5–99; 8:45 am]

BILLING CODE 7510–01–U

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 62—''Criteria and Procedures for Emergency Access to Non-federal and Regional Low-level Waste Disposal Facilities.''

2. *Current OMB approval number:* 3150–0143.

3. *How often the collection is required:* Requests are made only when access to a non-Federal low-level waste disposal facility is denied, which results in a threat to public health and safety and/or common defense and security.

4. *Who is required or asked to report:* Generators of low-level waste who are denied access to a non-Federal low-level waste facility.

5. *The number of annual respondents:* No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years.

6. *The number of hours needed annually to complete the requirement or request:* It is estimated that 680 hours would be required to prepare the request, or approximately 227 hours per year.

7. *Abstract:* Part 62 sets out the information which will have to be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security.

Submit, by January 7, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, MD, this 2nd day of November, 1999.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99–29123 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–9]**

### Notice of Issuance of Amendment to Materials License SNM–2504, Department of Energy Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 7 to Materials License No. SNM–2504 held by the U.S. Department of Energy (DOE) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By application dated October 19, 1999, DOE requested an amendment to its ISFSI license to revise the dates for terminating its interim physical protection measures and implementing its new physical protection plan.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that, pursuant to 10 CFR 51.22(c)(12), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 27th day of October, 1999.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–29125 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]**

## In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49); Notice of Prehearing Conference

November 2, 1999.

This proceeding involves the proposed increase in capacity (through the addition of high-density storage racks) of the spent fuel storage pool of the Millstone Nuclear Power Station, Unit No. 3, in New London County, Connecticut. Notice is hereby given that, as described in the Atomic Safety and Licensing Board's Memorandum and Order (Intervention Petition), dated October 28, 1999, a prehearing conference is hereby scheduled for Monday, December 13, 1999, beginning at 2 p.m., and continuing (to the extent necessary) on Tuesday, December 14, 1999, at the Ernst Common Room, Connecticut College, 270 Mohegan Avenue, New London, Connecticut 06320.

The conference will consider the standing of and proposed contentions submitted jointly by the Connecticut Coalition Against Millstone (CCAM) and the Long Island Coalition Against Millstone (CAM), petitioners for intervention in this proceeding. To the extent appropriate, the conference will also consider proposed discovery and hearing schedules, possibilities of settlement of various issues, and other procedural matters as may aid in the orderly disposition of the proceeding.

During the course of this proceeding, the Licensing Board, pursuant to 10 CFR 2.715(a), will entertain written or oral limited appearance statements, from any person who is not a party to the proceeding or a petitioner for intervention. The Licensing Board does not plan to entertain such statements at the December 13–14, 1999 prehearing conference. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St. NW, Washington, DC. Documents issued prior to November 1, 1999 may be found in microfiche format at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut (860–885–2346); at the Russell Library, 123 Broad Street, Middletown, Connecticut (860–347–2520); and, in late November, at the Connecticut State Library, Federal Documents, 231 Capitol Avenue, Hartford, Connecticut (860-566–4889). Documents issued subsequent to November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and the majority of public libraries have terminals for public access to the Internet.

Rockville, Maryland, November 2, 1999.

For the Atomic Safety and Licensing Board.

**Charles Bechhoefer,**

*Chairman, Administrative Judge.*

[FR Doc. 99–29120 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–333 ]**

## Power Authority of the State of New York; 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 Nos. NPF–59, issued to the Power Authority of the State of New York, (PASNY or the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant, (FitzPatrick), located in Oswego County, New York.

The proposed amendment, requested by the licensee in a letter dated March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, and October 14, 1999, represent a full conversion from the current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1433, ''Standard Technical Specifications (STS) for General Electric Plants, BWR/4'' Revision 1, dated April 1995. NUREG–1433 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TS) for nuclear power plants. 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 CTS, and, using NUREG–1433 as a basis, proposed an ITS for FitzPatrick. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and does not involve technical changes to the CTS. 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 impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS.

Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in the attachment of the licensee's March 31, 1999, submittal, which is entitled, ''Application of NRC Selection Criteria to James A. FitzPatrick Nuclear Power Plant Technical Specifications'' (Split Report) in Volume 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the final safety analysis report (FSAR), the ITS BASES, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational 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 TS may be appropriate. In most cases, relaxations previously 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 Improved Standard Technical Specifications. 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 is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1433, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are differences to the requirements in both the CTS and the Standard Technical Specifications (STS) NUREG–1433. These proposed beyond-scope issues to the ITS conversion are as follows:

1. ITS 3.0.3, Limiting Condition for Operation (LCO) to be in MODE 2 was changed to allow a 9-hour completion time.

2. ITS 3.3.1.1, Reactor Protection System (RPS) Instrumentation Function 5, reactor scram on main steam isolation valve (MSIV) closure. The trip setting valve was changed from less than or equal to 10 percent (in the CTS) to less than or equal to 14 percent in the ITS.

3. ITS 3.3.1.1, Extending Required Action F.1 Completion Time from 6 hours to 8 hours for consistency with Current Licensing Basis (CLB) and changing 3.0.3 which allows 8 hours to be in MODE 2 after initiation of Action.

4. ITS 3.3.5.1, Automatic Depressurization System (ADS) initiation timer and the Containment Spray (CS) and Low-Pressure Coolant Injection (LPCI) pump start timer values were changed from the CTS and the STS and tolerances relaxed to allow the extension of CALIBRATION Frequency to 24 months in the ITS.

5. ITS 3.3.5.1, CS, LPCI and ADS Logic System Functional Test (LSFT) Frequency was extended from 18 months (in the CTS) to 24 months in the ITS.

6. ITS 3.4.9, Reactor Coolant System (RCS) Pressure/Temperature (P/T) Limits in CTS were changed to add a new alternate criteria in ITS to allow idle recirculating pump (loop) start if the operating loop is greater than 40 percent flow or if the idle loop is less than 40% flow for less than or equal to 30 minutes.

7. ITS 3.5.1, ECCS-Operating, High-Pressure Coolant Injection (HPCI) and LPCI pump flow rates in CTS were reduced to SAFER/GESTR-Loss-of-Coolant Accident (LOCA) flow rates in the ITS.

8. ITS 3.5.2, ECCS-Shutdown, reduced Residual Heat Removal (RHR) LPCI pump flow rates in CTS to SAFER/GESTR–LOCA flow rates as in ITS 3.5.1 for RHR LPCI pumps.

9. ITS 3.8.1, AC Sources—Operating, Condition D for two reserve circuits inoperable in CTS was changed to add new interim power reduction to less than or equal to 45 percent with a 36-hour Completion Time in the ITS.

10. ITS 3.8.4, DC Sources—Operating (in CTS) was changed to allow 8 hours to restore one inoperable source in the ITS.

11. ITS 5.5, changed Standby Gas Treatment (SGT) and Control Room Emergency Ventilation Air Supply (CREVAS) system filter testing (in the CTS) from 6 months (or 12 months) to 24 months in the ITS for consistency with Regulatory Guide 1.52, Revision 2 or the fuel cycle length.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the NMP2 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 accessible electronically through

the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.NRC.gov*). 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.

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 Mr. David E. Blabey, 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 CAR 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 March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, and October 14, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, MD, this 3rd day of November 1999.

For the Nuclear Regulatory Commission.

**Guy S. Vissing,**

*Sr. Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–29121 Filed 11–5–99; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

## [Docket No. 72–2]

## Virginia Electric and Power Co., Notice of Docketing of the Materials License SNM–2501 Amendment Application for the Surry Independent Spent Fuel Storage Installation

By letter dated April 5, 1999, Virginia Electric and Power Company (Virginia Power) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR part 72 requesting the amendment of the Surry Power Station independent spent fuel storage installation (ISFSI) license (SNM–2501) and the Technical Specifications for the ISFSI located in Surry County, Virginia. Virginia Power is seeking Commission approval to amend the materials license and ISFSI Technical Specifications to permit the storage of burnable poison rod assemblies and thimble plug devices in the GNSI CASTOR V/21, Westinghouse MC–10, and NAC-I28 storage casks at the Surry ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–2 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated April 5, 1999, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the local Public Document Room located at

Swem Library, College of William and Mary, Williamsburg, VA 23185.

Dated at Rockville, Maryland, this 27th day of October, 1999.

For the U.S. Nuclear Regulatory Commission.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–29122 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–2]**

### Virginia Electric and Power Co.; Notice of Docketing of the Materials License SNM–2501 Amendment Application for the Surry Independent Spent Fuel Storage Installation

By letter dated June 16, 1999, Virginia Electric and Power Company (Virginia Power) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR part 72 requesting the amendment of the Surry Power Station independent spent fuel storage installation (ISFSI) license (SNM–2501) and the Technical Specifications for the ISFSI located in Surry County, Virginia. Virginia Power is seeking Commission approval to amend the materials license and ISFSI Technical Specifications to be consistent with the power plant Improved Standard Technical Specifications (ITS).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–2 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated June 16, 1999, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the local Public Document Room located at Swem Library, College of William and Mary, Williamsburg, VA 23185.

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, MD, this 27th day of October, 1999.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–29124 Filed 11–5–99; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Request for Public Comment

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:

Rule 12a–5, Form 26—SEC File No. 270–85, OMB Control No. 3235–0079

Rule 12f–1—SEC File No. 270–139, OMB Control No. 3235–0128

Rule 12f–3—SEC File No. 270–141, OMB Control No. 3235–0249

Rule 15Aj–1, Forms X–15AJ–1 and X–15AJ–2—SEC File No. 270–25, OMB Control No. 3235–0044

Rule 15c2–1—SEC File No. 270–418, OMB Control No. 3235–0485

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 12a–5 of the Securities Exchange Act of 1934 (the ''Act'') generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a–5 under the Act and Form 26 were adopted by the Commission in 1936 and 1955, respectively, pursuant to Sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, Rule 21a–5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of Section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of Rule 12a–5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the Rules, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under Section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a–5. Without the Rule and the Form, the Commission would be unable fully to implement these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12a–5. While approximately 40 Forms 26 are filed annually, the reporting burdens are not typically spread evenly among the exchanges.[1] For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of Form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13–⅓ hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on Form 26 is, on average, $15 per response. The staff estimates that the total annual related reporting cost per respondent is $75 (5 responses/respondent × $15 cost/response), for a total annual related cost

[1] In fact, some exchanges do not file any notifications on Form 26 with the Commission in a given year.

to all respondents of $600 ($75 cost/respondent × 8 respondents).

Rule 121f–1, originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there would be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $50, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $400 (8 responses × $50 response).

Rule 12f–3, which was originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act, prescribes the information which must be included in applications for and notices of termination of suspension of unlisted trading privileges for a security as contemplated in Section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination of suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $50, or, the cost of one hour of professional work needed to complete the application. The total annual related reported cost for all potential respondents, therefore, is $500 (10 responses × $50/response).

Rule 15Aj–1 implements the requirements of Sections 15A, 17, and 19 of the Act by requiring every association registered as, or applying for registration as, a national securities association or as an affiliated securities association to keep its registration statement up-to-date by making periodic filings with the Commission on Form X–15AJ–1 and Form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission after the discovery of any inaccuracy in its registration statement or in any amendment or supplement thereto by filing an amendment to its registration statement on Form X–15AJ–1 correcting such inaccuracy. The Rule also requires an association to promptly notify the Commission of any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto by filing a current supplement on Form X–15AJ–1. Rule 15Aj–1 further requires an association to file each year with the Commission an annual consolidated supplement on Form X–15AJ–2.

The information required by Rule 15Aj–1 and Forms X–15AJ–1 and X15AJ–2 is intended to enable the Commission to carry out its statutorily mandated oversight functions and to assure that registered securities associations are in compliance with the Act. This information is also made available to members of the public. Without the requirements imposed by the Rule, the Commission would be unable to fulfill its regulatory responsibilities.

There is presently only one registered securities association, which registered in 1939, subject to the Rule. The burdens associated with Rule 15Aj–1 requirements have been borne by only one securities association since Rule 15Aj–1 was adopted. Furthermore, the burdens associated with Rule 15A–1 vary depending on whether amendments and current supplements are filed on Form X–15AJ–1 in addition to an annual consolidated supplement filed on Form X–15AJ–2. The Commission staff estimates the burden in hours necessary to comply with the Rule by filing an amendment or a current supplement on Form X–15AJ–1 to be approximately one-half hour, with a related cost of $11, per response. The Commission staff estimates the burden in hours necessary to comply with the Rule by filing an annual consolidated supplement on Form X–15AJ–2 to be approximately three hours, with a related cost of $90. Therefore, the Commission staff estimates that the total annual related reporting cost associated with the Rule to be upwards of $90, assuming a minimum filing of an annual consolidated statement on Form X–15AJ–2, with additional filings on Form X–15AJ–1 correspondingly increasing such reporting cost.

Rule 15c2–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own transactions. Subject to certain exceptions and exemptions, Rule 15c2–1 prohibits a broker-dealer from: (1) Commingling under the same lien customer securities with other customer securities, without the written consent of each customer; (2) commingling under the same lien customer securities with non-customer securities (including those of the broker-dealer) for a loan made to the broker-dealer; and (3) hypothecating customer securities for a loan amount which exceeds all customers' aggregate indebtedness relating to securities carried in their accounts. Under Rule 15c2–1, a broker-dealer must collect information necessary to prevent the rehypothecation of customer securities in contravention of the Rule, (issue and retain copies of notices to) the pledgee of hypothecation of customer securities in accordance with the Rule, and collect written consents from customers in accordance with the Rule. The collection of information required by the Rule is necessary to ensure compliance with the Rule, and to advise customers of the Rule's protections. In addition, the collection of information is necessary to execute the Commission's mandate under the Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 177 respondents (*i.e.* broker-dealers that carry or clear customer accounts that also have bank loans) that must comply with the Rule. Each of these approximately 177 respondents make an estimated 45 annual responses, for an aggregate total of 7,965 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,983 burden hours. The approximate cost per hour is $25 (based on an annual salary of $52,000 for clerical labor), resulting in a total compliance cost of $99,575 (3,983 hours @ $25 per hour).

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: November 1, 1999.

**Margaret H. McFarland,**

*Deputy Secretary*

[FR Doc. 99–29154 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24121; 812–11420]**

## Elk Associates Funding Corporation, et al.; Notice of Application

November 2, 1999.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application: (i) under sections 6(c), 12(d)(1)(J), and 57(c) of the Investment Company Act of 1940 (''Act'') for exemptions from sections 12(d)(1)(A) and (C), 18(a), 21(b), 57(a)(1) through (a)(3), and 61(a) of the Act; (ii) under section 57(i) of the Act and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and (iii) under section 12(h) of the Securities Exchange Act of 1934 (''Exchange Act'') for an exemption from section 13(a) of the Exchange Act.

**SUMMARY OF THE APPLICATION:** The requested order would permit a business development company (''BDC'') to implement a reorganization plan under which it would become a wholly-owned subsidiary of a newly-formed BDC. The order would permit the two companies, and any additional wholly-owned BDC subsidiaries of the parent established in the future, to engage in certain transactions that would otherwise be permitted if the parent and its BDC subsidiaries were one company, adhere to modified asset coverage requirements, and file certain reports on a consolidated basis.

*Applicants:* Elk Associates Funding Corporation (''Elk''), Ameritrans Capital Corporation (''Ameritrans''), and Gary C. Granoff (''Granoff'').

*Filing Dates:* The application was filed on November 27, 1998. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

*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 November 29, 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 may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o Stursberg & Veith, Attn: C. Walter Stursberg, Jr., 405 Lexington Avenue, Suite 4949, New York, NY 10174–4902.

**FOR FURTHER INFORMATION CONTACT:** Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (telephone (202) 942–8090).

### Applicants' Representations

1. Elk, a New York corporation, is a closed-end management investment company registered under the Act that has elected to be regulated as a BDC, as defined in section 2(a)(48) of the Act.[1] Elk also is licensed as a small business investment company (''SBIC'') under the Small Business Investment Act of 1958 (''1958 Act''). Granoff is Elk's president and the chairman of its board of directors (''Board'').

2. Ameritrans, a Delaware corporation, is a closed-end management investment company registered under the Act that has elected to be regulated as a BDC. Granoff, who also is a Ameritrans' president and the chairman of its Board, has purchased for $10 the sole outstanding share of Ameritrans' common stock.

[1] Section 2(a)(48) generally defines a BDC to be any closed-end management investment company that operates for the purpose of making investments in securities described in sections 55(a) (1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

3. Applicants have proposed a reorganization in which Elk would become a wholly-owned subsidiary of Ameritrans. Ameritrans would acquire all of the outstanding voting capital stock of Elk by means of a share-for-share exchange with Elk's public shareholders (''Share Exchange''). Following the Share Exchange, Ameritrans will repurchase for $10 the share of its stock owned by Granoff. Ameritrans will engage in lending and investment activities not subject to the restrictions of the 1958 Act. Elk will continue to operate as a BDC and an SBIC, making loans to or investments in small business concerns as permitted by the 1958 Act.

4. On September 22, 1998, Elk's Board approve the Share Exchange and voted to recommend that the proposal be submitted to Elk's shareholders for approval. On October 20, 1999, Ameritrans filed a proxy statement with the Commission. Applicants anticipate that Elk will distribute proxy materials to its shareholders on or about November 10, 1999, and hold the shareholder meeting on or about December 10, 1999.

5. Ameritrans may in the future establish additional wholly-owned subsidiaries (collectively, ''Future Subsidiaries''), some of which may be regulated as BDCs (''Future BDC Subsidiaries''). Any Future Subsidiary that is not a BDC will not be an investment company. Elk and the Future Subsidiaries collectively are referred to in this notice as the ''Subsidiaries.'' Any Future Subsidiary that relies on the requested order will do so only in accordance with the terms and conditions of the application.

6. Applicants request an order to permit the Share Exchange. The requested order also would permit Ameritrans, Elk, and any Future BDC Subsidiaries to engage in certain transactions that otherwise would be permitted if Ameritrans, Elk, and the Future BDC Subsidiaries were a single company, adhere to modified asset coverage requirements, and file certain reports on a consolidated basis.

## Applicants' Legal Analysis

### *A. The Share Exchange*

1. Sections 57(a) (1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of securities or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes any director of officer of a BDC and any person who directly or indirectly controls a BDC. Applicants state that Ameritrans could be deemed to be an affiliate of Elk under section 57(b)(1) because Ameritrans is controlled by Granoff, an officer and director of Elk. Applicants state that the transfer of Ameritrans' shares to the shareholders of Elk may be deemed to be a prohibited sale of securities to Elk within the meaning of section 57(a)(1). Applicants accordingly request relief under section 57(c) of the Act from section 57(a)(1) to permit such transfer as part of the Share Exchange.

2. Section 57(c) provides, in relevant part, that the Commission will exempt a proposed transaction from the prohibitions in section 57(a)(1) if the terms of the proposed transaction are reasonable and fair and do not involve overreaching of the BDC or its shareholders on the part of any person concerned, and the proposed transaction is consistent with the policy of the BDC and the general purposes of the Act. Applicants submit that the requested relief meets this standard.

3. Applicants state that the Share Exchange will benefit Elk's shareholders because Ameritrans will be able to take advantage of business opportunities not otherwise available to Elk as an SBIC. Applicants also state that there will be no threat of overreaching because Granoff is the nominal owner of a single Ameritrans share, which share will be repurchased for its original purchase price of $10 following the Share Exchange.

### *B. Operation as One Company*

Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities that a BDC, or a company controlled by the BDC, may hold of other investment companies. Section 12(d)(1)(C) of the Act, which also applies to BDCs by reason of section 60, limits the amount of securities of a registered closed-end investment company that a BDC, or a company controlled by the BDC, may require.

2. Applicants state that any acquisition of the debt or equity securities of, or any contribution to capital of, a Future BDC Subsidiary by Ameritrans may violate sections 12(d)(1)(A) and (C).[2] Applicants state that these provisions also may preclude each Subsidiary from: (i) acquiring debt securities issued by Ameritrans or any other Subsidiary, and (ii) making loans or advances to Ameritrans or any other Subsidiary. Applicants request relief from sections 12(d)(1)(A) and (C) in order to permit these types of transactions, but only to the extent that the transactions would not be prohibited if each Subsidiary were deemed to be part of Ameritrans and not a separate company.

3. Section 12(d)(1)(J) of the Act, in relevant part, provided that the Commission may exempt transactions from any provisions of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants submit that the requested relief meets this standard.

4. Applicants state that the proposed transactions among Ameritrans and the Subsidiaries will not entail the types of abuses that the provisions of sections 12(d)(1)(A) and (C) were designed to prevent. Applicants further state that Ameritrans, as the sole shareholder of the Subsidiaries, will have no incentive to act contrary to the interests of any Subsidiary.

Sections 57(a)(1) and (2)

1. As discussed above, sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of securities or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person under common control with a BDC. Each Subsidiary could be deemed to be an affiliate of each other Subsidiary under section 57(b) because they will be under the common control of Ameritrans.

2. Applicants request relief from sections 57(a)(1) and (2) under section 57(c) to exempt any transaction between Ameritrans and Elk or a Future BDC Subsidiary, and any transaction between Elk or a Future BDC Subsidiary, on the one hand, and any other Subsidiary on the other hand, with respect to the purchase or sale of securities or other property. Applicants also request relief from sections 57(a)(1) and (2) to exempt any purchase or sale transaction between Ameritrans and a controlled portfolio affiliate of Elk or a Future BDC Subsidiary, and any purchase or sale transaction between Elk or a Future BDC Subsidiary and a controlled portfolio affiliate of Ameritrans or of another Future BDC Subsidiary or Elk, but only to the extent that any such transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies. Applicants submit that the requested relief meets the

[2] Rule 60a–1 under the Act exempts from sections 12(d)(1)(A) and (C) the acquisition by a BDC of the securities of an SBIC licensed under the 1958 Act that is operated as a wholly-owned subsidiary of the BDC. The rule exempts Ameritrans' acquisition of Elk's securities, and any loans or advances from Ameritrans to Elk, from the limits in sections 12(d)(1)(A) and (C).

section 57(c) standard because it would permit Ameritrans, Elk, and the Future BDC Subsidiaries to do what the Act would otherwise permit if Elk and the Future BDC Subsidiaries were part of Ameritrans and not separate companies.

Sections 21(b) and 57(a)(3)

1. Section 57(a)(3) of the Act generally prohibits the borrowing of money or other property from a BDC by a person related to the BDC within the meaning of section 57(b), except as permitted under section 21(b) of the Act. Section 21(b) (made applicable to BDCs by section 62 of the Act, with certain exceptions) generally prohibits loans from a BDC to a person who controls or is under common control with the BDC, except for loans to a company that owns all of the outstanding securities of the BDC. As described above, each Subsidiary will be under the common control of Ameritrans and, therefore, will be affiliated with each other Subsidiary within the meaning of section 57(b).

2. Applicants request relief from section 57(a)(3) under section 57(c) to exempt any borrowing of money or other property from Elk or a Future BDC Subsidiary by Ameritrans or any other Subsidiary. Applicants also request relief from section 21(b) under section 6(c) of the Act to exempt any lending of money or other property by Elk or a Future BDC Subsidiary to Ameritrans or another Subsidiary. Applicants state that the proposed transactions will have no substantive economic effect because they will be among Ameritrans and its wholly-owned subsidiaries.

3. Applicants state that it may be in the interests of Ameritrans' shareholders for Ameritrans, Elk, or any Future BDC Subsidiary to loan money or other property to portfolio companies controlled by any other of Ameritrans, Elk, and the Future BDC Subsidiaries. Accordingly, applicants also request relief from sections 21(b) and 57(a)(3) to exempt any lending of money or other property from Elk or a Future BDC Subsidiary to a controlled portfolio affiliate of Ameritrans or of another Future BDC Subsidiary or Elk, but only to the extent that any such transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the proposed lending transactions discussed above will satisfy the standards for relief in sections 6(c) and 57(c). Applicants note that the requested relief would permit Ameritrans, Elk, and the Future BDC Subsidiaries to do what the Act would permit if they were one company.

Section 57(a)(4) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint arrangements involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) of the Act provides that the rules and regulations under section 17(d) will apply to transactions subject to section 57(a)(4) in the absence of rules under that section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standard set forth in rule 17d–1 governs applicants' request for relief.

2. Applicants state that a joint transaction in which Elk or a Future BDC Subsidiary and Ameritrans or another Subsidiary participates may be prohibited under section 57(a)(4). Applicants request relief under section 57(i) and rule 17d–1 to permit any joint transaction in which Elk or a Future BDC Subsidiary and Ameritrans or another Subsidiary participate, but only to the extent that the transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies.

3. In determining whether to grant an order under section 57(i) and rule 17d–1, the Commission may consider whether the participation of the BDC in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the transaction. Applicants state that this standard is satisfied because the requested relief would simply permit Ameritrans and the Subsidiaries to conduct their operations as if they were one company.

Section 18(a)

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in that section. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in sections 18(a)(1)(A) and (B). Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications.

2. Applicants state that Ameritrans, Elk, and the Future BDC Subsidiaries may be required to comply with the asset coverage requirements of section 18(a), as modified by section 61(a) for BDCs, on a consolidated basis if Ameritrans were deemed to be an indirect issuer of any class of senior security issued by the Subsidiaries. Applicants request relief under section 6(c) from sections 18(a) and 61(a) to permit Ameritrans to exclude from its consolidated asset coverage ratio any senior security representing indebtedness that is issued by Elk.

3. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, to the extent that any Subsidiary is entitled to rely on section 18(k) for an exemption from the asset coverage requirements of sections 18(a) and 61(a), there is no policy reason to deny Ameritrans the benefit of that exemption when Ameritrans consolidates its assets with those of the Subsidiaries for the purpose of compliance with those requirements.

*C. Consolidated Reporting*

1. Section 54 of the Act provides that a closed-end investment company may elect BDC treatment under the Act if the company has registered or filed a registration statement under section 12 of the Exchange Act for a class of its equity securities. Section 13(a) of the Exchange Act requires that issuers of securities registered under the Exchange Act file certain information and reports with the Commission. Applicants request an order under section 12(h) of the Exchange Act to exempt Elk and each Future BDC Subsidiary from the reporting requirements of section 13(a) of the Exchange Act so that Ameritrans, Elk, and the Future BDC Subsidiaries may file consolidated reports. Absent the requested relief, Elk and each Future BDC Subsidiary, on an unconsolidated basis, would have to make periodic filings with the Commission, even though Ameritrans will be the sole equity holder of each such Subsidiary.

2. Section 12(h) of the Exchange Act provides that the Commission may exempt an issuer from section 13 of the Exchange Act if the Commission finds that the exemption is not inconsistent with the public interest and the protection of investors. Applicants state that the requested exemption meets this standard because applicants will be providing the same information required by the Exchange Act's reporting requirements on a consolidated basis.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Ameritrans will at all times own and hold beneficially and of record all of the outstanding voting capital stock of Elk and the Future Subsidiaries.

2. Elk and any Future BDC Subsidiaries will have the same fundamental investment policies as Ameritrans, as set forth in Ameritrans' registration statement, and will not engage in any other activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Ameritrans.

3. No person will serve or act as investment adviser or principal underwriter to Elk or any Future BDC Subsidiary unless the directors and shareholders of Ameritrans will have taken the action with respect thereto also required to be taken by the directors and sole shareholder of such Subsidiary.

4. Ameritrans will not itself issue or sell any senior security and Ameritrans will not cause or permit Elk or any Future BDC Subsidiary to issue or sell any senior security of which Ameritrans, Elk, or any Future BDC Subsidiary is the issuer, except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of Ameritrans, Elk, or any Future BDC Subsidiary of any such notes or evidences of indebtedness, Ameritrans and its Subsidiaries on a consolidated basis, and Ameritrans individually, will have the asset coverage required by section 18(a) of the Act (as modified by section 61(a) for Ameritrans), except that, in determining whether Ameritrans and its Subsidiaries on a consolidated basis have the asset coverage required by section 18(a) of the Act, as modified by section 61(a), any Small Business Administration (''SBA'') preferred stock interest in Elk and the Future BDC Subsidiaries and any borrowings by Elk and any Future BDC Subsidiaries will not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), will be treated as indebtedness not represented by senior securities.

5. No person shall serve as a director of Elk or of a Future Subsidiary unless elected as a director of Ameritrans at its most recent annual meeting, as contemplated by section 16(a) of the Act. Vacancies on Ameritrans' Board will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the Board of Elk and of any Future Subsidiary will be elected by Ameritrans as the sole shareholder of such Subsidiary, and such Board will be composed of the same persons that serve as directors of Ameritrans.

6. Ameritrans and any Subsidiary will acquire securities representing indebtedness of Elk or of any Future BDC Subsidiary operating as a SBIC only if, in each case, the prior approval of the SBA has been obtained. In addition. Elk or any Future BDC Subsidiary operating as a SBIC, on the one hand, and Ameritrans or any other Subsidiary on the other hand, will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

7. Ameritrans will: (i) File with the Commission, on behalf of itself, Elk, and any Future BDC Subsidiaries, all information and reports required to be filed with the Commission under the Exchange Act and other federal securities laws, including information and financial statements prepared solely on a consolidated basis as to Ameritrans, Elk, and any Future BDC Subsidiaries, such information and reports to be in satisfaction of any separate reporting obligations of Elk and any Future BDC Subsidiaries; and (ii) provide to its shareholders such information and reports required to be disseminated to Ameritrans' shareholders, including information and financial statements prepared solely on a consolidated basis as to Ameritrans, Elk, and any Future BDC Subsidiaries, such information and reports to be in satisfaction of any separate reporting obligations of Elk and any Future BDC Subsidiaries. Notwithstanding anything in this condition, Ameritrans will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statements of Elk and any Future BDC Subsidiaries required by rule 6–03(c) of Regulation S–X.

8. Ameritrans, Elk, and any Future BDC Subsidiaries may file on a consolidated basis under condition 7 above only so long as the amount of Ameritrans' total consolidated assets invested in assets other than securities issued by Elk and any Future BDC Subsidiaries, or securities similar to those in which Elk and any Future BDC Subsidiaries invest, does not exceed ten percent.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–29155 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

### Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 8, 1999.

A closed meeting will be held on Wednesday, November 10, 1999, at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 10, 1999, will be:

Institution and settlement of injuctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: November 3, 1999.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–29254 Filed 11–4–99; 11:30 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42074; File No. SR–BSE–99–11]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Implementing a Post Primary Session

October 29, 1999.

### I. Introduction

On July 13, 1999, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a Post Primary Session (''PPS'').

The proposed rule change was published for comment in the **Federal Register** on September 8, 1999. No comments were received on the proposal. This order approves the proposal.

### II. Description of the Proposal

The Exchange proposes to extend the close of trading on the BSE from 4 p.m. to 4:15 p.m. Eastern Time, creating a new PPS. Pursuant to Chapter I–B, Section 1 (Primary Session), the current trading hours at the Exchange are from 9:30 a.m. until 4:00 p.m. Eastern Time. The proposal will extend these hours for an additional fifteen minutes, until 4:15 p.m. Eastern Time. Under the proposal, all Exchange rules applicable to floor trading during the Exchange's Primary Session will continue to apply during the PPS, with the following exceptions: (1) Only orders that are designated ''PPS'' will be eligible for execution; (2) limit order on the book from the Primary Session will not be eligible for execution, but will carry over to the next day; (3) there will be no automated executions; (4) there will be no application of the Execution Guarantee Rule,[3] and (5) GTX [4] orders will be executable after the close of the PPS (*i.e.*, GTX orders are executable after 4:15 p.m. instead of 4:00 p.m. Eastern Time). Accordingly, the Exchange proposes to amend the following rules: (1) Chapter I–B, Sections 2 and 3, and (2) Chapter IIB, Sections 1 and 3.

*PPS Eligible Orders*

Pursuant to the proposed amendment of Chapter IIB, Section 3, only orders designated ''PPS'' will be eligible for execution during the PPS. Since the PPS is merely an extension of the Exchange's auction market, wherein bids and offers are continuously updated for trading under normal auction market principles, Exchange rules will continue to apply. Thus, to be designated as eligible for execution in the PPS, a market, limit, or contingent order must be acceptable under current Exchange rules.

Under the proposal, limit orders on the book from the Primary Session are not eligible for the PPS, and must be carried over to the next day. Also, those limits orders that are received during the PPS (and thus PPS eligible) remain subject to the Limit Order Display Rule.[5]

*GTX Orders*

A GTX Order is an agency limit order that is good until canceled, and is eligible for primary market protection based on the volume that prints on the after-hours trading session of the New York Stock Exchange or the American Stock Exchange. Thus, a GTX Order may be executed during regular trading hours or after the PPS, at 5 p.m. Eastern Time, but no GTX Order may be executed during the PPS.

*BEACON as a Routing System*

''BEACON'' is the acronym for the Boston Exchange Automated Communication Order-routing Network. It provides a system for the automatic execution of orders on the Exchange under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis. The Exchange proposes to amend Chapter IIB, Section 3(b), to indicate that BEACON will continue to operate as a routing system for PPS eligible orders, but will not provide an automatic execution mechanism.

*Operation of the ITS System During the PPS*

In the amendment to Chapter IIB, Section 3(a), the BSE represents that ITS will be available for both inbound and outbound commitments during the PPS to the extent that other market centers (*i.e.*, the Pacific Exchange, Inc. (''PCX''),[6] the Philadelphia Stock Exchange, Inc. (''PHLX'') [7] and the Chicago Stock Exchange, Inc. (''CHX'')) [8] are open for trading. The BSE also represents that it will perform surveillance during the PPS in the same manner and using the same techniques as those used during the Primary Session. To facilitate the surveillance of the PPS, BSE's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS.

*Execution Guarantee Does Not Apply*

The Execution Guarantee provides that Specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. According to the proposed amendments to Chapter IIB, Section 3(d), the Execution Guarantee will not be available in any form during the PPS.

### III. Discussion

The Commission has reviewed carefully the BSE's proposed rule change [9] and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).[10] In particular, the Commission finds the proposal is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it is reasonably designed to promote just and equitable principles of trade, and, in general, perfect the mechanism of a free and open national market system. The implementation of the BSE's Post Primary Session should enhance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BSE Rules, Paragraph 2039A, Section 33.

[4] For a description of GTX Orders, *see ''GTX Orders'' infra.*

[5] *See* Chapter II, Section 40, Paragraph 2039B7.

[6] PCX's regular equity session closes at 4:30 p.m. Eastern Time. During the crossing session, PCX does not utilize ITS. *See* PCX Rule 4.2, Commentary .02.

[7] PHLX operates a Post Primary Session from 4 p.m. until 4:15 p.m. Eastern Time which is an extension of its regular auction market. During the Post Primary Session, PHLX utilizes ITS to the same extent it does during regular trading hours. *See* PHLX Rule 101.

[8] CHX's primary session closes at 4 p.m. Eastern Time. CHX conducts an Extended Session from 4 p.m. until 4:30 p.m. Eastern Time. Both sessions utilize ITS. *See generally* Article 20, CHX Rules 20, 37, 39, 40 and 41.

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

competition in the expanding after-hours market.

The Commission finds that the implementation of the Exchange's PPS does not raise any new regulatory concerns. The Exchange will provide full transparency by disseminating quotes through the Consolidated Quotation System and reporting trades to the consolidated tape. The Commission notes that investors are accustomed to trading after-hours on regional exchanges between 4 p.m. and 4:30 p.m.,[12] and that the implementation of BSE's PPS does not significantly alter the after-hours market with regard to regional exchanges during that time period. In addition, the Commission has not received any comment letters from the public or BSE members raising any regulatory issues in connection with the implementation of the PPS.

The Commission believes that it is reasonable for the Exchange to implement the rule changes discussed above[13] during the PPS. Given that the after-hours trading market is in its nascent stage, with differences in volatility, liquidity, and volume as compared to the traditional trading session, the Commission believes it is reasonable to require investors to affirmatively choose to participate in the developing after-hours market. The Commission believes investors will be better protected if the Exchange requires them to knowingly opt-in to the PPS.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C) of the Act.[14] Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.[15] The proposed rule change accomplishes the objectives of the Act by providing an opportunity for investors to trade outside of traditional market hours, complete with the safeguards and standards upon which investors have come to rely during traditional market hours.

The Commission further notes that BSE has represented it intends to implement surveillance procedures during the PPS. Such surveillance should assist BSE in satisfying the requirements of Section 6(b)(5) of the Act[16] that Exchange rules be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. Accordingly, the Commission does not believe that the Exchange's implementation of a PPS will have an adverse effect on the maintenance of fair and orderly markets of disadvantage public customers.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–BSE–99–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[12] *See supra* footnotes 6–8.

[13] *See supra* Section II, *PPS Eligible Orders, GTX Orders,* and *Execution Guarantee Does Not Apply.*

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42089; File No. SR–CHX–99–23]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending Membership Dues and Fees Schedule for Transactions Occurring During the E-Session

November 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 1999, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I,II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule to eliminate, through December 31, 1999, all transaction, order processing and floor broker fees for transactions that occur during the Exchange's after-hours trading session (''E-Session'').[4] The text of the proposal is available upon request from the CHX or the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change amends the CHX schedule of membership dues and fees to eliminate, through December 31, 1999, order processing, transaction and floor broker fees for transactions that occur during the E-Session.[5] The Exchange seeks this change to allow CHX members to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] On October 13, 1999, the Commission approve, on a pilot basis, the CHX's proposed rule change that allows the CHX to implement an after-hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999) (SR–CHX–99–16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central Time, Monday through Friday, and began on October 29, 1999.

[5] The fees which CHX seeks to eliminate through December 31, 1999 with this proposed rule change include OTC agency orders in Nasdaq/NMS securities transacted by floor brokers, which were recently reviewed by the Commission. *See* Securities Exchange Act Release No. 41947 (September 29, 1999), 64 FR 54703 (October 7, 1999) (SR–CHX–99–15).

[6] The Exchange notes that the vast majority of securities that initially will be eligible for trading in the E-Session are already subject to order processing and transaction fee waivers under the Exchange's current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. The Exchange does not anticipate much floor

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance wit the provisions of 5 U.S.C. 552, with be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–99–23, and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

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brokerage activity in the E-Session, and believes that waiving brokerage fees will likely have little impact on the Exchange's revenues. According to the Exchange, waiving the fees on the few transactions to which they would otherwise apply will allow the Exchange to simplify its communications to members about the fees. Telephone conversation between Paul B. O'Kelly, Executive Vice President, CHX, and Joseph Morra, Attorney, Division of Market Regulation, SEC, October 28, 1999.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42090; File No. SR–MSRB–99–8]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

November 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 1999, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change. The proposed rule change is described in Items, I, II, and below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Board is filing this proposed rule change to institute a service (the ''Service'') to produce a daily public report containing information on individual transactions in frequently rated municipal securities (the ''Daily Transaction Report'' or ''Report''). The transaction information in the Report would come from dealer reports made to the Board pursuant to MSRB Rule G–14, which governs reports of sales or purchases. Rule G–14 currently requires dealers to report essentially all inter-dealer and customer transactions in municipal securities to the Board by midnight of the date of the trade.

The proposed Report would be the third product offered by the Board to increase the amount of price transparency in the municipal securities market. Like the Board's current Combined and Inter-Dealer Daily Reports, the proposed Daily Transaction Report would provide information on ''frequently traded'' issues (*i.e.*, issues on which at least four transaction reports were received for a given trade date). Also like the current Daily Reports, the proposed Report would be produced and made available electronically by approximately 7:00 a.m. on the business day following the trade date. Electronic Reports will be produced in the same three formats—printable, comma-delimited, and fixed record length—as the current Daily Reports.[3] However, unlike the current Daily Reports, the proposed Daily Transaction Report has been designed to provide transaction detail on each reported trade in a frequently traded issue, rather than merely providing the daily high, low and average prices.[4]

The proposed Daily Transaction Report would be available by subscription. To obtain a subscription it will be necessary to sign a subscription agreement, however, there will be no fee charged for the new Daily Transaction Report.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Board included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in section A,B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''printable'' format can be printed with little or no change by an end-user. The ''comma-delimited'' and ''fixed record length'' files can easily be sorted or converted by an end-user's spreadsheet or other application program (*e.g.*, Microsoft Excel).

[4] The Board also will continue to use all the transaction information reported by dealers to maintain a market surveillance database. The surveillance database is available to the Commission, the National Association of Securities Dealers (''NASD'') and the bank regulatory agencies responsible for the enforcement of Board rules.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

A long-standing goal of the Board is to provide market participants with information about the value of municipal securities.[5] Over the past five years, with the advent of the Transaction Reporting Program, the Board has been working toward making transaction price information ''transparent'' in the marketplace and seeking ways to make that information more comprehensive and contemporaneous.[6] The new Daily Transaction Report represents the next step in that continuing process.

The Daily Transaction Report builds upon two earlier phases of transparency—the Board's Inter-Dealer Daily Report[7] and the Combined Daily Report.[8] Whereas the Inter-Dealer and Combined Daily Reports provide daily high, low and average prices for frequently traded issues of municipal securities, the proposed Daily Transaction Reports will provide individual information for each reported transaction in frequently traded issues. The Board believes that the individual transaction data on the new report, which will include par value and time of trade for each transaction as well as price, will provide a more complete picture of the market than the currently available Daily Reports.

As with the Inter-Dealer and Combined Daily Reports, ''frequently traded'' issues will be defined as those issues trading at least four or more times on the business day for which the prices are reported, and the Daily Transaction Report will be made available on the morning of the next business day after trade date. As part of its effort to make more comprehensive data available, the Board intends to monitor the impact of the new report in the market. After the new report has been operational for a period of time, the Board will review its operation and will consider whether to lower the ''frequently traded'' threshold. Doing so would have the effect of listing more issues and more prices in each day's report and would make the report even more comprehensive in its representation of market activity.

The Board also is reviewing various options for collecting and disseminating transaction information on a more contemporaneous basis. As part of this effort, the Board has created a web site that simulates the kind of information that a ''real-time'' system might provide and how it might be presented to investors.[9] This demonstration system is available at the Board's web site at www.msrb.org. The Board welcomes comments from market participants on the demonstration system.

*Background Information on Board Transparency Initiatives.* The Board began disseminating price and volume information on municipal securities in 1995 after adopting an amendment to MSRB Rule G–14 that requires essentially all inter-dealer transactions to be reported to the Board via the automated comparison system operated by National Securities Clearing Corporation.[10] This transaction reporting requirement dovetailed with existing automated clearance requirements in MSRB Rule G–12(f) and allowed dealers to begin transaction reporting with relatively few changes to their own trade processing systems.

Each business day since its inauguration in January 1995, the Inter-Dealer Daily Report has provided statistics on total inter-dealer market activity reported for the previous day and information about price and volume for each issue that was frequently traded on that day. The report includes the total par value traded in each frequently traded issue, and the high, low and average[11] prices for the trading day.

The design of the Inter-Dealer Daily Report was based upon aspects of the municipal securities market that distinguish it from the exchange-listed and Nasdaq markets. A primary distinguishing characteristic of the municipal securities market is the large number of outstanding issues. There are approximately 1.3 million municipal securities that are distinct, non-fungible entities for purposes of trading and reporting, compared to a much smaller number of equity issues. The frequency of trading also differs substantially from patterns in the exchange and Nasdaq markets. While, on any given day, a certain number of municipal securities are traded frequently, the list of these frequently traded issues is continually changing over time. When frequent trading does occur in an issue, it generally occurs in connection with issuance and then subsides as ''buy and hold'' investors obtain the securities and offerings in the issue disappear completely.

In designing the Inter-Dealer Daily Report, the Board adopted a threshold of four trades a day as the definition of ''frequently traded.'' Only on issues for which there are four or more transaction reports on a given day are prices given on the Daily Report. The Board constructed the Daily Report in this manner because of the concern that an isolated transaction may not necessarily provide a reliable indicator of ''market price'' and might be misleading to an observer not familiar with the market. At the same time, the Board made a commitment to review the use of the Inter-Dealer Daily Report as experience was obtained and eventually move to a more contemporaneous and comprehensive price transparency report.[12]

In August 1998, after adopting amendments to MSRB Rule G–14 to require dealers to report their customer transactions to the Board each night, production of a Combined Daily Report began.[13] This report incorporates both inter-dealer and customer transaction information. Like the Inter-Dealer Daily Report, the format of high, low and average prices was used and only issues that are reported as having traded four or more times on a given trade date are included. However, since both customer and inter-dealer transactions are taken into account, the number of issues meeting the ''frequently traded'' threshold each day went from approximately 200 appearing each day

[5] *See e.g.,* ''From the Chairman,'' *MSRB Reports,* Vol. 8, No. 5 (December 1998) at 2.

[6] *See, e.g.,* ''Board to Proceed with the Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 14, No. 1 (January 1994) at 13; Vol. 14, No. 5 (December 1994) as 3–6; and ''Transaction Reporting Program for Municipal Securities,'' *MSRB Reports,* Vol. 15, No. 1 (April 1995) at 11–15.

[7] *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

[8] *See* Securities Exchange Act Release No. 40337 (August 19, 1998), 63 FR 45544 (August 26, 1998).

[9] *See* File No. SR–MSRB–99–9 (September 7, 1999).

[10] *See* ''Reporting Inter-Dealer Transactions to the Board; Rule G–14, *MSRB Reports,* Vol. 14, No. 1 (January 1994), at 13.

[11] Unlike the reported high and low prices, the average price in the Inter-Dealer Daily Report is computed including only those trades having a par value between $100,000 and $1 million. Since the prices of smaller, ''odd lot'' transactions and large position movements over $1,000,000 may be affected by the very size of the transaction, the Board decided to omit these transactions from the ''average price'' computation.

[12] *See, e.g.,* ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Commission noted that the Board, in proceeding to subsequent levels of transparency, ''should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading.'' *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

[13] *See* Securities Exchange Act Release No. 40337 (August 19, 1998), 63 FR 45544 (August 26, 1998), ''Availability of Information on Transactions in Municipal Securities: Rule G–14,'' *MSRB Reports,* Vol. 19, No. 1 (February 1999) at 23.

on the Inter-Dealer Report to approximately 1,000 on the Combined Daily Report.[14]

*Description of Proposed Report.* The proposed Daily Transaction Report will provide information on individual transactions in frequently traded municipal securities. It will display, for each transaction in such a security, the CUSIP number, a short description of the issue, the par value traded, the time of trade reported by the dealer, and the price of the transaction.[15] Transactions will be categorized as one of three transaction ''types'': (i) sales by dealers to customers, (ii) purchases by dealers from customers, and (iii) inter-dealer trades. Reports will be organized by issue, with the most frequently traded issues listed first. Within an issue, trades will be listed in order of time of trade, from the earliest reported time of trade to the latest.[16] Although the size of each day's report will depend on market activity, it is expected that the proposed Daily Transaction Report on average will provide information on approximately 9,000 individual transactions in approximately 1,000 frequently-traded issues each day. Sample copies showing the appearance of the proposed Daily Transaction Report can be obtained at the Board's web site at www.msrb.org.

*Subscriptions to the Proposed Report.* The proposed Daily Transaction Report will be available by subscription. To obtain a subscription, it will be necessary to sign a subscription agreement, but there will be no fee. In addition, recent Daily Transaction Reports will be available for examination, also free of charge, in the Board's Public Access Facility in Alexandria, Virginia. The Board expects to disseminate the Daily Transaction Report to subscribers mainly via the Internet.[17] Details on how to subscribe, how to obtain a subscription agreement, and the method for accessing files via the Internet will be made available before operation begins.[18] The Board expects that the proposed Service to provide the Daily Transaction Report will be made operational by December 1999.[19]

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[20] of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will impose any burden on competition because it applies equally to all dealers in municipal securities.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

During 1999, the Board began to consider how to improve upon the Combined Daily Report and decided to release individual transaction data on frequently traded issues. On April 29, 1999, the Board made five sample Daily Transaction Reports available for public comment at its web site and in printed form at Board offices. As discussed below, the sample reports were formatted essentially the same as the proposed Daily Transaction Report now being filed with the Commission, except that transactions were divided into two, rather than three, ''types.''

Responses to the request for comment on the sample Daily Transaction Reports were received from the following commentators.

Raymond James and Associates (''Raymond James'')[21]

Mark A. Condic (''Condic'') (two letters)[22]

A.G. Edwards & Sons, Inc. (''A.G. Edwards'')[23]

The Bond Market Association (''TBMA'')[24]

Lebenthal & Co., Inc. (''Lebenthal'')[25]

*General Comments.* Four commentators (Raymond James, A.G. Edwards, TBMA, and Lebenthal) supported the proposed Daily Transaction Report and believe it will be useful to market participants.[26] The fifth commentator (Condic) supported the new Report in his first letter to the

[14] In determining whether a reported customer transaction will be included for purposes of any transparency report, reported transactions are checked for errors and certain transactions are eliminated from consideration if they contain what appear to be obvious errors (*e.g.*, invalid or unknown CUSIP number, missing dollar price). The Board monitors the data it receives for errors and informs the dealer or its agent of each error that would eliminate a transaction from the Daily Report. The Board is working with dealers and enforcement agencies such as the NASD to improve the quality of reported data and to increase dealer compliance with Rule G–14 reporting requirements.

[15] A dollar price is given for each transaction listed on the report. If the dealer submits a yield with the transaction report, the yield is included with the dollar price. There are instances, however, when a yield is not reported. For example, yields are not submitted by dealers for secondary market inter-dealer transactions because the automated comparison system used to report inter-dealer trades cannot accept yield information on those transactions. In addition, dealers cannot report a yield for customer transactions done on a dollar price basis that involve defaulted or variable rate securities. Transactions including either customers or dealers in new issues without a determined settlement date may be effected and reported by dealers either with a dollar price or a yield. The MSRB Transaction Reporting System will calculate a dollar price from yields submitted for these transactions, using an assumed settlement date if necessary. There must be, however, sufficient securities data available to make this calculation (*e.g.*, coupon, dated date, maturity date, first interest payment date, etc.). For additional information, *see* ''Public Reporting of Transactions in Municipal Securities: Rule G–14,'' *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 25–27.

[16] Where trades are submitted by dealers with an invalid time or no time of trade, the report shows the time of trade as ''0.''

[17] Current subscribers to the Inter-Dealer and Combined Daily Reports now download their files from the Board's electronic bulletin board system. The Board plans eventually to phase out the electronic bulletin board system and rely exclusively on the Internet delivery mechanism. However, the Board plans to continue to offer the existing Daily Reports and the proposed new Daily Transaction Report via the electronic bulletin board to current subscribers until sufficient time has been given for them to make the conversion to the internet delivery mechanism. Access to electronic copies of the new Daily Transaction Report will be made available each day at the same time to all subscribers regardless of whether the means of access of the specific subscriber is via the internet or the electronic bulletin board.

[18] The Board expects to use an internet-based File Transport Protocol (FTP) method to download files to subscribers. After signing and sending to the Board the subscription agreement, a subscriber will be assigned a log-in name and password for this purpose.

[19] Persons interested in being notified by e-mail of this and other Board announcements may obtain this service by visiting the Board's web site and clicking on ''Subscribe to E-mail.''

[20] 15 U.S.C. 78o–4(b)(2)(C).

[21] Electronic mail from Mark Magee, Raymond James and Associates, to Bryan Johnson, MSRB, dated May 4, 1999.

[22] Letters from Mark A, Condic to the Municipal Securities Rulemaking Board dated June 15, 1999 (''June 15 letter'') and June 22, 1999 (''June 22 letter'').

[23] Letter from Clayton Erickson, A.G. Edwards and Sons, Inc., to Diane Klinke, MSRB, dated June 28, 1999.

[24] Letter from Sarah M. Starkweather, TBMA, to Diane Klinke, MSRB, dated July 6, 1999.

[25] Letter from James A. Lebenthal, Lebenthal & Co., Inc., to Diane Klinke, MSRB, dated July 21, 1999.

[26] TBMA's support for this proposed rule change was further clarified in a telephone call between Harold Johnson, MSRB, and Paul Saltzman, TBMA, on October 5, 1999. Telephone call between Larry Lawrence, MSRB, and Kelly Riley, Division of Market Regulation, SEC, on October 7, 1999.

Board but expressed doubt about its usefulness in his second letter.

*Further Enhancements to the Report.* One commentator (Condic) suggests adding a summary table to the Report keyed to bond ratings, which would show yields and the changes in yield that occur each day. The Board determined not to add such a summary table. Ratings of municipal securities assigned by private bond rating organizations are not currently part of dealer reports to the Board. The Board recognizes that various types of end-users of transaction data may need enhancements and additions to the data a (calculated yields, ratings, extended securities descriptions, etc.) and different means to access and use the data (such as automated search mechanisms and historical records). The Board's long-standing position has been that its primary role is to make available the basic transaction information that is reported to it by dealers. AT the same time, the Board has encouraged other organizations to re-disseminate the data, and to ''add value'' to the data to target the needs of specific end users.[27]

With respect to bond ratings, the Board notes that TBMA currently makes a web site available that includes data from existing Daily Reports and that this site includes ratings as well as search features and other enhancements designed to make the information particularly useful to investors. The Board also notes that TBMA, in its comment letter on the proposed report indicates that it will continue to provide this kind of service, using the data that will be included in the proposed Daily Transaction Report. The Board believes that organizations such as TBMA are well positioned to meet specific end-user needs and that the Board's role should continue to be as provider of basic transaction data unless it becomes clear that a critical need for enhanced information in the market is not being met.

*Adding Yield-To-Call Information.* One commentator (A.G. Edwards) suggests that where the displayed yield on the Daily Transaction Report is a ''yield to call,'' the transaction record should include the date and price of the call feature used for the price-yield calculation. The proposed Daily Transaction Report shows a yield for a transaction only if the dealer reported a yield. When reporting yields to the Board, dealers do not report the call features used for yield calculation, so the information requested by the commentator is not available for inclusion on the Daily Transaction Report. While it would be possible for the Board to calculate yields from dollar prices for most transactions, and to show whether the yield was calculated to a call date and call price or to maturity, the Board has chosen not to add this enhancement to the report. In this regard, the Board notes that TBMA's web site currently does include calculated yields for the dollar prices shown.

*Distinguishing Inter-Dealer Transactions from Purchases from Customers.* In the format released for comment, the Daily Transaction Report identified a transaction as one of two types: (1) a sale to a customer, or (ii) ''other,'' (*i.e.*, a purchase by a dealer). Purchases by dealers either are purchases from customers or purchases on the inter-market, but these two types of dealer purchases were not separately identified in the initial draft version of the Daily Transaction Report. One commentator (A.G. Edwards) suggests that the Daily Transaction Report should segregate the two types of purchases by dealers, nothing that it may be relevant to some market analyses whether securities were bought on the inter-dealer market or bought from a customer. Another commentator (Lebenthal) also believes the Report should present inter-dealer prices and retail customer prices separately, in order to avoid misleading customers.

The Board agrees that it would be useful to distinguish between dealers' purchases from customers and from other dealers. Thus, in the proposed report, there are separate columns showing the prices for: (i) sales to customers, (ii) purchases from customers, and (iii) inter-dealer transactions.

*Addition of Dealer Identification to the Daily Transaction Report.* One commentator (Condic) states that, since the proposed report shows the prices of actively traced municipal securities, it should also show the name and telephone number or any dealer selling the securities. The Board notes that the existence of transaction information reported by a dealer does not indicate whether the dealer has additional securities of that issue to sell. The Board believes that this kind of proposal would be more appropriate to a quotation system rather than a transaction transparency system and therefore has declined to adopt this suggestion.

*Voiding Customer Transactions Where Spread is Over 25 Basis Points.* One commentator (Condic) suggests that the Board adopt a rule that a transaction is voidable by a customer if the ''spread'' is more than 25 basis points. This view may be based upon the concern that a customer may buy a security from a dealer and on the next day find that the transaction was not effected at a fair market price.

Board Rule G–30 already addresses the issue of mis-priced securities transactions with customers. The rule states that prices to customers must be fair and reasonable, taking into account all relevant factors about the transaction. The Board historically has allowed the enforcement agencies charged with enforcing Board rules make determinations on whether particular transaction price is fair and reasonable because the enforcement agency is in the best position to determine the facts and circumstances of individual transactions. The Board notes that the surveillance data from the Transaction Reporting Program now provides to the enforcement agencies comprehensive, searchable information on transactions and transaction prices occurring in the market. This should enhance the ability of the enforcement agencies to enforce MSRB Rule G–30. Consequently, the Board is not undertaking further rulemaking with respect to the commentator's suggestion.

*Continued Production of Combined Daily Report.* In its comment letter, TBMA requests that the Board continue to produce the Combined Daily Report because that report's summary information could serve as the ''gateway'' to the detailed information of the Daily Transaction Report. TBMA notes that, if the Board does not continue production of the Combined Daily Report, the TBMA might create a similar summary report for its web site. This would be possible since the Daily Transaction Report includes all of the information necessary to produce a Combined Daily Report.

The Board intends to continue, at least initially, production of both the Combined Daily Report and the Inter-Dealer Daily Report after the new report goes into operation. However, the number of subscriptions to these older Daily Reports may diminish in the future as subscribers to the existing reports program their systems to use the more detailed information in the new report. After some time, if subscribership to the older Daily Reports diminishes markedly, the Board may file a proposed rule change with the Commission to discontinue production of the older Reports.

*Fees for new Daily Transaction Report.* The Inter-Dealer and Combined Daily Reports are each available by

[27] *See, e.g.*, ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports*, Vol. 14, No. 1 (January 1994) at 14.

subscription for $15,000 annually. One commentator (Condic) states that the proposed Daily Transaction Report should be made available free of charge. Another commentator (TBMA) urges the Board to make transaction information available, electronically and without charge, to dealers for their internal use in market analysis and in their compliance efforts. As noted above, the Board has decided to make subscriptions to the proposed report free. Subscribers, however, will need to sign a subscription agreement that outlines the Board's disclaimer of liability, the proprietary nature of and usage restrictions on the CUSIP numbers and CUSIP descriptions contained in the report, and certain other matters.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal office. All submissions should refer to File No. SR–MSRB–99–8 and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–29156 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

[28] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–42091; File No. SR–NASD–99–15)**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the National Adjudicatory Council's Call For Review of Membership Decisions

November 2, 1999.

### I. Introduction

On March 19, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''). filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to temporarily suspend the National Adjudicatory Council's (''NAC's'') oversight of membership applications approved by district staff. On April 16, 1999, the Association filed Amendment No. 1 to the proposal.[3] The proposed rule change and amendment were published in the **Federal Register** on April 26, 1999.[4] On October 20, 1999, the NASD filed Amendment No. 2 to the proposal.[5] The Commission received no comments on the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 2.

### II. Description of the Proposal

The purpose of the proposed rule change is to temporarily suspend the NAC's oversight responsibilities under NASD rule 1015 requiring review of membership decisions made by NASD district staff, while the Association considers other options for review of the membership admission process. Currently, NASD Rule 1015(a)(2) provides that a membership decision rendered by the Department of Member Regulation shall be subject to a call for review by the NAC. According to the NASD, the NAC has never been able to adequately perform this function. Therefore, the Association proposes formal suspension of this function until December 31, 1999,[6] while it attempts to devise and implement new review procedures.

In August 1997, the SEC approved substantial revisions to the membership review processes to conform the rules to the requirements of the August 8, 1996 SEC Order correcting abuses in certain NASD procedures (''Order').[7] Following the Order, the authority to approve membership application was transferred from NASD District Business Conduct Committees to NASD Regulation staff.[8] Applicants granted restricted membership or refused admission could appeal to the National Business Conduct Committee (''NBCC''), the NAC's predecessor, which was also charged with oversight of admissions.[9] During consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions. Nonetheless, the NBCC, which requested the change, was primarily concerned about decisions approving unrestricted memberships. Since a successful applicant would have no incentive to appeal an unrestricted admission, the NBCC wished to have a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (April 16, 1999) (''amendment No. 1'').

[4] Securities Exchange Act Release No. 41311 (April 20, 1998), 64 FR 20347.

[5] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant director, Division, Commission (October 18, 1999) (''Amendment No. 2''). In Amendment No. 2, the NASD requests that the proposed end date of the temporary suspension of NASD Rule 1015 be change from October 31, 1999 to December 31, 1999.

[6] *Id.*

[7] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc.).

[8] Securities Act Release Nos. 39350 (Nov. 21, 1997), 62 FR 64000 (Dec. 3, 1997) and 39470 (Dec. 19, 1997), 62 FR 67927 (Dec. 30, 1997) (Notice and Notice and Accelerated Approval of File No. SR–NASD–97–81, respectively.)

[9] The Association asserts that during consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions.

mechanism to review the unrestricted admissions, if warranted.

The Association has never been able to implement the NAC's call for review authority. The NASD states that several attempts have been made to do so, none of the procedures tried have been particularly effective.[10] Therefore, the NAC and the NASD Board agreed to request temporary suspension of the NAC's review responsibilities. At the same time, the Association asserts that it will review the NASD Rule 1010 Series admissions procedures in their entirety, including the role of the NAC in that process. The Association expects to conclude its review by December 31, 1999.[11]

## III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] and particularly Section 15A(b)(8) thereof.[13] Section 15A(b)(8) requires that the rules of a national securities association provide a fair procedure for the denial of membership to any person seeking membership therein.[14] This must be balanced against the more general requirement that the rules of a national securities association promote the public interest and the protection of investors. Thus, while the Commission finds that it is reasonable to temporarily suspend the NAC's call for review responsibilities until December 31, 1999,[15] during that time the Association must actively seek to develop an effective mechanism for reviewing unrestricted memberships approved by its district office staff, which the NASD has represented may be heightened oversight NASD headquarters staff of the NASD district membership decisions.[16]

The Commission notes, notwithstanding its approval of the Association's proposal to temporarily suspend NASD Rule 1015, the NASD is still responsible for all oversight of membership admissions decisions, both restricted and unrestricted. In addition, during the temporary suspension of NASD Rule 1015, the approved procedures for the denial of membership to any person seeking NASD membership will not be affected. In approving the Association's proposal, the Commission relies upon the NASD's representation that the proposed rule change will neither alter a membership applicant's ability to independently seek NAC review of a membership decision, nor prejudice a membership applicant's rights under the NASD Rules.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 changes the proposed end date of the temporary suspension of NASD Rule 1015 from October 31, 1999, to December 31, 1999. The Commission believes that the extension of the temporary suspension of NASD Rule 1015 is reasonable in light of the efforts taken by the NASD to find an appropriate resolution for the review of membership decisions. The Commission notes that in NASD Notice to Members 99–67 the NASD published its recommendations for new procedures for the review of membership decisions for membership comment. The Commission believes an extension of the temporary suspension of NASD Rule 1015 should provide the Association with adequate time to consider and integrate any comments into the review procedures that will ultimately be implemented. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(8) and 19(b) of the Act,[17] to approve Amendment No. 2 to the proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–15 and should be submitted by [insert date 21 days from the date of publication].

## V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change, as amended, (SR–NASD–99–15) is temporarily approved, until December 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–29157 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

[10] For example, the Association contemplated limiting the number of staff decisions to be considered for a call for review by focusing the process on certain categories of decisions, such as only new member application decisions or certain types of business expansions. The NASD determined, however, that such a procedure might be perceived as biased against those firms that fell within a selected category.

[11] *See* note 5, *above.*

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(8).

[14] *Id.*

[15] *See* note 5, *above.*

[16] The Commission notes that even prior to the noticing of this proposed rule change the NASD represented that it was working to achieve a workable solution to the implementation problems, and that significant progress was being made. This representation is critical to the Commission's approval of this proposal.

[17] 15 U.S.C. 78*o*–3(b)(8) and 78s(b).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42086; File No. SR–NYSE–99–43]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

November 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 1999, the New York Stock Exchange, Inc. (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On November 1, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to the proposed rule change requests that the Commission exercise its discretionary authority under rule 19b–4(f)(6)(iii) of

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of the pilot fees (''Pilot Fee Structure'') currently set forth in Exchange Rule 451. ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material.'' (collectively the ''Rules''). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on November 1, 1999. The Exchange proposes to extend the Pilot Fee Structure through January 3, 2000.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.[4] The Pilot Fee Structure has been modified and extended several times,[5] most recently by Commission order dated July 29, 1999.[6]

In June of this year, the Exchange submitted a proposed rule change to the Commission (''June Filing'') to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.[7] The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Pilots also proposes to define the term ''nominee'' as it relates to the calculation of the nominee coordination fee.

The Exchange believes that an extension of the Pilot Fee Structure through January 3, 2000, will give the Commission additional time to fully consider the June Filing and the public comment letters regarding the June Filing,[8] without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after November 1, 1999. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June Filing, proposing to extend the revised Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[9] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)[10] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.[11]

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date (or such shorter time period as designated by the Commission); the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

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the Act by designating such shorter time period, which waives the requirement that written notice of a ''non-controversial'' proposed rule change be provided to the Commission at least five business days before filing. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulations, Commission, dated November 1, 1999 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1970. The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[5] *See* Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); and 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999).

[6] *See* Securities Exchange Act Release No. 41669 (July 29, 1999), 64 FR 43007 (Aug. 6, 1999) (order extending Pilot Fee Structure through November 1, 1999).

[7] *See* Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

[8] The Commission received comment letters from the Council of Institutional Investors, Association of Publicly Traded Companies, and Automatic Data Processing (''ADP''). The ADP comment letter included an economic analysis of the June Filing, which analysis was prepared by a consulting firm retained and paid by ADP. *See* Public File SR–NYSE–99–21.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

of the Exchange Act [12] and Rule 19b–4(f)(6) [13] thereunder.

Under Rule 19b–4(f)(6)(iii),[14] an exchange is ordinarily required to provide the Commission with written notice of its intent to file a ''non-controversial'' proposed rule change at least five business days prior to the filing date. In Amendment No. 1, however, the Exchange requested that the Commission exercise its discretionary authority under Rule 19b–4(f)(6)(iii) by designating such shorter time period so that the five day pre-filing requirement would be waived. Given the nature of the filing and absence of material issues, the Commission believes that it is appropriate to waive the five day pre-filing requirement for the proposed rule change.

In addition, a proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may take effect no later than November 1, 1999. The immediate effectiveness would allow the current Pilot Fee Structure to continue uninterrupted, and would provide the Commission with additional time to complete its review of the June Filing and related comment letters.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the Pilot Fee Structure from November 1, 1999, through January 3, 2000. The extension of the Pilot Fee Structure will provide the Commission with further time to complete its review and evaluation of the June Filing. In particular, the Commission is still reviewing the economic analysis of the June Filing that was submitted by ADP. Thus, the extension will afford the Commission the additional time necessary to thoroughly consider the substance of ADP's economic analysis and the issues raised in the comment letters.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for proxy materials distributed after November 1, 1999, will revert to those in effect prior to March 14, 1997. The Commission believes such a result could be confusing and counterproductive, especially given that the June Filing proposing to extend the Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change, and Amendment No. 1, become immediately effective upon the date of filing, October 28, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–9943 and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–29159 Filed 11–5–99; 8:45 am]

**BILLING CODE 8010–01–M**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42087; File No. SR–NYSE–99–29]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to a Proposed Rule Change by the New York Stock Exchange, Inc. Extending a Pilot Program Relating to Continued Listing Standards Through December 1, 1999

November 1, 1999.

### 1. Introduction

On June 22, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 8 of its *Listed Company Manual* (''Manual''), make corresponding changes to NYSE Rule 499, and implement the proposed changes pursuant to a pilot program (''pilot''). On July 26, 1999, the Commission issued notice of the filing and approved, on an accelerated basis, the portion of the filing establishing a pilot through November 1, 1999.[3]

On October 26, 1999, the NYSE submitted Amendment No. 1, proposing to revise the continued listing criteria applicable to closed-end investment companies (''Funds').[4] On November 1, 1999, the NYSE submitted Amendment No. 2, proposing to extend the pilot until December 1, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.[5] The Commission is publishing this notice to solicit comments on and grant accelerated approval to Amendment No. 2.

### II. Proposed Rule Change

In Amendment No. 2, the NYSE is proposing to extend the pilot which amends Section 8 of the NYSE Manual and makes corresponding changes to NYSE Rule 499 regarding criteria governing the continued listing of securities. The proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41648 (July 26, 1999), 64 FR 41986 (August 2, 1999).

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, dated October 25, 1999.

[5] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, dated November 1, 1999.

implemented pursuant to the pilot modifies several of the NYSE's existing continued listing criteria, codifies certain Exchange policies regarding the NYSE's continued listing criteria, replaces certain of the current criteria with new continued listing criteria, and creates subsections in the continued listing section.[6]

### III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the extension of the pilot until December 1, 1999, or such earlier time as the Commission takes final action on the Exchange's request for permanent approval of the pilot, is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public. The Commission believes that continuation of the pilot will maintain the status quo while the Commission and the Exchange review the proposed changes to the continued listing criteria, including Amendment No. 1.

The Commission finds good cause for approving the extension of the pilot prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the NYSE market and confusing to market participants to reintroduce the previous continued listing criteria for, potentially, a brief period while the Commission considers the request for permanent approval of the pilot.[8] Additionally, a lapse in the pilot could affect companies whose position is precariously balanced between listing and delisting depending on whether the proposed continued listing criteria are approved. This is particularly true of Funds, which could be subject to the original continued listing criteria, the criteria proposed and implemented in the pilot, or the criteria proposed in Amendment No. 1.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–29 and should be submitted by November 29, 1999.

### V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that Amendment No. 2 to the proposed rule change (SR–NYSE–99–29), which extends the pilot to December 1, 1999, or such earlier time as the Commission takes final action on the Exchange's request for permanent approval of the program, is hereby approved on an accelerated basis.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–29160 Filed 11–5–99; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Securities Exchange Act Release No. 41648, *supra* note 3.

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission's approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving Amendment No. 2, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3225]**

### State of Florida; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated October 24, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on October 14, 1999 and continuing through October 24, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 18, 1999, and for economic injury the deadline is July 20, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 28, 1999.

**Herbert L. Mitchell**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 99–29091 Filed 11–5–99; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3212]**

### State of North Carolina; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 21, 1999, the above-numbered Declaration is hereby amended to re-open the incident period for this disaster as a result of the continued flooding caused by Hurricanes Floyd and Irene in the State of North Carolina. The incident period is now established as beginning on September 15, 1999 and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 14, 1999, and for economic injury the deadline is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 28, 1999.

**Herbert L. Mitchell,**

*Acting Associate Administrator, for Disaster Assistance.*

[FR Doc. 99–29092 Filed 11–5–99; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 3155]**

### Notice of Proposal To Extend Memorandum of Understanding With El Salvador

Pursuant to the authority vested in me under Department of State Delegation of Authority 234, dated October 1, 1999, and pursuant to 19 U.S.C. 2602(f)(1), I hereby propose extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological material from the Prehispanic Cultures of the Republic of El Salvador, signed March 8, 1995. Pursuant to 19 U.S.C. 2602(f) the views

and recommendations of the Cultural Property Advisory Committee regarding this proposal are being requested.

Dated: November 2, 1999.

**Evelyn S. Lieberman,**

*Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.*

[FR Doc. 99–29165 Filed 11–5–99; 8:45 am]

BILLING CODE 4710–11–P

## DEPARTMENT OF STATE

**[Public Notice 3154]**

### Notice of Meeting of the Cultural Property Advisory Committee

The Cultural Property Advisory Committee will meet on Monday, November 22, 1999, from approximately 9 a.m. to approximately 5 p.m., and on November 23 from approximately 8:30 a.m. to approximately 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting on November 22, the Committee will continue its review of a cultural property request from the Government of the Republic of Italy filed under Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Italy believes its cultural patrimony to be in jeopardy from pillage. It seeks U.S. import restrictions on categories of archaeological material in stone, metal, ceramic, bone, and glass, and wall paintings from the 5th millennium B.C. to the 5th c. A.D., although the preponderance of material represents the period between the 8th c. B.C. and the 5th c. A.D. The request is being reviewed by the Committee in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The Committee will report its findings and recommendations thereunder. Deliberations were conducted by the Committee on October 12–13 during which time it held an open session to receive public comment. The Committee also has received considerable written comment for its consideration and welcomes any additional written comment. The meeting on November 22 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

During its meeting on November 23 the Committee will commence a review of a proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador. An open session to hear comment about the proposed extension of the MOU will be held from 9:30 a.m. to 11 a.m. The balance of the meeting on November 23 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). A copy of the MOU and the designated list of protected categories of archaeological material and further information about U.S. implementation of the 1970 Convention may be found at http://e.usia.gov/education/culprop. Persons wishing to attend the open portion of the meeting on November 23 must call the Cultural Property Office at (202) 619–6612 no later than 5 p.m. (EDT) Thursday, November 18, 1999, to arrange for admission. Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW., Rm. 247, Washington, DC. 20547.

Dated: November 2, 1999.

**Evelyn S. Lieberman,**

*Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.*

### Determination To Close Portions of the Meeting of the Cultural Property Advisory Committee, November 22–23, 1999

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the meeting of the Cultural Property Advisory Committee on November 22, 1999, from approximately 9 a.m. to 5 p.m., and on November 23, from approximately 8:30–9:30 a.m. and from 11 a.m. to 2 p.m., at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed. This determination shall be published in the **Federal Register.**

Dated: November 2, 1999,

Evelyn S. Lieberman,

*Under Secretary of State for Public Diplomacy and Public Affairs, Department of State.*

[FR Doc. 99–29164 Filed 11–5–99; 8:45 am]

BILLING CODE 4710–11–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues.

**DATES:** The meeting is scheduled for December 14, 1999, beginning at 10:00 a.m.

**ADDRESSES:** Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC., Room 813.

**FOR FURTHER INFORMATION CONTACT:** Cindy Nordlie, Office of Rulemaking, ARM–108. Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: (202) 267–7627; FAX (202) 267–5075; e-mail: cindy.nordlie@faa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App II), notice is given of an ARAC meeting to be held December 14, 1999, at the Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, Room 813.

The agenda will include a review of the Licensing Harmonization Working Group's report and recommendations. The report and its recommendations are limited to cockpit crew. There will be a vote taken on the report and its recommendations, the result of which will determine if the report and its recommendations should be forwarded to the FAA. Copies of the document to be voted on are available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by December 3, 1999, to present oral statements at the meeting. Written statements may be presented at any time before the meeting by providing 25 copies to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** If you are in need of special assistance or require a reasonable accommodation for this meeting, requests should be made no later than 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on November 2, 1999.

**Ruth Ann Hodges,**

*Assistant Executive Director for Training and Qualification Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 99–29146 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Docket: RSPA–98–4957 Notice 11

### Request for Comments and OMB Approval

**AGENCY:** Research and Special Programs Administration, DOT

**ACTION:** Notice and request for public comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) published a notice requesting extension of an information collection in support of the Office of Pipeline Safety (OPS) for Response Plans for Onshore Oil Pipelines (64 CFR 46746 August 26, 1999). No comments were received. The public is being given another 30 days to provide comments on this information collection.

**DATES:** Comments on this notice must be received on or before December 8, 1999 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW. Washington, D.C. 20950, (202) 366–6205 or by electronic mail at Marvin.fell@rspa.dot.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Response Plans for Onshore Oil Pipelines.

*OMB Number:* 2137–0589.

*Type of Request:* Extension of an existing information collection.

*Abstract:* The Oil Pollution Act of 1990 (OPA 90) requires that certain pipelines that transport oil must develop a response to minimize the impact of an oil discharge in the case of an accident. These response plans enhance the spill response capability of pipeline operators.

*Estimate of Burden:* The average burden hours per response is approximately 47.

*Respondents:* Oil Pipeline operators.

*Estimated Number of Respondents:* 1,400.

*Estimated Total Annual Burden on Respondents:* 65,467 hours.

*Frequency:* Every three years.

*Use:* To enhance response capability in the event of an oil spill.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590 Monday Through Friday from 9:00 A.M. to 5:00 P.M. Excluding Federal holidays. This information collection can also be reviewed electronically on the worldwide web at dms.dot.gov.

Comments are invited on: (a) The need for the proposed collection of information 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 of information 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 of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Send comments to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation. All comments will also be a matter of public record.

Issued in Washington, DC on November 2, 1999.

**Richard B. Felder,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 99–29143 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### International Standards on the Transport of Dangerous Goods; Public Meetings

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of public meetings.

**SUMMARY:** This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the seventeenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held December 6, through December 15, 1999 in Geneva, Switzerland.

**DATES:** November 30, 1999, 10:00 AM–1:00 PM, Room 6202–6204; January 6, 2000, 10:00 AM–1:00 PM, Room 3328.

**ADDRESSES:** Both meetings will be held at the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

**SUPPLEMENTARY INFORMATION:** The primary purposes of the first meeting will be to prepare for the seventeenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the eighteenth session of the UNSCOE which is scheduled for July 3–14, 2000 in Geneva, Switzerland. Topics to be covered during the public meeting include (1) Global harmonization of classification criteria, (2) Reformatting the UN Recommendations into a model rule, (3) Criteria for Environmentally Hazardous Substances, (4) Intermodal portable tank requirements including requirements for the transport of solids in portable tanks, (5) Requirements applicable to small quantities of hazardous materials in transport (limited quantities) including package marking requirements, package quantity limits and requirements applicable to consumer commodities, (6) Harmonized requirements for compressed gas cylinders, (7) Classification of individual substances, (8) Requirements for bulk and non-bulk packaging used to transport hazardous materials, (9) Requirements for Toxic by Inhalation (TIH) substances and (10) Hazard communication requirements including harmonized shipping papers.

The public is invited to attend without prior notification.

**Documents**

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/dgscomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at *http://www.unece.org/trans/danger/meetings.htm#ST/SG.* These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site also provides information regarding the UNSCOE and related matters such as a summary of decisions taken at the 16th Session of the UNSCOE, meeting dates and a summary of the primary topics which the UNSCOE plans to address in the 1999–2000 biennium.

Issued in Washington, DC, on November 2, 1999.

**Alan I. Roberts,**

*Assoociate Administrator for Hazardous Materials Safety.*

[FR Doc. 99–29142 Filed 11–5–99; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33810]**

### Wisconsin Chicago Link Ltd.—Lease Exemption—Pennsylvania Lines LLC

Wisconsin Chicago Link Ltd. (WCLL), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease from Pennsylvania Lines LLC (PRR) approximately 1.9 miles of rail line (the Panhandle Line) of the former Pittsburgh Cincinnati, Chicago & St. Louis Railroad Company (PCC&StL) in Chicago, Cook County, IL.[1] The Panhandle Line extends between: (1) A connection with CSX Transportation, Inc. (CSXT) via the Altenheim Subdivision of The Baltimore and Ohio Chicago Terminal Railroad Company at Ogden Junction near Rockwell Street (approximately PCC&StL milepost 309.8), and (2) a point (approximately PCC&StL milepost 307.9) 600 feet north of the north bank of the Chicago Sanitary and Ship Canal, near the Ash Street Interlock. The Panhandle Line is paralleled for its entire length by terminal trackage of other carriers, and connects at its north and south ends with the lines of numerous other railroads.[2] WCLL will also obtain incidental, overhead trackage rights extending south from PCC&StL milepost 307.9, a distance of approximately 2 miles to present or future connections with rail lines of Norfolk Southern Railway Company (NS), Canadian National/Grand Trunk Western Railroad, Inc., Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company and The Burlington Northern and Santa Fe Railway Company.

The proposed lease of the Panhandle Line was the subject of an October 17, 1997 settlement agreement entered into by: (1) Norfolk Southern Corporation and NS, which now control and operate PRR, and (2) Wisconsin Central Transportation Corporation (WCTC) and its then existing carrier affiliates.[3] At the time of filing of this notice, the parties were negotiating a definitive lease agreement that would effectuate the intent and purpose of the prior agreement. According to the notice, that lease agreement provides for WCLL's acquisition of a leasehold interest in the Panhandle Line, a portion of the associated right-of-way and certain incidental overhead trackage rights.[4]

WCLL indicates that WCTC will shortly be filing a petition for exemption in a related proceeding in STB Finance Docket No. 33811, *Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd., wherein WCTC will seek to continue in control of WCLL*[5] once it leases the Panhandle Line and becomes a carrier.

WCLL further states that the Panhandle Line is currently out of service. WCLL intends to reconstruct the line and add additional capacity. Initially operations on the line will be conducted by NS, CSXT, and WCL pursuant to trackage rights. It is anticipated that CSXT will dispatch a portion of the Panhandle Line.

The transaction was expected to be consummated on or shortly after October 29, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33810, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Janet H. Gilbert, 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: November 2, 1999.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99–29172 Filed 11–5–99; 8:45 am]

BILLING CODE 4915–00–P

[1] WCLL states that its revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.

[2] Wisconsin Central Ltd. (WCL), a WCLL affiliate, operates pursuant to overhead trackage rights on the Altenheim Subdivision that will connect with the north end of the Panhandle Line.

[3] The Panhandle Line was formerly owned by Consolidated Rail Corporation (Conrail). Pursuant to a transaction approved by the Board, and fully consummated by the parties on June 1, 1999, PRR was assigned assets designated to be operated as part of the NS rail system (the PRR-Allocated Assets). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33888, Decision No. 89 (STB served July 23, 1998).

[4] According to the notice, the lease agreement further provides that, after five years, WCLL has an option to purchase the Panhandle Line for an amount determined in accordance with provisions of the agreement.

[5] Pending a Board decision granting WCTC's petition for exemption to control WCLL, the stock of WCLL will be placed in an independent voting trust established in accordance with 49 CFR 1013.

## DEPARTMENT OF THE TREASURY

### Bureau of Engraving and Printing

### 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 Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Public Tour Survey Card.

**DATES:** Written comments should be received on or before December 14, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Department of the Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2212.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Department of the Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2532.

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey Card.

*OMB Number:* 1520–0005.

*Form Number:* BEP 1883.

*Abstract:* The Bureau of Engraving and Printing solicit voluntary feedback from the public regarding the quality of our public tour, exhibits, and displays.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 100.

*Estimated Total Annual Burden Hours:* 8.

*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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 14, 1999.

**Pamela V. Grayson,**

*Management Analyst.*

[FR Doc. 99–29097 Filed 11–5–99; 8:45 am]

BILLING CODE 4840–01–U

## DEPARTMENT OF THE TREASURY

### Bureau of Engraving and Printing

### 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 Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Mutilated Currency Redemption Customer Service Survey.

**DATES:** Written comments should be received on or before December 14, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2212.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, S.W., Washington, D.C. 20228, (202) 874–2532.

**SUPPLEMENTARY INFORMATION:**

*Title:* Mutilated Currency Redemption Customer Service Survey.

*OMB Number:* 1520–0003.

*Form Number:* BEP 5284.

*Abstract:* The Office of Currency Standards, Bureau of Engraving and Printing, conduct surveys to ascertain overall customer satisfaction with procedures employed and services rendered in the redemption of mutilated currency.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 300.

*Estimated Total Annual Burden Hours:* 15.

*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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 14, 1999.

**Pamela V. Grayson,**

*Management Analyst.*

[FR Doc. 99–29098 Filed 11–5–99; 8:45 am]

BILLING CODE 4840–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 673

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 673, Statement For Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

**DATES:** Written comments should be received on or before January 7, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement For Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

*OMB Number:* 1545–0666.

*Form Number:* 673.

*Abstract:* Under section 911 of the Internal Revenue Code certain income earned abroad is excludable from gross income. Form 637 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99–29088 Filed 11–5–99; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register
Vol. 64, No. 215
Monday, November 8, 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.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Types and Quantities of Agricultural Commodities Availabile for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for the Period October 1, 1999 Through December 31, 2000

*Correction*

In notice document 99–27745, appearing on page 57437, in the issue of Monday, October 25, 1999, make the following correction:

On page 57437, in the first column, the subject heading is corrected to read as set forth above.

[FR Doc. C9–27745 Filed 11-5-99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP94-271-002]**

### East Tennessee Natural Gas Company; Notice of Compliance Filing

*Correction*

In notice document 99– 28185 beginning on page 58045 in the issue of Thursday, October 28, 1999, the docket line should appear as set forth above.

[FR Doc. C9–28185 Filed 11–5–99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Parts 36 and 36a

**RIN 0917-AAO3**

### Currently Effective Indian Health Service Eligibility Regulations

*Correction*

In rule document 99–27417 beginning on page 58318, in the issue of Thursday, October 28, 1999, make the following correction:

**PART 36 — [CORRECTED]**

On page 58318, in the third column, in amendatory instruction 2., in the third line, ''(h)(i)'' should read ''(h)(1)''.

[FR Doc. C9–27417 Filed ??–??–99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request NIH Intramural Research Training Award, Program Application

*Correction*

In notice document 99–28270, appearing on page 58071, in the issue of Thursday, October 28, 1999, make the following correction:

On page 58071, in the table, under the heading ''Estimated total annual burden hours requested'', in the fifth line down, ''27'' should read ''3,386''.

[FR Doc. C9–28270 Filed 11-5-99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–070–1430–01; NMNM102473]**

### Notice of Realty Action: Notice of Termination of Recreation and Public Purpose Classification and Opening Order and Direct Sale of Public Land, New Mexico

*Correction*

In notice document 99–24844 beginning on page 51554, in the issue of Thursday, September 23, 1999, make the following correction:

On page 51555, in the first column, under **New Mexico Principal Meridian**, in the second line, ''38'' should read ''28''.

[FR Doc. C9–24844 Filed 11–5–99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airpsace Docket No. 99–AGL–41]**

### Modification of Class E Airspace; Cable Union, WI

*Correction*

In rule document 99–25852 beginning on page 53889, in the issue of Tuesday, October 5, 1999, make the following correction:

**§ 71.1 [Corrected]**

On page 53889, in the third column, in § 71.1, in the 16th line from the top of the page, ''Hayard'' should read ''Hayward''.

[FR Doc. C9–25852 Filed 11–5–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
November 8, 1999

# Part II

# Department of Health and Human Services

## Health Care Financing Administration

**42 CFR Parts 431, 433, 435, and 457**
**State Child Health; Implementing Regulations for the State Children's Health Insurance Program; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 431, 433, 435, and 457;**

**[HCFA–2006–P]**

**RIN 0938–AI28**

## State Child Health; Implementing Regulations for the State Children's Health Insurance Program

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

**ACTION:** Proposed rule.

**SUMMARY:** Section 4901 of the Balanced Budget Act of 1997 (BBA) amended the Social Security Act by adding a new title XXI. Title XXI provides funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner. To be eligible for funds under this program, States must submit a State plan, which must be approved by the Secretary.

This proposed rule would implement provisions related to the State Children's Health Insurance Program (CHIP)including State plan requirements, coverage and benefits, eligibility, beneficiary financial responsibility, strategic planning, substitution of coverage, program integrity, and waivers. In addition, this proposed rule would implement the provisions of sections 4911 and 4912 of the BBA, which amended title XIX of the Act to expand State options for coverage of children under the Medicaid program.

**DATES:** Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on January 7, 2000.

**ADDRESSES:** Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2006–P, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, Maryland

If you wish to submit written comments on the information collection requirements contained in this proposed rule, you may submit written comments to the following:

Lori Schack, HCFA Medicaid Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503; and

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

ATTN: John Burke, HCFA–2006–P

**FOR FURTHER INFORMATION CONTACT:**

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Barbara Greenberg for subpart G, Strategic planning, (410)786–0435;

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Jennifer Ryan for subpart I, Program integrity and beneficiary protections, (410)786–1304;

Cindy Ruff for subpart J, Allowable waivers, (410)786–5916;

Judy Rhoades for section K of preamble, Expanded coverage of children under Medicaid and Medicaid coordination, (410)786–4462;

Chris Hinds for section L of preamble, Medicaid disproportionate share hospital expenditures, (410)786–4578;

Joan Mahanes for section M of preamble, Vaccines for Children program, (410)786–4583

**SUPPLEMENTARY INFORMATION:**

### Comments, Procedures, Availability of Copies, and Electronic Access

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2006–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

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### I. Background

Section 4901 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by Public Law 105–100, added title XXI to the Social Security Act (the Act). Title XXI authorizes a new State Children's Health Insurance Program (CHIP) to assist State efforts to initiate and expand the provision of child health assistance to uninsured, low-income children. Under title XXI, States may provide child health assistance primarily for obtaining health benefits coverage through (1) obtaining coverage under a separate child health program that meets the requirements specified under section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both. To be eligible for funds under this program, States must submit a State child health plan (State plan), which must be approved by the Secretary.

This proposed rule would implement the following sections of title XXI of the Act:

- Section 2101 of the Act, which sets forth the purpose of title XXI, the requirements of a State plan, State

entitlement to title XXI funds, and the effective date of the program.

- Section 2102 of the Act, which sets forth the requirements for a State plan, including eligibility standards and methodologies, coordination, and outreach.
- Section 2103 of the Act, which contains coverage requirements for children's health insurance.
- The following parts of section 2105 of the Act: 2105(c)(2)(B) relating to cost-effective community based health delivery systems; 2105(c)(3) relating to family coverage; 2105(c)(5) relating to cost sharing and 2105(c)(7) relating to limitations on payment for abortion.
- Section 2106 of the Act, which describes the process for submission, approval and amendment of State child health plans and plan amendments.
- Section 2107 of the Act, which sets forth requirements relating to strategic objectives, performance goals and program administration.
- Section 2108 of the Act, which requires States to submit annual reports and evaluations of the effectiveness of the State's title XXI plan.
- Section 2109 of the Act, which provides that health insurance coverage provided under a State child health program and coverage provided as a cost effective alternative are treated as ''creditable coverage'' under section 2701(c) of the Public Health Service Act (PHS).
- Section 2110 of the Act, which includes title XXI definitions.

This proposed rule would also implement the provisions of sections 4911 and 4912 of the BBA, which amended title XIX of the Act to provide expanded coverage to children under the Medicaid program. Specifically, section 4911 of the BBA set forth provisions for use of State child health assistance funds for targeted and optional low-income children eligible for enhanced Medicaid match for expanded eligibility under Medicaid. Section 4912 of the BBA added a new section 1920A to the Act creating a new optional group for presumptive eligibility for children. Both title XXI and title XIX statutory provisions are discussed in detail in section II of this preamble.

We note that on March 4, 1999, we published in the **Federal Register** a proposed rule concerning financial program allotments and payments to States under CHIP at 64 FR 10412. In that rule, we proposed to implement sections 2104 and portions of 2105 of the Act, which relate to allotments and payments to States under title XXI. For a detailed discussion of title XXI and related title XIX financial provisions including the allotment process, the payment process, financial reporting requirements and the grant award process, refer to the March 4, 1999 proposed rule.

## II. Provisions of the Proposed Rule

### *A. Overview*

Title XXI authorizes grants to States that initiate or expand health insurance programs for low-income, uninsured children. A Children's Health Insurance Program (CHIP) under title XXI is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. CHIP provides a capped amount of funds to States on a matched basis for fiscal years (FY) 1998 through 2007. At the Federal level, CHIP is administered by the Department of Health and Human Services, through the Center for Medicaid and State Operations (CMSO) of the Health Care Financing Administration (HCFA).

Federal payments under title XXI to States are based on State expenditures under approved plans that could be effective on or after October 1, 1997. The short time frame between the enactment of the BBA (August 5, 1997) and the availability of the funding for States required the Department to begin reviewing CHIP plans submitted by States and Territories at the same time as it was issuing guidance to States on how to operate the CHIP programs. The Department worked closely with States to disseminate as much information as possible, as quickly as possible, so States could begin to implement their new programs expeditiously.

The Department began issuing guidance to States within one month of enactment of the BBA. We provided information on each State's allotment through two **Federal Register** notices published on September 12, 1997 (62 FR 48098) and February 8, 1999 (64 FR 6102). We developed a model application template to assist State's in applying for title XXI funds. We provided over 100 answers to frequently asked questions. We issued policy guidance through a series of 20 letters to State health officials. All of this information is available on our website located on the Internet at ''http://www.HCFA.gov.'' We have also provided technical assistance to all States in development of CHIP applications.

CHIP programs operate in almost every State and Territory in the country. As of April 27 1999, we have approved 52 CHIP plans and have approved 15 amendments to these plans. Prior to the enactment of Public Law 105–174, which gave States an additional year to secure their fiscal year 1998 CHIP allotments, a number of States originally submitted ''place-holder'' plans in order to secure their fiscal year 1998 allotments. Many of these States now indicate that they will submit amendments to further expand their programs. Over half of the approved CHIP plans already provide coverage to families with income levels at or above 200 percent of the poverty line. We expect that most of the States and Territories that have not yet expanded eligibility to children in families with income at or below 200 percent of the Federal poverty line will eventually do so.

States and Territories have used the guidance we have issued to design and implement their programs. We intend to formalize this guidance in two regulations—a financial regulation mentioned previously (the proposed rule published March 4, 1999) and this proposed programmatic regulation. This proposed regulation incorporates much of the programmatic guidance that already has been issued to States.

In addition, this proposed rule addresses beneficiary protections necessary for the program to effectively function. These fundamental protections are consistent with the Presidential directive known as the Consumer Bill of Rights and Responsibilities. See subpart I for a discussion of the rights which are addressed in this proposed rule.

This proposed regulation builds upon previously released guidance and therefore, most of the regulation represents policies that have been in operation for some time. As we continue to implement the program, however, we have identified a number of areas in which we further elaborate on previous guidance or propose new policies that have not yet been made public. In an attempt to highlight the key issues, a brief summary follows:

- Subpart A—State Plan Requirements

The regulation would clarify several conditions under which States must submit amendments to approved CHIP plans. For example, we propose that States submit a plan amendment when the funding source of the State share changes, prior to such change taking effect. The purpose of this proposed requirement is to ensure that programs are operated using only permissible sources of funding. In addition, amendments to impose cost-sharing on

beneficiaries, increase existing cost-sharing charges, or increase the cumulative cost sharing maximum will be considered the same as amendments proposing a restriction in benefits. Therefore, States will be required to follow rules regarding prior public notice and retroactive effective dates.

• Subpart C—Eligibility, Screening, Applications and Enrollment

Title XXI prohibits the participation of children of public agency employees who are eligible to participate in a State health benefits plan. The only case where such a child could be covered under CHIP is the case where the employer provides no more than a nominal contribution available for the child's health benefits coverage. We propose to clarify that these children would not be considered to be ''eligible for health benefits coverage under a State health benefits plan'' and could then be eligible for coverage through CHIP.

• Subpart D—Coverage and Benefits

The proposed regulation provides some flexibility for States in keeping the benefit package current. States using the benchmark benefit package option are not required to submit an amendment each time the benchmark package changes. States need only submit amendments when proposing to make a change to the benefit package for the separate child health program, and then they only need to compare their benefit package to the most recent benchmark package.

The proposed regulation also clarifies policy regarding the conditions under which abortion services are permitted under title XXI and proposes that managed care entities providing this service must do so under a separate contract.

• Subpart E—Beneficiary Financial Responsibilities

The statute places a 5 percent cap on cost-sharing expenditures for families with incomes greater than 150 percent of the Federal Poverty Level (FPL) who are enrolled in separate child health programs. In an attempt to preserve State flexibility, the proposed regulation gives States the option to use either gross or net family income when calculating the cost-sharing cap.

In addition, the regulation proposes to place a comparable limit of 2.5 percent on cost-sharing for families with incomes below 150 percent of the poverty line, in order to ensure that those families with lower incomes will not be forced to pay the same amount of cost-sharing as those with higher incomes. In addition, States have the option to apply cost-sharing imposed on adults in CHIP family coverage plans toward the cumulative maximum cap.

The regulation proposes that States must have a process in place that will protect beneficiaries by ensuring ''due process'' before beneficiaries can be disenrolled from the program for failure to pay cost-sharing. This preamble suggests that States may look for a pattern of nonpayment, provide clear notice and opportunities for late payment, and wait at least one billing cycle before taking action to disenroll.

Finally, title XXI includes provisions to ensure enrollment and access to health care services for American Indian and Alaska Native (AI/AN) children. The regulation incorporates our interpretation that in light of the unique Federal relationship with tribal governments, cost-sharing requirements for individuals who are members of a Federally recognized tribe are not consistent with this statutory requirement.

• Subpart G—Strategic Planning, Reporting and Evaluation

The regulation includes provisions intended to ensure compliance with both the statute, the elements of the State's title XXI plan and the onsite review of State programs. In addition, monitoring will enable tracking of CHIP data submissions, which will ultimately help ensure enrollment in both the CHIP and Medicaid programs.

• Subpart I—Program Integrity and Beneficiary Protections

This subpart is intended to underscore the importance of preserving program integrity in the Children's Health Insurance Program. The regulation proposes that States must have fraud and abuse protections in place, but provides flexibility to States in developing program integrity protections for separate child health programs. States are encouraged to utilize systems already existing for Medicaid, but are not required to do so.

In addition, the regulation proposes that States have additional flexibility in setting procurement standards more broadly than Medicaid. States may choose to base payment rates on public and/or private rates for comparable services, and where appropriate, establish higher rates in order to ensure sufficient provider participation.

Finally, this regulation includes various beneficiary protections consistent with the President's directive regarding the *Consumer Bill of Rights and Responsibilities*. Provisions are included throughout the regulation to ensure that beneficiaries are given the opportunity to participate in and make informed medical decisions, to have access to needed services, and to be treated with dignity and respect.

• Subpart J—Waivers

The proposed regulation discusses the circumstances under which States may obtain a waiver in order to provide Title XXI coverage to entire families. We propose that in order to qualify for such a waiver, the State must meet several requirements, including a requirement that the proposal be cost effective.

Under our proposal, the new provisions for the Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457, subchapter D. We note that the following table of contents is for all of part 457 and lists some subparts which have been reserved for provisions set forth in the March 4, 1999 proposed financial regulation.

The proposed table of contents for new part 457, subchapter D is as follows:

## Subchapter D—Children's Health Insurance Program (CHIP)

## PART 457—ALLOTMENTS AND GRANTS TO STATES

### Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

§ 457.1 Program description.
§ 457.2 Basis and scope of subchapter D.
§ 457.10 Definitions and use of terms.
§ 457.30 Basis, scope, and applicability of subpart A.
§ 457.40 State program administration.
§ 457.50 State plan.
§ 457.60 Amendments.
§ 457.65 Duration of State plans and plan amendments.
§ 457.70 Program options.
§ 457.80 Current State child health insurance coverage and coordination.
§ 457.90 Outreach.
§ 457.110 Enrollment assistance and information requirements.
§ 457.120 Public involvement in program development.
§ 457.125 Provision of child health assistance to American Indian and Alaska Native children.
§ 457.130 Civil rights assurance.
§ 457.135 Assurance of compliance with other provisions.
§ 457.140 Budget.
§ 457.150 HCFA review of State plan material.
§ 457.160 Notice and timing of HCFA action on State plan material.

§ 457.170 Withdrawal process.
§ 457.190 Administrative and judicial review of action on State plan material.

**Subpart B—[Reserved]**

**Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment**

§ 457.300 Basis, scope, and applicability.
§ 457.301 Definitions and use of terms.
§ 457.305 State plan provisions.
§ 457.310 Targeted low-income child.
§ 457.320 Other eligibility standards.
§ 457.340 Application.
§ 457.350 Eligibility screening.
§ 457.360 Facilitating Medicaid enrollment.
§ 457.361 Application for and enrollment in CHIP.
§ 457.365 Grievances and appeals.

**Subpart D—Coverage and Benefits: General Provisions**

§ 457.401 Basis, scope, and applicability.
§ 457.402 Child health assistance and other definitions.
§ 457.410 Health benefits coverage options.
§ 457.420 Benchmark health benefits coverage.
§ 457.430 Benchmark-equivalent health benefits coverage.
§ 457.431 Actuarial report for benchmark-equivalent coverage.
§ 457.440 Existing comprehensive State-based coverage.
§ 457.450 Secretary-approved coverage.
§ 457.470 Prohibited coverage.
§ 457.475 Limitations on coverage: Abortions.
§ 457.480 Preexisting condition exclusions and relation to other laws.
§ 457.490 Delivery and utilization control systems.
§ 457.495 Grievances and appeals.

**Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities**

§ 457.500 Basis, scope, and applicability.
§ 457.505 General State plan requirements.
§ 457.510 Premiums, enrollment fees, or similar fees: State plan requirements.
§ 457.515 Co-payments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.
§ 457.520 Cost sharing for well-baby and well-child care.
§ 457.525 Public schedule.
§ 457.530 General cost sharing protection for lower income children.
§ 457.535 Cost sharing protection to ensure enrollment of American Indians/Alaska Natives.
§ 457.540 Cost sharing charges for children in families at or below 150 percent of the Federal poverty line (FPL).
§ 457.545 Cost sharing for children in families above 150 percent of the FPL.
§ 457.550 Restriction on the frequency of cost sharing charges on targeted low-income children in families at or below 150 percent of the FPL.
§ 457.555 Maximum allowable cost sharing charges on targeted low-income children at or below 150 percent of the FPL.
§ 457.560 Cumulative cost sharing maximum.
§ 457.565 Grievances and appeals.
§ 457.570 Disenrollment protections.

**Subpart F—[Reserved]**

**Subpart G—Strategic Planning, Reporting, and Evaluation**

§ 457.700 Basis, scope, and applicability.
§ 457.710 State plan requirements: Strategic objectives and performance goals.
§ 457.720 State plan requirement: State assurance regarding data collection, records, and reports.
§ 457.730 State plan requirement: State annual reports and evaluation.
§ 457.735 State plan requirement: State assurance of the quality and appropriateness of care.
§ 457.740 State expenditures and statistical reports.
§ 457.750 Annual report.
§ 457.760 State evaluations.

**Subpart H—Substitution of Coverage**

§ 457.800 Basis, scope, and applicability.
§ 457.805 State plan requirements: Private coverage substitution.
§ 457.810 Premium assistance for employer-sponsored group health plans: Required protections against substitution.

**Subpart I—Program Integrity and Beneficiary Protections**

§ 457.900 Basis, scope, and applicability.
§ 457.902 Definitions.
§ 457.910 State program administration.
§ 457.915 Fraud detection and investigation.
§ 457.920 Accessible means to report fraud and abuse.
§ 457.925 Preliminary investigation.
§ 457.930 Full investigation, resolution, and reporting requirements.
§ 457.935 Sanctions and related penalties.
§ 457.940 Procurement standards.
§ 457.945 Certification for contracts and proposals.
§ 457.950 Contract and payment requirements including certification of payment related information.
§ 457.955 Conditions necessary to contract as a managed care entity (MCE).
§ 457.960 Reporting changes in eligibility and redetermining eligibility.
§ 457.965 Documentation.
§ 457.970 Eligibility and income verification.
§ 457.975 Redetermination intervals in cases of suspected enrollment fraud.
§ 457.980 Verification of enrollment and provider services received.
§ 457.985 Enrollee rights to file grievances and appeals.
§ 457.990 Privacy protections.
§ 457.995 Consumer Bill of Rights and Responsibilities.

**Subpart J—Allowable Waivers: General Provisions**

§ 457.1000 Basis, scope, and applicability.
§ 457.1005 Waiver for cost-effective coverage through a community-based health delivery system.
§ 457.1010 Waiver for purchase of family coverage.
§ 457.1015 Cost-effectiveness.

**Editor's note:** In the preamble we discuss new CHIP provisions (part 457) before we discuss relevant changes to the Medicaid regulations (Medicaid coordination, section K of the preamble, and parts 431, 433, and 435 of the regulations text). We believe this order is the most logical presentation for the preamble. However, because regulations text must be set forth in numerical order, proposed changes to the Medicaid regulations precede the new regulations text for part 457.

*B. Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies*

1. Program Description (§ 457.1)

Proposed § 457.1 states that title XXI of the Social Security Act, enacted in 1997 by the BBA, authorizes Federal grants to States for provision of child health assistance to uninsured, low-income children. The program is jointly

financed by the Federal and State governments and administered by the States. Within broad Federal rules, each State decides eligible groups, types and ranges of services, payment levels for benefit coverage, and administrative and operating procedures.

2. Basis and Scope of Subchapter D (§ 457.2)

This subchapter implements title XXI of the Act, which authorizes Federal grants to States for the provision of child health assistance to uninsured, low-income children.

The regulations in subchapter D would set forth State plan requirements, standards, procedures, and conditions for obtaining Federal financial participation (FFP) to enable States to provide health benefit coverage to targeted low-income children, as defined in § 457.310.

3. Definitions and Use of Terms (§ 457.10)

This subpart includes the definitions relevant specifically to the Children's Health Insurance Program under title XXI. We have defined in this subpart key terms that are specified in the statute or frequently used in this regulation. We note that those terms that are specific to certain subparts of this regulation are defined at the opening of those subparts, however, all the terms are listed here. For example, since the definition of ''targeted low-income child'' is specifically relevant in making eligibility determinations, the term is defined in subpart C—Eligibility. Because of the unique Federal-State relationship that is the basis for this program and because of our commitment to State flexibility, we determined States should have the discretion to define many terms.

In accordance with section 2110 of the Act, which sets forth definitions for title XXI, we propose to adopt definitions for the terms, ''creditable health coverage'', ''group health insurance coverage'', ''group health plan'' and ''preexisting condition exclusion'' from sections 2701(c) and 2791 of the Public Health Service Act (PHS) (42 U.S.C. 300gg(c)) as specifically required under the statute. These definitions are consistent with the definitions set forth in regulations at 45 CFR 144.103 and 146.113. Section 2109(a)(1) of title XXI provides that health insurance coverage provided under a State child health plan and coverage provided as a cost-effective alternative are treated as ''creditable coverage'' under section 2701(c) of the PHS Act. In addition, section 2103(f) of title XXI provides that the State plan cannot impose a preexisting condition exclusion; however, if the State plan provides for benefits through payment for, or contract with, a group health plan or health insurance coverage, the State plan can permit the imposition of a preexisting condition exclusion insofar as it is permitted under HIPAA. (Creditable coverage counts as credit for previous health coverage against the application of a preexisting condition exclusion period when moving from one group health plan to another, from a group health plan to an individual policy, or from an individual policy to a group health plan.)

We propose the following definitions:

- *American Indian/Alaska Native (AI/AN)* means (1) A member of a Federally recognized Indian tribe, band, or group or a descendant in the first or second degree, of any such member; (2) an Eskimo or Aleut or other Alaska Native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act 43 U.S.C. 1601 *et seq;* (3) a person who is considered by the Secretary of the Interior to be an Indian for any purpose; (4) a person who is determined to be an Indian under regulations promulgated by the Secretary.
- *Child* means an individual under the age of 19.
- *Child health assistance* has the meaning assigned in § 457.402 of these proposed regulations.
- *Children's Health Insurance Program (CHIP)* means a program established and administered by a State, but jointly funded with the Federal government to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination of both.
- *Combination program* means a program under which a State provides child health assistance through both a Medicaid expansion program and a separate child health program.
- *Contractor* has the meaning assigned in § 457.902.
- *Cost-effectiveness* has the meaning assigned in § 457.1015 of these proposed regulations.
- *Creditable health coverage* has the meaning given the term ''creditable coverage'' at 45 CFR 146.113. Under this definition, the term means the coverage of an individual under any of the following:

—A group health plan (as defined in 45 CFR 144.103).
—Health insurance coverage (as defined in 45 CFR 144.103).
—Part A or part B of title XVIII of the Act (Medicare).
—Title XIX of the Act, other than coverage consisting solely of benefits under section 1928 (the program for distribution of pediatric vaccines).
—Chapter 55 of title 10, United States Code (medical and dental care for members and certain former members of the uniformed services, and for their dependents).
—A medical care program of the Indian Health Service or of a tribal organization.
—A State health benefits risk pool (as defined in 45 CFR 146.113).
—A health plan offered under chapter 89 of title 5, United States Code (Federal Employees Health Benefits Program).
—A public health plan. (For purposes of this section, a public health plan means any plan established or maintained by a State, county, or other political subdivisions of a State that provides health insurance coverage to individuals who are enrolled in the plan.
—A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

The term ''creditable health coverage'' does not include coverage consisting solely of coverage of excepted benefits including limited excepted benefits and non-coordinated benefits. (See 45 CFR 146.145)

- *Emergency medical condition* has the meaning assigned at § 457.402 of these proposed regulations.
- *Emergency services* has the meaning assigned in § 457.402 of these proposed regulations.
- *Employment with a public agency* has the meaning assigned in § 457.301 of these proposed regulations.
- *Family income* means income as determined by the State for a family as defined by the State.
- *Federal fiscal year* starts on the first day of October each year and ends on the last day of September.
- *Fee-for-service entity* has the meaning assigned in § 457.902 of these proposed regulations.
- *Grievance* has the meaning assigned in § 457.902 of these proposed regulations.
- *Group health insurance coverage* means health insurance coverage offered in connection with a group health plan as defined at 45 CFR 144.103.
- *Group health plan* means an employee welfare benefit plan, to the extent that the plan provides medical care as defined in section 2791(a)(2) of the PHS Act (including items and services paid for as medical care) to employees or their dependents directly (as defined under the terms of the plan), or through insurance, reimbursement, or otherwise, as defined at 45 CFR 144.103.

• *Health benefits coverage* has the meaning assigned in § 457.402 of these proposed regulations.

• *Health maintenance organization (HMO) plan* has the meaning assigned in § 457.420 of these proposed regulations.

• *Legal obligation* has the meaning assigned in § 457.555 of these proposed regulations.

• *Low-income child* means a child whose family income is at or below 200 percent of the poverty line for the size family involved.

• *Managed care entity (MCE)* has the meaning assigned in § 457.902 of these proposed regulations.

• *Medicaid applicable income level* means, with respect to a child, the effective income level (expressed as a percentage of the poverty line) that has been specified under the State plan under title XIX (including for these purposes, a section 1115 waiver authorized by the Secretary or under the authority of section 1902(r)(2)), as of March 31, 1997, for the child to be eligible for medical assistance under either section 1902(l)(2) or 1905(n)(2) of the Act.

• *Medicaid expansion program* means a program where a State receives Federal funding at the enhanced matching rate available for expanding eligibility to targeted low-income children.

• *Post-stabilization services* has the meaning assigned in § 457.402 of these proposed regulations.

• *Poverty line/Federal poverty level* means the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

• *Preexisting condition exclusion* has the meaning assigned at 45 CFR 144.103, which provides that the term means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the first day of coverage, whether or not any medical advice, diagnosis, care or treatment was recommended or received before that day. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information that is obtained relating to an individual's health status before the individual's first day of coverage, such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period.

• *Premium assistance for employer-sponsored group health plans* means State payment of part or all of premiums for group health plan or group health insurance coverage of an eligible child or children.

• *Public agency* has the meaning assigned in § 457.301 of these propose regulations.

• *Separate child health program* means a program under which a State receives Federal funding from its title XXI allotment under an approved plan that obtains child health assistance through obtaining coverage that meets the requirements of section 2103 of the Act.

• *State* means all States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

• *State health benefits plan* has the meaning assigned in § 457.301 of these proposed regulations.

• *State plan* means the approved or pending title XXI State child health plan.

• *State program integrity unit* has the meaning assigned in § 457.902 of these proposed regulations.

• *Targeted low-income child* has the meaning assigned in § 457.310 of these proposed regulations.

• *Uncovered child* means a child who does not have creditable health coverage.

• *Well-baby and well-child care services* means regular or preventive diagnostic and treatment services necessary to ensure the health of babies and children as defined by the State. For purposes of cost sharing, the term has the meaning assigned at § 457.520 of the proposed regulations.

4. Basis, Scope, and Applicability of Subpart A (§ 457.30)

This subpart interprets sections 2101(a) and (b), 2102(a), 2102(c), 2106, 2107(c), (d) and (e) of title XXI of the Social Security Act and sets forth the related State plan requirements for a State child health assistance program. It includes the requirements related to administration of the State program and the process for Federal review of a State plan or plan amendment. This subpart applies to all States that seek to provide health benefits coverage through CHIP.

5. State Program Administration (§ 457.40)

Consistent with section 2106(d)(1) of the Act, we would specify in § 457.40(a) that it is the State's responsibility to implement and conduct its program in accordance with the approved State plan and plan amendments, the requirements of title XXI and title XIX (as appropriate), and the regulations in chapter IV.

To ensure that the State is operating its program accordingly, HCFA will review the operation of the program through on-site review or monitoring of State programs. At proposed § 457.40(a), we would provide that HCFA will monitor the operation of the approved State plan and plan amendments to ensure compliance with title XXI, title XIX (as appropriate) and the regulations in chapter IV. There are two general goals for the proposed monitoring provisions. Specifically, monitoring will assure State compliance with both statutory and regulatory requirements under title XXI and with the specifications of the State plan. In addition, monitoring will allow us to track the submission of requested data related to CHIP, including enrollment and expenditure data and other efforts related to ultimately ensuring enrollment of eligible children into both CHIP and Medicaid. Expected outcomes of CHIP monitoring include: (1) Identifying the need for corrective action, enforcement and improvement within State title XXI programs; (2) recognizing and sharing best practices that may lead to increased enrollment; (3) identifying States' needs for technical assistance; and (4) informing HCFA as we prepare for the Secretary's report to Congress.

The ongoing review of State programs is an evolving process as there is wide variation among implemented children's health insurance programs. Many programs are just being implemented, while others have been built upon programs in existence long before the passage of title XXI. Because of both variation in program design and differences in stages of program implementation, we have established a flexible review process that is focused primarily on assuring compliance with Federal law and regulations. In subsequent years Federal review of State programs may also examine how well programs are achieving the overall goals outlined in their State plans and plan amendments.

In the Federal review process, however, we will monitor to ensure consistent implementation of the core set of key policy areas specifically described in the title XXI statute. We expect our monitoring effort to be an interactive and informative process for both the Department and the States. As a result, we plan to work with the States to identify any areas of need for technical assistance, to identify best practices that will assist States in understanding what works in specific situations and to ensure policies are implemented consistently across States.

Although HCFA central and regional offices are in constant contact with the States, after the first anniversary of the

implementation of each CHIP, a formal State review will be conducted by a team led by HCFA regional staff with participation of HRSA regional staff.

The review process may include site visits and phone interviews. Regional staff will put its preliminary findings into a report and share that report with the State to provide an opportunity for response to any issues raised in the review process before they make recommendations and send the report to HCFA central office. If necessary, HCFA, with participation of HRSA regional staff, will work with States to address areas in which they are not in compliance with either the statute, applicable regulations, or a State's plan.

The review process and the implications of noncompliance are specifically addressed in § 457.200, which was set forth in the March 4, 1999 proposed financial regulation.

To ensure involvement in and commitment to the program at the highest level of State government, we are proposing in § 457.40(b) to require that the State plan and plan amendments be signed by the State Governor or by an individual who has been delegated authority by the Governor to submit it. This individual could be the Secretary of Health, the CHIP Administrator, the Medicaid Director or any other individual who has authority, delegated by the Governor, to submit the State plan or plan amendment. In order to facilitate communication between the appropriate State and HCFA staff, we are proposing in § 457.40(c) to require that the State include in the State plan or plan amendment the names of the State officials who are responsible for program administration and financial oversight.

An additional aspect of program administration for the State is the passage of enabling legislation, which a State may need to implement a State plan. When the passage of State enabling legislation is required to implement a State plan, a State can submit its State plan application before the passage of the legislation. States must indicate in their application if such legislation is necessary and when it will be in place. The State plan must include an assurance that the State will not claim expenditures for child health assistance prior to the time that the State has legislative authority to operate the State plan or plan amendment as approved by HCFA. We are proposing this provision so that we can approve State plans and plan amendments while a State's legislative authority is pending. This provision is consistent with the requirement that a State must implement and conduct its CHIP in accordance with the approved State plan.

6. State Plan (§ 457.50)

The State plan is a comprehensive written statement submitted by the State to HCFA for approval. The State plan describes the purpose, nature, and scope of its CHIP and gives assurance that the program will be administered in conformity with the specific requirements of title XXI, title XIX (as appropriate), and the regulations in chapter IV. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

An approved State plan is comprised of the initial plan submission, responses to requests for additional information and subsequent approved State plan amendments. The first item that forms part of the approved State plan is the State's original application. The information that must be included in the original submission varies according to how the State chooses to provide health benefits coverage. In addition, the State's written responses to requests from HCFA for additional information, whether formal or informal, and any other written correspondence from the State are considered part of the approved State plan. The State's correspondence modifies the original submission; that is, information received from a State supersedes any contrary information that is included in the original plan or other earlier submissions. Moreover, if there are several submissions from the State that are inconsistent, the latest submission is the governing document. Most often the information in the additional responses should clarify or add to the language of the original submission. All documents that are included in the approved State plan will be referenced in the approval letter. Documents pertaining to all State plan amendments are also components of the approved State plan.

7. Amendments word (§ 457.60)

Section 2106(b)(1) of the Act permits a State to amend its approved State plan in whole or in part at any time through the submittal of a plan amendment. We propose in § 457.60(a) that the State plan must be amended whenever necessary to reflect changes in Federal law, regulations, policy interpretations or court decision; changes in State law, organization, policy or operation of the program; and changes in the source of the State share of funding.

Although the proposed language of § 457.60(a) contains no exceptions, we believe in practice only changes that are substantial and noticeable would require amendments. Changes in program elements that would not ordinarily be required to be included in the State plan at all would thus not require an amendment. For example, a change in the date for mailing enrollment material from June 1 to July 1 would not be considered substantial or noticeable and a State plan amendment would thus not be required. We are seeking comments on how to further interpret and express in regulations the necessity for State plan amendment submission.

We are proposing in § 457.60(a)(3) to require an amendment if the source of State share of funding changes. Furthermore, we are proposing in § 457.65(d) that such amendment must be submitted to HCFA prior to such change taking effect. From the beginning of the program, our policy has been to only approve State plans that can assure, to our satisfaction, that the program has a permissible source of funding. Pursuant to section 2107(e)(1)(C) of the Act, a State is required as a condition for approval of its State plan to assure that the State will comply with section 1903(w) of the Act, relating to limitations on provider taxes and donations. Section 2107(d) of the Act requires that the State plan include a description of the budget, which is an advance plan for expenditures. Section 2107(d) also provides that the budget be updated periodically as necessary. We believe that proposed § 457.60(a)(3) and § 457.65(d) will ensure ongoing compliance with our requirement for permissible sources of funding and will avoid situations that require a disallowance for non-compliance. If a State has indicated that general revenues are the source of funding, then we would require a plan amendment for changes in the State's tax structure that reflect or include a change to general revenues based on taxes related to health care used to finance the State's share of title XXI expenditures. We would not require a plan amendment to reflect changes in the type of non-health care related taxes used to generate general revenue.

We are proposing in § 457.60(b) to require that a State proposing to amend its plan include an amended 3-year budget if the proposed amendment would result in different expenditures than those described in the budget accompanying the approved State plan. Under section 2107(d) of the Act, a State plan clearly must include the budget for

the plan. If a plan amendment that affects the budget is approved without a revision to the budget, then the current description of the budget would no longer be accurate for the entire State plan. If the proposed changes in the State plan amendment have no impact on the budget, then an updated budget is not required.

8. Duration of State Plans and Plan Amendments (§ 457.65)

In § 457.65, we propose that the State may choose any effective date for its State plan or plan amendment, but no earlier than October 1, 1997. We believe that the intent of section 2106(a)(2)(B) of the Act is to provide flexibility to States in choosing an effective date. We considered requiring that a State must be providing health coverage to targeted low-income children as of the date the State specified as its effective date; however, such a requirement would preclude a State from claiming FFP for administrative start-up costs that are eligible for FFP. Therefore, in order to allow the State to claim program and administrative expenditures that the State may incur prior to providing coverage, we propose to define ''effective date'' as the date on which the State begins to incur costs to implement its State plan or plan amendment. This effective date may be prior to the date on which the State begins to provide coverage to targeted low-income children.

A State may implement a State plan prior to approval of that plan but this may put the State at some risk. If a State implements a plan prior to approval and that plan is approved, the State can receive Federal matching funds on a retroactive basis for expenses incurred for programs operated in compliance with the approved plan and all applicable statutory and regulatory requirements (other than expenses incurred earlier than October 1, 1997).

Any State that implements an unapproved State plan risks the possibility that the plan will not be approved as implemented. In the event that the State plan is not approved as it was implemented, the Federal government would not match the State's prior expenditures. HCFA has no authority to pay claims for periods prior to the effective date of the approved State plan for activities that are not consistent with an approved plan, or for activities that do not meet the requirements of title XXI. Section 2106 of the Act gives the Secretary authority to disapprove an initial State plan submission that does not fully comply with title XXI, and to approve an effective date for that State plan submission. We believe this authority necessarily means that the Secretary may deny an effective date that would include any time period during which the operating program did not fully comply with title XXI. Moreover, this authority permits the Secretary to deny claims for Federal matching funds for such time periods. We base that conclusion on the reasoning that there would be no approved State plan at the time of any claimed expenditures during those time periods. Under section 2105(a), the Secretary is authorized to pay Federal matching funds to States based on child health assistance and certain other expenditures ''under'' an approved State plan (up to the amount of the State's allotment). Absent an approved State plan, no Federal matching funds may be paid to a State. Although section 2106(c)(3) states that ''* * * the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such [a] disapproval,'' this provision does not require that the Secretary accept claims in the absence of an approved State plan.

Any State that implements an unapproved State plan amendment also risks the possibility that the plan amendment will not be approved as implemented. The reasoning described above for State plans also applies to State plan amendments that result in additional Federal financial participation. For a State that implements an unapprovable State plan amendment that results in expenditures that can be identified as beyond the scope of the approved State plan, these expenditures could not be used as a basis for Federal funding under section 2105(a)(1). An example of this situation is the implementation of a State plan amendment that adds a new population. For those populations, the expenditures would simply be beyond the scope of the approved State plan.

For unapproved State plan amendments that do not result in expenditures that can be identified as beyond the scope of an approved State plan, we believe a different analysis must be applied. The implementation is a failure to conduct the State program in accordance with the approved State plan, and would be subject to the compliance remedies described in section 2106(d) of the Act. In this situation, HCFA would only withhold Federal matching funds after following the compliance procedures permitting the State a ''reasonable opportunity for correction'' in accordance with section 2106(d)(2).

On March 4, 1999, we published a proposed rule addressing the financial provisions for title XXI. We are proposing to clarify certain provisions which were set forth in subpart B of that proposed rule. Specifically, paragraph (d)(2) of § 457.204, ''Withholding of payment for failure to comply with Federal requirements,'' discusses the opportunity for correction prior to a financial sanction for failure to comply with a Federal requirement. As proposed, § 457.204(d)(2) provides that if enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification. The proposed regulation would implement section 2106(d)(2) of the Act, which requires that the Secretary provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of an enforcement action. We would revise the proposed regulatory text at § 457.204(d)(2) to address in more detail the possible scope of corrective action that could be required. We would specify that such corrective action can include actions to ensure that the plan is and will be administered consistent with applicable law and regulations, actions to address past deficiencies in plan administration, and actions to ensure equitable treatment of beneficiaries. We recognize that not every situation will require all of these different types of corrective action. We are reserving to the Secretary the determination of the appropriate scope of corrective action under the individual circumstances presented. Such a determination necessarily will be made in the final determination on the findings of noncompliance, and will be reflected in the final notice described in proposed § 457.204(d)(3).

Certain special provisions govern the establishment of allotments for FY 1998 and FY 1999 for States that receive approval for their State plans during FY 1999. Under Public Law 105–277, effective October 21, 1998, if a State submits a State plan during FY 1999, and the plan is approved by HCFA by the end of FY 1999 (that is, by September 30, 1999), then CHIP allotments may be obligated for the State for both FY 1998 and FY 1999. The effective date for the State plan would be the date requested by the State, but no earlier than the beginning of FY 1998, (that is, October 1, 1997).

After FY 1999, a State's initial State plan must be approved by HCFA by the end of a fiscal year in order to receive a State CHIP allotment for that fiscal year. For example, if HCFA approves a

State's initial State plan during FY 2000, the State could only receive a State allotment for FY 2000; the State could not receive an allotment for FY 1998 or for FY 1999. Since the State did not have a State plan approved by HCFA in FY 1998 or by the end of FY 1999, it could not receive a State allotment for FY 1998 or FY 1999.

If a State submits a State plan that is first approved during FY 2000, a FY 2000 allotment would be obligated for that State, but there would be no allotment for FY 1998 or FY 1999. However, the FY 2000 allotment is potentially available to provide Federal financial participation (FFP) in the State's allowable FY 1998 and FY 1999 expenditures, such as administrative costs, assuming the State has requested an effective date for its State plan in one of those fiscal years. For example, a State plan could be approved November 1, 1999, at which time the FY 2000 allotment would be obligated, and have an effective date of September 1, 1999, when the State began incurring administrative costs related to the State plan. These administrative costs could then be claimed under the FY 2000 allotment. Thus, a State may potentially have an effective date for its State plan in a fiscal year and receive FFP in expenditures incurred in a fiscal year for which it does not have a State CHIP allotment.

Medicaid rules regarding effective dates continue to apply to child health assistance provided under a Medicaid expansion program. In accordance with § 430.20(b) of the Medicaid regulations, the effective date of title XIX State plan amendments cannot be earlier than the first day of the quarter in which an approvable title XIX State plan amendment is submitted to HCFA. It is, therefore, important for a State to submit a title XIX State plan amendment either prior to or during the calendar quarter in which it wants the amendment to take effect. As discussed in proposed § 457.70, States must submit both a Medicaid State plan amendment and a title XXI plan for the Medicaid expansion. Medicaid State plan amendments will be reviewed using the established process for title XIX. We will make every effort to coordinate the approval of a Medicaid State plan amendment with the approval of the title XXI State plan.

Section 2106(b)(3)(C) of the Act provides that any State plan amendment that does not eliminate or restrict eligibility or benefits can remain in effect only until the end of the State fiscal year in which it becomes effective (or, if later, the end of the 90-day period in which it becomes effective) unless the State plan amendment is submitted to HCFA before the end of the period. We would implement this provision at proposed § 457.65(a)(2). Thus, if a State plan amendment is implemented but is not submitted within the required time frame, the State risks being found out of compliance with its State plan, and loss of Federal participation in expenditures beyond the scope of the approved plan or other financial sanctions, as discussed below and in the proposed financial regulation (64 FR 10412).

In accordance with section 2106(b)(3)(B)(ii) of the Act, an amendment that eliminates or restricts eligibility or benefits under the plan may not be effective for longer than a 60-day period unless the amendment is submitted to HCFA before the end of that 60-day period. Section 2106(b)(3)(B)(i) requires that amendments that eliminate or restrict eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the proposed change in a form and manner provided under applicable State law. The notice must be published prior to the requested effective date of change. We propose to implement this provision at § 457.65(b). In the amendment request, the State should describe the public notice process.

We are also proposing that State plan and State plan amendments imposing new or increased cost sharing on beneficiaries would be treated as a restriction on benefits and subject to the prior public notice requirements set forth at § 457.65 of these proposed regulations. We view cost sharing as a restriction on benefits since a beneficiary's financial responsibility for certain costs associated with CHIP may be an impediment to the beneficiary's access to certain covered services. Therefore, in accordance with section 2106(a)(3)(B) of the Act, we are proposing that the State plan must comply with the prior public notice requirements at § 457.65 when the plan implements cost sharing charges, increases the existing cost sharing charges or increases the cumulative cost sharing maximum set forth at proposed § 457.555. We believe that prior public notice would give interested parties the opportunity to react to the proposed changes. In addition, our proposed notice requirements would allow States to take into account the public's concerns regarding the potential impact of cost sharing on beneficiary access to services and participation in CHIP.

As discussed previously at proposed § 457.65(d), we would specify that a State plan amendment that requests approval of changes in the source of the State share of funding must be submitted prior to such change taking effect.

In accordance with section 2106(e) of the Act, at § 457.65(e) we propose that an approved State plan shall continue in effect unless and until the State modifies its plan by obtaining approval of an amendment to the State plan. The new plan will consist of the originally approved State plan and any approved State plan amendments. The State plan shall also continue in effect unless and until the Secretary finds substantial non-compliance of the plan with the requirements of the statute and regulations. An example of substantial non-compliance would be the imposition of cost sharing that exceeds Federal limits.

9. Program options (§ 457.70)

Under section 2101(a) of the Act, a State may obtain health benefits coverage for uninsured, low-income children in one of three ways: (1) A State may provide coverage by expanding its Medicaid program; (2) a State may develop a plan that meets the requirements of section 2103 of the Act; or (3) a State may provide coverage through a combination of a Medicaid expansion program and a separate child health program. The following subparts apply to States that elect Medicaid expansions:

- Subpart A
- Subpart B (if the State claims administrative costs under title XXI).
- Subpart C (with respect to the definition of a targeted low-income child only).
- Subpart F (with respect to determination of the allotment for purposes of the enhanced matching rate, determination of the enhanced matching rate, and payment of any claims for administrative costs under title XXI).
- Subpart G.
- Subpart H (if the State elects the eligibility group for optional targeted low-income children and elects to pay for employer-sponsored insurance).
- Subpart J (if the State claims administrative costs under title XXI and seeks a waiver of limitations on such claims based on a community based health delivery system). Subparts D, E, and I of part 457 do not apply to Medicaid expansion programs because Medicaid rules govern benefits, cost-sharing, program integrity and other provisions included in those subparts. We note that the provisions of subparts B and F were set forth in the March 4, 1999 proposed rule.

A State that chooses to implement a separate child health program must

comply with all the requirements in part 457. We would set forth the program options at § 457.70(a).

At § 457.70(b), we propose that a State plan must include a description of the State's chosen program option. In addition, at proposed § 457.70(c) we specify that States choosing a Medicaid expansion program must submit an amendment to the State's Medicaid State plan as appropriate. These States will be required to complete an abbreviated State plan and, in most circumstances, a Medicaid State plan amendment. If a State is expanding Medicaid within the scope of an 1115 demonstration project, then that demonstration project may need to be modified by submission of a formal request for a change to the demonstration project and not through a Medicaid State plan amendment. If such a modification is needed, then the request for a change to the demonstration project must be submitted in addition to the title XXI State plan. The abbreviated State plan must include the State plan requirements specified in this subpart and subpart G of this proposed rule. A State that chooses to implement a separate child health program must include in its State plan all of the State plan requirements specified in part 457. A State selecting a combination program would need to submit a title XXI State plan, as well as a Medicaid State plan amendment.

States may choose one option and switch to a different option at any time if a State plan amendment describing this change meets the requirements of the statute and these regulations and is approved by HCFA.

10. Current State Child Health Insurance Coverage and Coordination (§ 457.80)

In accordance with sections 2102(a)(1) and (2) and 2102(c)(2) of the Act, we propose to require that the State plan describe the State's current approach to child health coverage and plans for coordination of the program with other insurance programs in the State. We specify that the State must provide a description of the following:

- The extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children, by income level and other relevant factors, currently have creditable health coverage (as defined by § 457.10) and, if sufficient information is available, whether the creditable health coverage they have is under public health insurance programs or health insurance programs that involve public-private partnerships.
- Current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships.
- Procedures used by the State to accomplish coordination of the program under title XXI with other public and private health insurance programs, including procedures designed to increase the number of children with creditable health coverage, and to ensure that only eligible targeted low-income children are covered under title XXI. The degree of creditable coverage a child has impacts whether a preexisting condition exclusion applies and therefore, tracking this information would be beneficial to the child.

The purpose of this section is to require the State to justify the insurance expansion approach it has chosen to ensure that the State does not use Federal funds to supplant existing programs and funding but rather uses the funds for children who are uninsured. To the extent possible, the income level categories by which the State reports the current availability of creditable coverage should correspond to the income level categories used for other purposes such as eligibility or cost-sharing. The State may classify children by family income level, age group, race and ethnicity, urban versus rural location and any other categorization that the State finds useful in describing its situation. If sufficient information is available, the State should describe the extent to which the classes of children it sets forth are insured through Medicaid, employer-based coverage, or other forms of publicly supported insurance, such as State-only programs and public/private partnerships. In addition, the State should describe the extent to which children in the State are uninsured. The State plan should clearly identify the sources of the data it uses in this section. We recognize that States may not initially have data available for an in-depth study of the insurance status of its children. However, the information provided should be sufficient to illustrate that the State has analyzed the problem, using available data sources. The demographic information requested in this section can be used for State planning and will be used strictly for informational purposes. These data will not be used as a basis for the State's allotment. We also note that these data are not necessarily the baseline data required to be submitted as part of the annual report under subpart G.

In addition, at § 457.80(b), we propose that the State must provide an overview of current efforts made by the State through child related programs (such as Medicaid, the Maternal and Child Health Block Grant, title V, WIC, community and migrant health centers or special State programs for child health care) to provide health care services or obtain creditable health coverage for uncovered children by identifying and enrolling all uncovered children.

Section 457.80(c) would require the State plan to include a description of the coordination of the plan with other public and private health insurance programs in accordance with sections 2102(a)(3) and 2102(c)(2) of the Act. This section of the State plan should include an overview of how new enrollment outreach efforts will be coordinated with and improve upon existing State efforts as described in § 457.80(a).

A State that implements a separate child health program should describe how children who are determined to be eligible for Medicaid or another State-only program will be referred to and enrolled into that program, as required by proposed § 457.350 and § 457.360. Because children identified as Medicaid eligible are required to be enrolled in Medicaid, the State should describe how it will coordinate enrollment in CHIP and Medicaid. The State plan should also describe how Medicaid eligibility workers will refer non-Medicaid eligible children to the separate child health program.

11. Outreach (§ 457.90)

In § 457.90, we propose to require a State to implement an outreach process to inform families of the availability of health coverage programs and to assist families in enrolling their children into a health coverage program pursuant to section 2102(c) of the Act. A State plan must include a description of the procedures used for outreach. According to the statute, a State has the option to decide which methodologies and procedures it will use to inform families of uninsured, potentially eligible children about enrollment for child health assistance under the program. No single approach to reaching these children is provided in the statute. While States are expected to identify enrollment targets, they are encouraged to design and implement outreach activities that will reach diverse groups of children. We realize that the challenges States face in reaching out to families and assuring access to services

are great and will require vigorous sustained efforts.

Outreach includes identifying, educating, and enrolling uninsured children, while remaining sensitive to the cultural and linguistic differences and special health care needs of diverse populations. There is no one model for outreach and there are many examples of successfully implemented, locally developed campaigns. Outreach is intrinsically linked to eligibility and enrollment and calls for activities that remove barriers that deter families from applying to the program. At proposed § 457.90(b), we set forth examples of outreach strategies. The following two major types of outreach procedures, when designed with the targeted populations in mind, serve to encourage significant enrollment and reduction in the numbers of uninsured children:

• *Education and awareness campaigns.* A comprehensive Statewide education and awareness campaign is needed to inform the public about the importance of availability of CHIP and how to enroll eligible children. Implementing this campaign in multiple venues frequented by families, with culturally sensitive information, will help to keep the message of health insurance in front of the target audience. Families will benefit from educational programs designed to inform them of the advantages of enrolling eligible children in health insurance, including having a regular source of care, and obtaining well-child check ups including immunization. All outreach efforts should include information about how families can find out if their children are eligible and how to get them enrolled.

Identifying families with uninsured children is the first step in outreach. States must develop and sustain comprehensive education and awareness campaigns to reach these children and families. Several data sets are available to assist States in the identification of families with uninsured children (for example, immunization registries, hospital discharge databases, school lunch program participant lists and hospital charity care databases). States should assure confidentiality when using their own existing data to identify uninsured children. Schools may also help in the education and awareness process as they often know who the uninsured children are. School nurses and school health centers, Parent Teacher Associations, and school health screens and fairs offer excellent opportunities for outreach for this new insurance program.

States often begin outreach campaigns by sending printed material such as brochures, flyers, and program applications to families considered to be potentially eligible for enrollment. States may choose to target mailings to special audiences of potentially uninsured children. Hispanic/Latinos, Tribal/Native Americans, adolescents, African-Americans, Asians, migrant populations, rural and homeless, are populations considered to have large numbers of uninsured children.

States have choices as to the breadth of distribution of program materials, prepared specifically for the different targeted subpopulations. Flyers, posters and brochures, developed in appropriate languages, can be made available through many programs that are closely identified with low-income families. Programs such as Head Start, school lunch programs, Child Care Centers and WIC programs serve thousands of low-income children. Welfare/food stamp offices are frequented by low-income families who may be eligible for CHIP.

The provider community can also distribute program information. States could include major providers such as clinics (especially for newborns), hospitals, physicians (including OB/GYNs, pediatricians, and family physicians), pharmacies, mobile health units, mental health/addiction centers, and health trade associations.

Workers who live in the community, speak the language, and know its cultural beliefs and practices can be effective in disseminating information and answering basic questions. The diversity of the uninsured population requires that States, in designing outreach activities, be sensitive to the various cultural groups, their perceptions, needs, and desires. To be effective, messages and promotional materials should be developed with the assistance of people toward whom the message is directed.

Employer-based outreach is another avenue for providing targeted populations with basic information on children's insurance programs. Working families may not know that their children are potentially eligible for enrollment in either CHIP or Medicaid. Small businesses, factories, city and State chambers of commerce and labor unions are often eager to spread the word about insurance coverage to their members or community groups with whom they are associated.

A broad array of private and public sector partnerships affords States the opportunity to extend the CHIP message to many areas through groups and organizations not traditionally involved in outreach. Strategic partnerships with media, volunteer organizations, school personnel, community volunteers, clergy, and agency caseworkers may lend innovation to an outreach campaign. Churches and faith-based communities, civic clubs, YMCA, 4–H Clubs, Boy Scouts and Girl Scouts and senior citizen organizations are additional organizations committed to providing voluntary assistance for community causes. Private and public sector partnerships, enhanced by large numbers of volunteers, strengthen dissemination of program information in conjunction with State and local level campaigns.

• *Enrollment Simplification.* A major key to successfully reaching and enrolling uninsured children in CHIP and Medicaid is a simple application and enrollment process. While it is important to maintain program integrity (as described in subpart I of this proposed rule), burdensome applications and enrollment processes have created significant barriers to successful enrollment. Federal requirements for application and enrollment in Medicaid and CHIP provide broad flexibility to States in application and enrollment design. Several actions currently undertaken by States to encourage enrollment include: reducing and simplifying the application forms; providing mail-in applications; creating joint CHIP/Medicaid applications; eliminating the assets test; allowing self-declaration of income with follow-up verification by the State; reducing verification and documentation requirements that go beyond Federal regulation; implementing presumptive eligibility and 12-month continuous eligibility; allowing redeterminations by mail; and developing a follow-up process for families not completing the application. These changes, made in conjunction with other outreach activities undertaken by States, will help produce significant increases in enrollment.

When a State selects a separate child health program, the State may consider new ways of providing families with assistance in filling out applications. We encourage these States to consider outstationing eligibility workers at sites that are frequented by families with children such as schools, child care centers, churches, Head Start centers, WIC offices, Job Corps sites, GED programs, local Tribal organizations, and Social Security Field Offices. However, States that implement Medicaid expansions must follow all Medicaid rules relating to application assistance and eligibility determination.

12. Enrollment Assistance and Information Requirements (§ 457.110)

Section 2102(c) of the Act requires that State plans include procedures to inform families of the availability of child health assistance. In accordance with this provision, we are proposing to require that a State have procedures to ensure that targeted low-income children are given information and assistance needed to access program benefits. Specifically, we propose in § 457.110, that the State plan describe methods the State will use to make accurate, easily understood information available to families of targeted low-income children and provide assistance to them in making informed health care decisions about their health plans, professionals, and facilities. In order to assist families of targeted low-income children in making informed decisions about their health care, we propose in § 457.110(b) to require that States have a mechanism in place to ensure that the type of benefits and amount, duration and scope of benefits available under CHIP and the names and locations of current participating providers are made available to beneficiaries in a timely manner. This requirement is consistent with the ''right to information'' disclosure provision of the President's Consumer Bill of Rights and Responsibilities and is further discussed in subpart I.

The proposed requirements set forth in this section apply to all States that are providing child health assistance whether through a Medicaid expansion or separate child health program under fee-for-service or managed care delivery systems. Because Medicaid rules apply to States that implement Medicaid expansion programs, a State that is operating a Medicaid expansion program that uses managed care delivery systems would also be required to comply with the requirements of section 1932(a)(5) of the Act, enacted by section 4701(a)(5) of the BBA, and the regulations that implement that statutory provision. The Medicaid statute and regulations govern the kind of information that must be made available to Medicaid enrollees and potential enrollees and require that this information, and certain enrollment materials, be in a format that can be easily understood by the individuals to whom it is directed.

We propose to require that materials be made available to applicants and beneficiaries in easily understood language and format. The State should consider the special needs of those who, for example, are visually impaired or have limited reading proficiency, and the language barriers of those who may use the information. A State may overcome language barriers by establishing a methodology for determining the prevalent language or languages in a geographic area and making information available in the languages that prevail throughout the State or in limited geographic areas where appropriate. A State may also overcome language barriers by making translation services available to enrollees and potential enrollees. In any case, the State should provide instructions to enrollees and potential enrollees on how to obtain information in the appropriate language or how to access translation services. While we encourage States to apply these principles in outreach, this provision is specifically designed to provide information to targeted low-income children once they have enrolled in CHIP.

In addition to the benefit and provider information that a State must make available, other basic information should be made available to families of eligible targeted low-income children. This information could include procedures for obtaining services, including authorization requirements; the extent to which after-hours and emergency coverage are provided; cost sharing, if any; the rights and responsibilities of enrollees; complaint, grievance, and fair hearing procedures; any appeal rights that the State chooses to make available to providers; with respect to managed care organizations (MCOs) and health care facilities, their licensure, certification, and accreditation status; and, with respect to health professionals, information that includes, but is not limited to, education and Board certification and recertification.

A State that delivers services through a managed care delivery system should consider making additional information available to families of targeted low-income children. This additional information may include any restrictions on the enrollee's freedom of choice among network providers; policy on referrals for specialty care and for other services not furnished by the enrollee's primary care provider; the extent to which enrollees may obtain services from out-of-network providers; and any benefits to which they may be entitled under the program, but that are not covered under the MCO contract and specific instructions on where and how to obtain those benefits.

13. Public Involvement in Program Development (§ 457.120)

States are required under section 2107(c) of the Act to include in the State plan the process that the State used to accomplish public involvement in the design and implementation of the plan and the method to ensure ongoing public involvement. We would implement this provision at § 457.120. Beneficiaries, providers, and interested groups and organizations can provide valuable input in developing a plan and insight into the successes and challenges faced by a State during implementation and throughout the operation of the program. Experience with section 1115 demonstrations and other Medicaid programs demonstrates the benefit of early consultation in identifying and resolving issues. States should provide for participation from organizations and groups such as hospitals, community health centers, and other providers, beneficiaries, and advocacy groups. States may ensure such involvement through a wide variety of approaches. For instance, to encourage public involvement, States can—

- Hold periodic public hearings to provide a forum for comments when developing or implementing their plans;
- Establish a child health commission or a consumer advisory committee responsible for soliciting public opinion about the State plan;
- Publish notices in generally circulated newspapers advertising State plan development meetings so the public can provide input; or
- Create a mechanism enabling the public to receive copies of working proposals in order to provide comments to the State.

States may use methods other than those listed above. In fact, States may use any process for public input that affords interested parties the opportunity to learn about the State plan and allow for public input in all phases of the program.

14. Provision of child health assistance to American Indian and Alaska Native children (§ 457.125)

Section 2102(b)(3)(D) of the Act requires a State to include in its plan a description of procedures to be used to ensure the provision of child health assistance to American Indian or Alaska Native children. We believe that a State cannot meet the requirement for ensuring the provision of child health assistance to American Indian or Alaska Native children without consultation with Tribes and Tribal organizations. Therefore, we are requesting in

457.125(a) that the State officials responsible for CHIP consult with Federally recognized Tribes and other Indian Tribes and organizations in the State (such as regional Indian health boards, urban Indian health organizations, non-Federally recognized Tribes, and units of the Indian Health Service) on development and implementation of the procedures used to ensure the provision of child health assistance to American Indian or Alaska Native children. This request is consistent with the February 24, 1998 letter to State Officials addressing consultation with Tribes and Tribal organizations.

The Federal government and the governments of American Indians and Alaska Natives (AI/AN or Indian people) have a ''government-to-government'' relationship based on the U.S. Constitution, treaties, Federal statutes, court decisions, and Executive Branch policies. This special relationship also constitutes a trust relationship between these governments. Certain benefits provided to Indian people through Federally enacted programs flow from this trust relationship. These benefits are not based upon race, but rather, are derived from the government-to-government relationship. A vital component of this relationship is consultation between the Federal and tribal governments. Increasingly, this special relationship has emphasized self-determination for Indian people and meaningful involvement by Indian people in Federal decision making (consultation) where such decisions affect Indian people, either because of their status as Indian people or otherwise. In cases where the government-to-government relationship does not exist, as with urban Indian centers, Inter-tribal organizations, State recognized tribal groups, and other Indian organizations, we nevertheless encourage States to engage in consultation.

Consultation is an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision making. We encourage States, in addition to consulting with Federally recognized Tribes, to consult with other Indian Tribes and organizations before taking actions that affect these governments or the Indian people residing within the State.

In consulting with tribes and tribal organizations regarding the procedures to ensure provision of child health assistance, State might want to consider the following:

- Reimbursing facilities that serve Indian populations, including tribal and urban programs, for CHIP covered services at higher rates than other facilities to assure access to adequate services.

- Improving enrollment procedures for AI/AN children by placing outstation eligibility workers in the IHS, tribal, and urban facilities, by developing culturally appropriate education materials for enrollment of AI/AN children and by using tribal and community resources to increase eligibility outreach.

We encourage States to consult with Tribes and Indian organizations throughout the process of developing and implementing their State plans, outreach strategies, and other policies and procedures. These are matters of great interest to Tribes and others in the Indian health community and on which they have significant expertise and insight.

We propose in § 457.125(b) that HCFA will not approve a State plan that imposes cost sharing on AI/AN children. We believe that the imposition of cost sharing on children in AI/AN families may impact the State's ability to ensure coverage for this group as required under section 2102(b)(3)(D) of the Act. Our rationale for exempting AI/AN children from cost sharing is further discussed in the preamble for proposed § 457.535. This proposed provision would apply to states that submit State plans for either a separate child health program or a Medicaid expansion program, including Medicaid expansion programs under a section 1115 demonstration project.

15. Civil Rights Assurance (§ 457.130)

In § 457.130, we propose to require the State to provide an assurance that the State plan will be conducted in compliance with all civil rights requirements. This assurance is necessary for all programs involving continuing Federal financial assistance in accordance with 45 CFR 80.4 and 84.5. These civil rights requirements include title VI of the Civil Rights Act of 1964, title II of the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and 45 CFR part 80, part 84 and part 91 and 28 CFR part 35.

16. Assurance of Compliance with Other Provisions (§ 457.135)

In accordance with section 2107(e) of the Act, we propose in § 457.135 to require that the State plan include an assurance that the State will comply under title XXI with the following provisions of titles XIX and XI of the Social Security Act:

- Section 1902(a)(4)(C) (relating to conflict of interest standards).
- Paragraphs (2), (16) and (17) of section 1903(i) (relating to limitations on payment).
- Section 1903(w) (relating to limitations on provider donations and taxes).
- Section 1132 (relating to periods within which claims must be filed).

We note that section 2107(e)(2)(A) of the Act provides that section 1115 the of Act, pertaining to research and demonstration waivers, applies to title XXI. This provision grants the Secretary the same section 1115 waiver authority in title XXI programs as in title XIX programs. Title XXI provides a broad range of options to allow States maximum flexibility in designing the program that best meets the needs of their children. We have carefully considered the extent to which waivers of both title XIX and title XXI provisions should be granted under CHIP.

While the law permits the Secretary to use section 1115 authority to waive provisions of title XXI in order to pursue research and demonstration projects, we do not believe it would be reasonable to exercise this authority before States have experience in operating their new title XXI programs and can effectively design and monitor the results of demonstration proposals. In addition, we do not yet have sufficient experience in the operation of CHIP to review and evaluate the merits of a proposal to waive title XXI provisions. Therefore, we would consider a section 1115 demonstration proposal for waiver of title XXI provisions only after a State has had at least one year of CHIP experience and has conducted an evaluation of that experience. We are inviting comments on the best approach to considering section 1115 waivers of title XXI provisions.

Because both the Federal government and the States have substantial experience in administering title XIX, we believe that we are in a position to consider and grant waivers of title XIX provisions even when the demonstration project involves the CHIP-related enhanced match. We would consider a request for section 1115 waivers of title XIX provisions

applicable to Medicaid expansion programs without any additional experience with the program. We would require, however, that proposals be consistent with what would be allowable in a separate child health program in order to be approvable. We have approved waiver requests for three States. For example, we granted Missouri a waiver of title XIX requirements to provide non-emergency medical transportation because those services would not have been required under a title XXI benefit package. We have granted waivers for Missouri, New Mexico, and Wisconsin to waive title XIX cost sharing limitations to the extent that cost sharing is consistent with limitations of title XXI.

States that submit section 1115 research and demonstration proposals of Medicaid laws and requirements must meet the existing section 1115 requirements, including requirements for research and evaluation design. To the extent that title XIX funds could be utilized to implement the demonstration, it would be necessary to negotiate budget neutrality. A State that wishes to have a section 1115 demonstration proposal considered must submit a full section 1115 application in addition to a title XXI State plan or plan amendment request that indicates that the State intends to implement title XXI through an approved Medicaid demonstration project. The State plan or plan amendment must describe the applicable Medicaid requirements that will be waived if the section 1115 demonstration project is approved.

Although a 90-day review period applies to CHIP State plans, the 90-day review period does not apply to section 1115 demonstration requests. Section 1115 does not impose any restrictions on review of waiver applications. While the President has committed to treat requests for waivers expeditiously, the complexity of waiver proposals under Medicaid and CHIP means that a 90-day review period may not be sufficient.

To the extent that a proposed title XXI State plan or plan amendment depends upon section 1115 demonstration authority (waivers) which will take longer than 90 days for HCFA to approve or otherwise act on, HCFA may not be able to approve the proposed title XXI submission within 90 days. In such a circumstance, HCFA will advise the State that additional time will be required to review the waiver request. In addition, HCFA will ask the State for additional information on whether a final determination on the title XXI submission is required before approval of the waiver request, and how the State will implement the title XXI submission absent approved waivers. If the State does not provide information about implementation absent approved waivers, then the 90-day review period will not resume and HCFA will not proceed to final determination of the title XXI submission before acting on the related waiver request. If the State responds with information on how the submission will be implemented and implementation continues to rely upon waivers that have not yet been granted, then the 90-day review period will resume and HCFA may be required to disapprove the title XXI submission.

17. Budget (§ 457.140)

Section 2107(d) of the Act specifies that a State plan must include a description of the budget, updated periodically as necessary, including details on the planned use of funds and the source(s) of the non-Federal share of plan expenditures, including any requirements for cost-sharing by beneficiaries. We are proposing in § 457.140(a) that the State plan must include a budget that describes both planned use of funds and sources of the non-Federal share of plan expenditures for a 3-year period. An amended budget included in a State plan amendment must also include the required description for a 3-year period.

We are proposing that the planned use of funds include the projected amount to be spent on health services, the projected amount to be spent on administrative costs and assumptions on which the budget is based. The amount spent on health services would be the cost of the benefits provided to beneficiaries, such as payments to providers or health plans. Administrative costs include the costs specified in section 2105(a)(2) of the Act, examples of which are costs associated with outreach, child health initiatives and evaluation. We propose that assumptions on which the budget is based must include the cost per child and expected enrollment. We realize that a State must base the required information on projections. However, we believe it is important to have this information to ensure the State has adequately planned for its program. In particular, we want to ensure that the State understands the limits placed on administrative expenditures and that the plan is being developed in an ''effective and efficient'' manner.

Although section 2107(d) does not specifically require States to submit a 3-year budget, it provides a sufficient authority for our proposed requirement. We propose to require a 3-year budget for the initial State plan because States have up to 3 years to spend each annual allotment. A 3-year budget is useful to show if States are planning to use their unused allotments in the succeeding 2 fiscal years. In developing this policy, we also considered the budget requirements for Medicaid programs. Section 1115 demonstration projects require a 5-year budget and section 1915(b) waivers require a 2-year budget.

In accordance with section 2107(d), we are requiring in § 457.140(b) that the budget in the State plan describe the projected source of non-Federal plan expenditures, including any requirements for cost sharing by beneficiaries. Under § 457.224 of the March 4, 1999 proposed regulation concerning program allotments and payments to States (64 FR 10412), FFP would not be available for cost sharing amounts such as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges as required by section 2105(c)(5). To ensure this result, the amount of expenditures under the State plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

HCFA's approval of a State plan, including amendments, is contingent on the State's use of permissible funding sources for the non-Federal share of plan expenditures.

Furthermore, we reserve the right to disallow funds, to the extent we find that the State is using impermissible funding for the non-Federal share of plan expenditures under a previously approved plan. Any revenues received by a State through contribution(s) from or the imposition of tax(es) on health care providers or related entities, regardless of whether or not the State uses the contribution for Federal matching purposes, is subject to the statutory provisions of 1903(w) of the Act.

18. HCFA Review of State Plan Material (§ 457.150)

Section 2106 of the Act provides the Secretary of the Department of Health and Human Services (DHHS) with the authority to approve and disapprove State plans and plan amendments. The authority vested in the Secretary under title XXI has been delegated to the Administrator of HCFA with the limitation that no State plan or plan amendment will be disapproved without consultation and discussion by the Administrator with the Secretary.

Therefore, in § 457.150, we propose to specify that HCFA reviews, approves and disapproves all State plans and plan amendments. The Center for Medicaid and State Operations within HCFA has

the primary responsibility for administering the Federal aspects of title XXI. We will continue to work jointly with the Health Resources and Services Administration (HRSA) to implement and monitor the new program as a part of the Department's overall strategy to support coordination with other Federal and State health programs in providing outreach to uninsured children and promoting coordination of care and other public health interventions. At this time, State plans and plan amendments are reviewed by a team of DHHS staff, including HRSA staff, who must concur on approval of the plan. Departmental concurrence is an internal policy that is subject to change.

We base approval or disapproval of State plans on relevant Federal statutes, including title XXI and title XIX, regulations, and guidelines issued by HCFA. We published and will continue to publish guidelines in the format of State Health Official letters and Questions and Answers, which may be accessed through the website.

Section 2106 does not allow the Secretary to partially approve or disapprove a State plan or plan amendment. Thus, at § 457.150(b) we propose that HCFA approves or disapproves the State plan or plan amendment only in its entirety. For example, if a State submitted one proposal to implement a combination program, we would not approve the Medicaid expansion portion and disapprove the separate program portion. The proposal would only be considered as a whole. If a State wants HCFA to consider portions of a proposal separately, then the State must expressly divide the proposal into distinct and separate proposed State plan or State plan amendment submissions. For example, a State could receive approval for a Medicaid expansion program described in the State plan and then receive approval to turn the program into a combination program as described in a plan amendment. As appropriate and feasible, States may withdraw portions of a pending State plan or plan amendment that may lead to delay in its approval or disapproval of the program.

In § 457.150(d), we propose to designate an official to receive the initial submission of a State plan. By designating one official to receive all initial State plans, we eliminate any confusion of where to send the first submission. The identity of this individual is posted on HCFA's website. If this designated official is unavailable, the review period is started and counted as if the designated official was in the office.

In § 457.150(e), we propose to designate an individual to coordinate HCFA's review for each State that submits a State plan. We will notify the State of the identity of the designated individual in the first correspondence from HCFA relating to the plan, such as a formal request for additional information. We will also notify the State at any time there is a change in the designated individual. If the designated individual for a State is unavailable during regular business hours, another HCFA employee will act in place of the designated individual to ensure that the review period is counted as if the designated individual was in the office. We believe that this procedure will simplify administration of the program.

19. Notice and Timing of HCFA Action on State Plan Material (§ 457.160)

In § 457.160(a), we propose that HCFA will send written notification of the approval or disapproval of a State plan or plan amendment. While section 2106(c)(2) only requires that written notification be sent for disapproval and requests for additional information, we are proposing to require that written notification be sent for approval as well. This rule is consistent with the Medicaid approval process during which HCFA sends written notices of approval of Medicaid State plan amendments and 1915 (b) and (c) waivers.

We will closely track the review period, which begins on the first full day following receipt of the initial State plan by the designated official or the State plan amendment by the designated individual. In § 457.160(b)(2), we propose that the State plan or plan amendment be considered received on the day the designated official or individual, as determined in § 457.150 (d) and (e), receives an electronic, fax or hard copy of the complete plan. The complete plan includes any referenced documentation, such as attachments, benefits plans or actuarial analyses. If the designated official or individual receives a State plan without the referenced documentation, then the review period begins not on the first full day following receipt of the initial, incomplete plan, but rather on the first full day after the designated individual receives the documentation. We strongly encourage States to submit their State plans or plan amendments in electronic format (via disk or e-mail) to facilitate its distribution to DHHS' reviewing components. We request that the State submit the State plan and plan amendments to both the HCFA central office and the appropriate regional office at the same time. If the State submits the State plan or plan amendment in hard copy, we request that the State submit twenty (20) copies to the central office and three (3) copies to their regional office. If the State submits the State plan or plan amendment electronically, then the State should send three (3) hard copies to the central office and one (1) hard copy to their regional office. We also request that States include the name and telephone number of their primary contact person for CHIP (if different from the information required in § 457.40(c)) in the State's transmittal letter to help ensure an early and ongoing dialogue on the submission.

As required by section 2106(c)(2), a State plan or plan amendment will be considered approved unless HCFA, within 90 days after receipt of the State plan or plan amendment, sends the State written notice of disapproval or written notice of any additional information it needs in order to make a final determination. The Act does not specify calendar days or business days. We propose to measure the 90-day review period using calendar days. The 90-day review period would not expire until 12 a.m. eastern time on the 91st countable calendar day after receipt, as calculated using the rules set forth in the proposed regulation and discussed below (except that the 90-day period cannot stop or end on a non-business day).

HCFA's formal request for additional information may include a description of specific issues that need clarification, an outline of additional information required, or a request for resolution of any inconsistencies of the plan with title XXI provisions. We will make a formal request for information only when the State may need a significant amount of time to resolve issues or develop required information. In order to ensure that additional information responding to HCFA's formal requests will be sufficient to restart the approval process, we encourage States to work with HCFA in developing any responses.

In § 457.160(b)(3), we propose that if HCFA provides written notice requesting additional information, the 90-day review period is stopped on the day HCFA sends the written request for additional information. HCFA will not stop a review period on a weekend or a Federal holiday. This written request will be considered sent on the day that the letter is signed and dated except if the day is a weekend or Federal holiday, in which case the review period will stop on the next business day. We will

attempt to ensure that the State receives the letter on that same day, through some means of electronic transmission, and will try to confirm receipt by telephone contact during normal business hours. We propose that the review period will resume on the next calendar day after the complete additional information is received by the designated individual, unless the State's response is received after 5 p.m. eastern time on a day prior to a non-business day or any time on a non-business day, in which case the review period will resume on the following business day. For example, if the formal request for information is sent on day 45, the review will begin again at day 46 on the first full business day following receipt of the requested information by the designated individual. If the formal request for information is sent on day 45 and the State's response is received at 6 p.m. eastern time on a Friday, then day 46 will be the following Monday (assuming it is not a holiday). We propose in § 457.160(b)(4) that the 90-day review period cannot stop or end on a non-business day. HCFA will not stop a review period on a weekend or holiday. If the 90th day of a review period is scheduled to be on a weekend or holiday, then the 90th day will be the following business day. Additionally, in § 457.160(b)(5), we propose that the 90-day review period may be stopped as many times as necessary to obtain the necessary information for making a final decision whether to approve the State plan or plan amendment.

In developing our policy for the review period, we considered applying the review periods associated with the review of title XIX State plan amendments (SPA) and 1915 (b) and (c) waiver requests. In the review of a SPA and 1915 (b) and (c) waiver request, the 90-day clock begins on the day of receipt of the SPA or waiver request and ends 90 days later and only business days are counted. The 90-day clock can be stopped only once by a written request for additional information. A new 90-day period begins on the day the requested information is received.

We are not proposing to use the same review period policies under title XXI, as we believe the proposed process will more effectively implement title XXI objectives because it will be speedier and more flexible. Rather than having a 90-day clock that restarts at the beginning when additional information is requested and received, we propose a clock that consists of only 90 calendar days and resumes on the day additional information was requested, when that information is received. The proposed time frame allows States ample opportunity to comply with the requirements of this new program by allowing the review period to be stopped as many times as necessary rather than only once. We are proposing that the review period be started (or restarted) on the first full day following receipt of the plan (or additional information) in order to allow us the fullest amount of time for review. Furthermore, our proposal to resume the review period on the following business day if the response is received after 5 p.m. eastern time on a day prior to a non-business day would allow us maximum review time. This provision and the provision that the review period cannot end on a non-business day safeguard against a plan becoming automatically approved on a non-business day. While we are committed to expedient review, we believe it would not be reasonable to count non-business days on which we could not have reasonably taken action.

We permit and encourage informal discussion between the State and HCFA during the review period. We may informally request additional information through meetings or telephone contact, or in writing. Because an informal request does not stop the 90-day approval time frame, HCFA usually makes such a request only when HCFA has concerns that the State could address in a timely manner through clarification of information already contained in the plan. It is important that States respond as quickly as possible to informal requests for clarification because these requests do not stop the review period.

20. Withdrawal Process (§ 457.170)

In § 457.170, we propose to allow a State to withdraw its State plan during the review process by providing written notice to HCFA of the withdrawal. This process is consistent with the process for withdrawal of a Medicaid State plan amendment.

21. Administrative and Judicial Review of Action on State Plan Material (§ 457.190)

A State dissatisfied with the Administrator's action on State plan material has a right to administrative review. In § 457.190(a), we propose a procedure for administrative review under the authority of section 2107(e)(2)(B) of the Act. Specifically, we would require that any State dissatisfied with the Administrator's action on State plan material under § 457.150 may, within 60 days after receipt of the notice of final determination provided under § 457.160(a), request that the Administrator reconsider whether the State plan or plan amendment conforms with the requirements for approval. This procedure is consistent with the procedure for administrative review in Medicaid. Additionally, we propose that the procedures for hearings and judicial review be the same procedures used in Medicaid which are set forth in regulations at part 430, subpart D. We propose to use the same procedures that are used in Medicaid because the infrastructure supporting these procedures is already in place and well known. We believe it is important for a State to be familiar with the process for requesting reconsideration of a HCFA action in order for that State to have full opportunity to dispute the action. In addition, we propose that we will not delay the denial of Federal funds, if required by the Administrator's original determination, pending a hearing decision. If the Administrator determines that the original decision was incorrect, we pay the State a lump sum equal to any funds incorrectly denied.

*C. Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment*

1. Basis, Scope, and Applicability (§ 457.300)

This subpart interprets and implements section 2102(b) of the Act, which relates to eligibility standards and methodologies; section 2105(c)(6)(B), which precludes payment for expenditures for child health assistance provided to children eligible for coverage under other Federal health care programs other than programs operated or financed by the Indian Health Service; and section 2110(b), which defines the term ''targeted low-income child.'' This subpart sets forth the requirements relating to eligibility standards and to screening, application and enrollment procedures. The requirements of this subpart apply to a separate child health program and, with respect to the definition of targeted low-income child only, a Medicaid expansion program.

2. Definitions and Use of Terms (§ 457.301)

This section includes the definitions and terms used in this subpart. Because of the unique Federal-State relationship that is the basis for this program and in keeping with our commitment to State flexibility, we determined that many terms should be left to the States to define. For example, we did not define the terms ''family'' or ''income'' as there is a great deal of variation among States. States have the option to count either

gross or net income when making eligibility determinations; and the term family can be defined any number of ways, ranging from only the individual child to including parents, grandparents or other non-related guardians. States have discretion in making these determinations.

The statutory phrase ''public agency in the State'' is not restricted to State government agencies, but would include other public agencies, such as local agencies in the State. Therefore, we propose to define ''public agency'' as a State, county, city or other type of municipal agency, including a public school district, transportation district, irrigation district, or any other type of public entity. Such an interpretation is consistent with the use of the term under § 433.51 of the Medicaid regulations, which includes State and local governmental units, as well as Indian tribes, as public agencies. We are proposing to define the term ''employment with a public agency'' as employment either directly or with an entity under a contract with a public agency. This term includes both direct and indirect employment because we do not wish to influence or restrict the organizational flexibility of State and local governmental units.

We would define the term ''State health benefits plan'' as a plan that is offered or organized by the State government on behalf of State employees or other public agency employees within the State. For example, if a local government, such as a county or a city, has its own insurance plan that is separate from the State employee plan, the children of that entity's employees could be eligible for CHIP as long as they are uninsured and meet all other eligibility requirements under the plan. The term does not include a separately run county, city, or other public agency plan or a plan that provides coverage only for a specific type of care, such as dental or vision care. Our definition parallels the definition in section 2791(d)(8) of the Public Health Service Act, which refers to plans ''established or maintained for its employees,'' except that we would limit the term to a plan under which an actual benefit in the form of a more than nominal premium subsidy is available for coverage of a dependent child. In the absence of a more than nominal premium subsidy, we would not consider the plan to be a ''benefits plan'' with respect to the child, because no benefit would be extended by the State for that child.

3. State Plan Provisions (§ 457.305)

In accordance with the requirements of section 2102(b)(1)(A) of the Act, we propose to require that the State plan include a description of the eligibility standards under the State plan.

4. Targeted Low-income Child (§ 457.310)

Section 2110(b) of the Act defines a targeted low-income child. In accordance with this section, we have defined a targeted low-income child as a child who meets the eligibility requirements established in the State plan and certain other statutory conditions to be a targeted low-income child. At § 457.310(b), we set forth proposed standards for targeted low-income children that relate to financial need, eligibility for other coverage including coverage under a State health benefits plan. In addition, we set forth exclusions from the category of low-income children.

With regard to financial need, we propose that a child who resides in a State with a Medicaid applicable income level, must have: (1) Family income at or below 200 percent of the Federal poverty line; or (2) family income that either exceeds the Medicaid applicable income level but by not more than 50 percentage points or does not exceed the Medicaid applicable income level determined as of June 1, 1997. Section 2110(b)(1)(B)(ii)(II) of the Act refers to the term Medicaid applicable income level in the definition of targeted low-income child. As specified in a technical amendment passed by Congress, the March 31, 1997 date from section 2110(b)(4), defining Medicaid applicable income level, was replaced with the June 1, 1997 date in the text of this proposed regulation.

With regard to other coverage, we propose that a targeted low-income child must not be eligible for Medicaid (determined either through the Medicaid application process or the screening process discussed later in this preamble); or covered under a group health plan or under health insurance coverage, unless the health insurance coverage has been in operation since before July 1, 1997, and is administered by a State that receives no Federal funds for the program's operation. However, we would not consider a child to be covered under a group health plan if the child did not have reasonable access to care under that plan. For example, if a child is covered by a health maintenance organization in another State through the employer of an absent parent and cannot get treatment (other than emergency care) in his State of residence, we would not consider the child to have health insurance coverage for purposes of eligibility in the State of residency.

Section 2110(b)(3) allows low-income children who have insurance coverage under a State program operating since before July 1, 1997 without Federal funds to be considered targeted low-income children. This rule applies to programs that are State-operated, that is, administered by the State in some respect. Children in such programs continuously operating since June 30, 1997 would not be precluded from being considered as targeted low-income children, but would have to meet other applicable eligibility requirements.

In the State plan review process, we have been asked whether children in Blue Cross/Blue Shield (BC/BS) Caring Programs for Children are eligible for a separate child health program. As of May 1997, there were more than 20 Blue Cross/Blue Shield (BC/BS) Caring Programs for Children. These programs are generally funded by contributions from the community that are matched by BC/BS and no Federal funds have been used to support these programs. Whether such children can be covered under a separate child health program depends on whether the Caring Program is State-operated. Assuming a particular Caring Program is not within the pre-existing State program exception, children would nevertheless only be ineligible to the extent that they were *covered* by the Caring program. To the extent that the Caring program terminates, or alters its eligibility criteria so that these children are no longer eligible, the children previously covered under the Caring program could be eligible for CHIP coverage as long as they meet the State's eligibility requirements. We also note that to the extent that a Caring Program does not meet the definition of ''health insurance coverage'' under HIPAA, children covered by a Caring Program may be eligible for CHIP coverage.

As defined in section 2110(b)(2)(B) of the Act, the definition of targeted low-income child excludes a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan in a State on the basis of a family member's employment with a public agency. This provision would exclude children based on eligibility rather than actual coverage. Therefore a child who is eligible and offered coverage could not be a targeted low-income child even if the family declined to accept the coverage.

There may be circumstances in which a State may cover otherwise eligible

children of public agency employees. The exclusion only extends to children ''eligible for health benefits coverage under a State health benefits plan''. We do not believe this condition is met in any meaningful sense when only a nominal employee benefit is available for health benefits coverage for the child. If the State or public agency contribution for the cost of the child's health benefits coverage is merely nominal, the child is not ''eligible for health benefits coverage under a State health benefits plan''. We would find an employee benefit available to the extent that a more than nominal State or public agency contribution was available under any health coverage option offered by the plan, regardless of the actual choice between those options made by the employee. In other words, if the State offers a cafeteria plan with multiple choices, we would look to whether a more than nominal State or public agency contribution could be available under any of the available choices, regardless of the actual choice made by the employee. This means that some children of public agency employees whose parents have access to State health benefits may be eligible for CHIP, while others may not, depending on whether the parent's public agency employer offers more than a nominal contribution that is available for the cost of the coverage of any dependent in the family.

In order to ensure that States do not change their contribution levels to make children of public agency employees eligible for CHIP, we are proposing to provide that the exception discussed above would not apply if the State made available an employee benefit to pay for part or all of dependent coverage on, the date this proposed rule is published, November 8, 1999, whether or not the State later terminates that employee benefit. This proposed limitation would ensure that CHIP coverage does not displace current coverage and substitute Federal dollars for existing private and public dollars already spent on coverage. The proposed limitation is to ensure that our overall interpretation of the public agency employee exclusion is consistent with the overall purposes of the CHIP statute, and results in effective and efficient use of CHIP resources.

We propose to find that a child is only ''eligible for health benefits coverage under a State health plan'' when an employee benefit is available to cover part or all of the cost of health benefits coverage under the State plan. Of course, such a benefit would be available if the child is the employee and directly entitled to State or public agency contribution to the cost of employee care. In the more likely instance that the child is a dependent of a State or public agency employee, the exclusion would be triggered if a State or public agency makes available a more than nominal contribution under the plan that exceeds the minimum amount necessary for coverage of the employee alone, and could be available to cover part or all of the cost of dependent coverage. This applies regardless of whether the State offers a defined benefit plan or a defined contribution applicable to a range of optional benefits. In other words, if the family must pay the full cost of coverage for dependents, with the exception of a nominal amount, then effectively no benefit is available, and children in the family could be eligible for a separate child health program. On the other hand, if the State makes available a more than nominal contribution for the cost of coverage beyond the amount needed to cover the cost of the employee alone, then a benefit would be available for dependent coverage, and children in the family would not be eligible.

We are proposing to consider any contribution over $10 towards the cost of dependent coverage to be more than nominal. We considered an interpretation that the exclusion would be triggered by any State or public agency employer contribution over the minimum amount necessary for coverage of the employee alone, but we believe that this interpretation would be administratively difficult because of the inability in some cases to accurately determine the overall cost of such coverage, particularly on a prospective basis. Moreover, the exclusion operates to prevent substitution of CHIP coverage for existing State supported coverage, which is not an issue when the State or public agency contribution is merely nominal and provides insignificant financial support toward enrolling the child.

Section 2110(b)(2)(A) of the Act excludes from the definition of targeted low-income child, a child who is an inmate of a public institution or who is a patient in an institution for mental diseases (IMD). We have proposed to use the Medicaid definition of IMD set forth at § 435.1009. This definition states, in part, that an IMD ''means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such.''

We propose to apply the IMD eligibility exclusion any time an eligibility determination is made, either at the time of application or during any periodic review of eligibility (for example, at the end of an enrollment period). Therefore, a child who is an inpatient in an IMD at the time of application, or during any eligibility determination, would be ineligible for CHIP coverage. If a child is enrolled in CHIP and subsequently requires inpatient services in an IMD, the IMD services would be covered to the extent that CHIP coverage includes coverage for such services. However, eligibility would end at the time of redetermination if the child resides in an IMD at that time.

Some States have had questions regarding our policy on the provision of services to eligible individuals residing in IMDs. Under section 2110(b)(2)(A) of the Act, children who reside in IMDs are specifically excluded from being eligible for CHIP as a targeted low-income child. However, there may be situations where a child already determined eligible for CHIP may require inpatient mental health services and the State CHIP plan covers IMD services. This situation raises the issue of whether the child is eligible for CHIP services once he or she enters the IMD. In a question and answer released on July 29, 1998, we noted that a child in an IMD may not be eligible for CHIP but an eligible child who then enters an IMD may remain eligible for CHIP services until such time as the child's eligibility is redetermined. In developing this policy, we were attempting to allow services to be provided to more individuals. However, it had been suggested that our policy as stated in the July 29, 1998 question and answer has the potential for allowing services to be delivered inequitably among children with similar needs. For example, if one child is receiving services in an IMD and is redetermined after 2 months, that child will no longer be eligible for CHIP at that time. Another child may be receiving IMD services but may not be redetermined for 12 months. The second child would receive more services than the first although they are similarly situated. Moreover, the CHIP guidance is not consistent with the Medicaid IMD policy. Under Medicaid, children residing in IMDs remain eligible for Medicaid, but Federal matching funds are not available for any services

provided to the individual unless the facility is qualified as an inpatient psychiatric hospital for individuals under the age of 21.

We are currently reviewing the CHIP IMD policy and considering various options. We are soliciting comments on an appropriate way to address this issue. We note that inpatient mental health services may be available under a State CHIP program in settings and facilities other than IMDs.

We have proposed to use the Medicaid definition of inmate of a public institution set forth at § 435.1009. Accordingly, when determining eligibility for CHIP, an individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities. A facility is a public institution when it is under the responsibility of a governmental unit or when a governmental unit exercises administrative control.

Under Medicaid, FFP is not available for medical care provided to inmates of public institutions, except when the inmate becomes a patient in a medical institution. We believe that the underlying basis for this exception to the FFP exclusion in Medicaid is to recognize that the term ''inmate'' includes only a person involuntarily residing in a penal setting. When discharged from a penal setting, or temporarily transferred to a medical institution (which does not include institutions that are part of the State's penal system, since such an institution is primarily a penal institution rather than a medical institution) a person is no longer an ''inmate'' and is treated as part of the general health care community. While the person is in the medical institution, FFP is available for Medicaid covered services.

We propose to allow this same exception when determining eligibility for a separate child health program because we believe an inmate residing in a penal institution who is subsequently discharged or temporarily transferred to a medical institution for treatment is no longer an ''inmate.'' Therefore, an inmate who becomes an inpatient in a medical institution which is not part of the penal system (that is, is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility), would then be eligible for CHIP (subject to meeting other CHIP eligibility requirements), and the State would receive FFP for medical care provided to that child. If the child is taken out of the medical institution and returned to a public institution, the child would again be excluded from eligibility for CHIP.

4. Other Eligibility Standards (§ 457.320)

Section 2102(b) of the Act sets forth the parameters for other eligibility standards and methodologies a State may use under a separate child health program. With certain exceptions, the State may establish different standards for different groups of children. Such standards may include those related to geographic areas served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to disability does not restrict eligibility), access to other health coverage and duration of eligibility. Under the statute, the State may not use eligibility standards that discriminate on the basis of diagnosis, cover children with higher family income without covering children with a lower family income within any defined group of covered targeted low-income children, or deny eligibility on the basis of a preexisting medical condition.

Accordingly, with certain exceptions, States are free to choose the standards that they will use to establish eligibility under a separate child health program. A State can set the income limit or limits, consistent with title XXI and these regulations, against which to compare income to determine eligibility. With the exception of income that cannot be counted because of a prohibition in another Federal statute, a State can determine what constitutes income, what income is counted, and what income is excluded or disregarded. A State can calculate eligibility using either gross income or net income after deductions and disregards. A State can also determine who is in a child's family and therefore, whose income will be counted and under what circumstances. However, as noted, certain other Federal statutes prohibit counting certain payments in determining eligibility under certain means tested programs including a separate child health program. For example, relocation payments provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and student financial assistance for attendance costs received from a program funded in whole or in part under title IV of the Higher Education Act of 1965, as amended, or under the Bureau of Indian Affairs student assistance programs cannot be counted as income under a separate child health program.

A State has the option to impose a resource test. However, very few States have elected this option. Most States believe that a resource test unnecessarily complicates the eligibility process and is a barrier to enrollment. Most families who meet the income requirements for eligibility do not have significant resources. If a State chooses to impose a resource test, it may set the resource limits(s) that it will use to establish eligibility and determine what constitutes a resource and what resources, if any, will be excluded or disregarded.

The statute provides that in establishing eligibility, the standards may include those related to a ''spenddown''. We would interpret this language to allow a child who would be eligible except for excess income and/or resources, to become eligible when the family has either incurred or paid medical expenses in the amount of the excess income and/or resources. We would allow the State to establish the period of eligibility for children who become eligible for the program by virtue of a spenddown. As it already exists under the Medicaid program, we would also allow States to have a ''pay-in spenddown'' policy. Under a ''pay-in spenddown,'' a State would establish the amount of the excess income or resources that a family had and allow the family to pay that amount directly to the State to establish immediate eligibility without waiting until the family incurs the medical expenses. In the event that the family did not incur medical expenses sufficient to cover the pay-in spenddown amount for the spenddown period, the State would need to have reasonable procedures in place for the disposition of the unused pay-in spenddown amount, such as refunding the unused amount or crediting it to a future spenddown period. The State cannot use money collected for matching purposes.

The statute provides that in establishing eligibility, the standards may relate to ''disposition of resources.'' We interpret this provision to allow a State to impose a period of ineligibility, or other penalty, if the State finds that an individual, whose resources are relevant to a child's eligibility for CHIP, disposed of resources for less than fair market value in order to make the child eligible for CHIP coverage.

The statute provides that the standards used may include those related to geographic area. We interpret this language to allow a State to provide coverage only to children living in certain areas or jurisdictions within the State and to have different eligibility criteria for different areas or

jurisdictions within the State. However, we recommend that States strive to maximize coverage throughout the State.

Eligibility standards may also relate to disability status as long as any standard relating to such status does not restrict eligibility. We interpret this provision to allow a State to establish a group of children who may be eligible because they meet State-established disability criteria or have a particular disabling condition. The State could establish different eligibility criteria for each such group, as long as the criteria do not restrict eligibility for either group.

The statute provides that the standards may relate to age. We interpret this provision to allow States to provide coverage only to children of a certain age or ages or to have different eligibility criteria for children of different ages. We have specified that the age used cannot exceed age 18 because section 2110(c)(1) defines a child for purposes of title XXI as an individual under the age of 19. This means that a State cannot provide coverage to a child who has attained age 19. We considered whether there was statutory authority to continue coverage after a child's 19th birthday if the child was in a course of treatment and decided that there is no statutory authority to do so. We also considered whether a child who attains age 19 during what would otherwise have been a period of guaranteed eligibility, explained below, could remain eligible until the end of that period. We decided that there is no authority for such continuous eligibility and therefore eligibility must be terminated on the date that the child attains age 19. If coverage for a given period has been pre-paid under the State's usual and customary administrative procedures prior to the date the child attains age 19, the coverage may continue until the end of the pre-paid period even though the child is no longer eligible.

Eligibility standards may also include those related to residency. We interpret this language to allow States to provide child health assistance under a separate child health program only to residents of the State. We would also allow a State to determine what constitutes residency in the State. However, under the 1969 decision of the Supreme Court in *Shapiro* v. *Thompson* (394 US 618), a State cannot impose a durational residency requirement. Therefore, we propose to require that an eligibility standard relating residency cannot exclude those who have recently moved to the State. In addition, in establishing residency requirements we urge States to be particularly attentive to meeting the health needs of migrant targeted low-income children. We encourage States to allow migrants to maintain residency in the State in which they reside most often, if they choose, or to establish residency in the State in which they are working. We also strongly recommend that States establish written inter-State agreements setting forth rules and procedures for resolving cases of disputed residency as States do under Medicaid. (See § 435.403 for Medicaid regulations pertaining to residency.)

The eligibility standards also may relate to access to other health coverage. See Subpart H of this proposed rule for a discussion of substitution of coverage.

Furthermore, we want to ensure that the State periodically disenrolls from the program enrollees that no longer meet the eligibility standards under section 2102 and these regulations for any reason including a change in age, income, and other health coverage. For this reason, we would specify that the State agency may, at its own discretion, establish a period for regular review of eligibility, not to exceed 1 year. During the period between regular eligibility reviews, a child need not have eligibility redetermined, and thus will remain eligible throughout the period, unless the child reaches age 19 or (as discussed below) is found eligible for Medicaid. Note that, States that implement CHIP through the Medicaid expansion option are subject to the Medicaid regulations (42 CFR 435.916), under which a State must also redetermine eligibility at least every 12 months. The eligibility standard relating to duration of eligibility would not allow States to impose a maximum length durational requirement or any similar requirement. We solicit comments on this issue.

We are particularly concerned about the impact of age, income, and benefits restrictions under a separate child health program on pregnant teens and their children. We urge States to pay particular attention to the interaction of a separate child health program and the Medicaid program when it comes to the State's attention that a teen is pregnant. Although States may provide pregnancy-related and delivery services under a separate child health program, it is often to the pregnant teen and newborn's advantage to be covered by Medicaid, if eligible. Under Medicaid, once a pregnant teen is determined eligible, she remains eligible without regard to changes in income until the end of the postpartum period. Under a separate child health program, a pregnant teen may lose eligibility due to an increase in income and at that point, be unable to establish eligibility for Medicaid. She then might be without coverage for the rest of her prenatal care and her delivery. In addition, an infant born to a teen who is eligible for and receiving Medicaid on the date of the infant's birth is deemed to have filed a Medicaid application and been found eligible. The infant also remains eligible for 1 year, without regard to changes in income, as long as the infant continues to reside with the mother. An infant born to a mother whose delivery was covered by a separate child health program would not have this protection. To be eligible for separate child health program, an application would have to be filed for the infant and the infant would have to meet income eligibility standards.

In addition, we urge States to be particularly attentive to the possibility that a pregnant teen who loses eligibility under a State child health program because she attains age 19 might be eligible for Medicaid as a pregnant teen although she was not eligible for Medicaid otherwise. In some States, the income standard applied under Medicaid to a pregnant teen is higher than the standard used for non-pregnant teens of the same age, which means that pregnant teens with higher incomes than other children of the same age may be Medicaid eligible.

A State must allow any child, including a pregnant teen, to apply for Medicaid at any time and must take timely action on that application. If the teen is determined to be eligible for Medicaid, the teen is no longer eligible for CHIP. Any child who is covered under CHIP at all times is entitled to apply for and receive Medicaid, if eligible, regardless of the State's practice for determining and reestablishing eligibility under the State program. When the State determines that a child is Medicaid eligible, the child is no longer eligible for CHIP. States that have opted to provide presumptive eligibility for pregnant women under the Medicaid program must also allow providers to find pregnant teens presumptively eligible for Medicaid.

Finally, in some States, the benefits provided to pregnant teens under Medicaid, particularly those related to prenatal care and delivery, may be better and less expensive than those provided under CHIP. We urge States to provide sufficient information to a pregnant teen for her to make an informed choice about applying for Medicaid during a period of guaranteed eligibility.

In keeping with section 2102(b)(1)(B)(i) and (ii), States may not cover children with higher family income without covering children with

lower family income within any State-defined group of covered targeted low-income children or deny eligibility based on a preexisting medical condition.

We have proposed certain other restrictions on eligibility standards. The first proposed restriction is that a State not require that a social security number (SSN) of an applicant child or family member be provided as a condition of eligibility. We wish to clarify that, under section 1137 of the Act, a SSN must be supplied only by applicants for and recipients of Medicaid benefits. In all other cases, including non-applicant parents of children applying for Medicaid and children applying for a separate child health program, States are prohibited from making the provision of a SSN by another family member a condition of the child's eligibility. This rule also applies to other members of the household whose income might be used in making the child's eligibility determination.

Some States use parents' SSNs as a means of verifying family income in the process of making an eligibility determination. While the statute does not permit States to require disclosure of the SSN for applicants or non-applicants, voluntary disclosure by the parent may facilitate the verification of income and contribute to a speedier and more accurate determination of the child's eligibility. States may advise parents and other household members of this as long as they do so in a manner that does not coerce provision of the SSN or deter application for benefits. Once more, we wish to clarify that States have no legal basis for denying an application based upon the failure to supply the SSN for verification purposes.

We also propose to specifically provide that the eligibility standards used for a separate child health program cannot exclude American Indian or Alaska Native children who are eligible to receive medical care funded by the Indian Health Service (IHS). We believe this provision is effectively required by the statutory mandate that State child health plans contain procedures to ensure the provision of child health assistance to targeted low-income children who are Indians, and the statutory provision, discussed below, that CHIP payment may be made primary to any IHS payment for CHIP-covered services.

Section 2105(c)(6)(B) of the Act specifically exempts programs operated or financed by IHS from the restriction on payment to prevent duplication between CHIP and other Federally operated or financed health programs. In light of IHS policies, we read this provision to require that a separate child health program must pay for services that are covered under the plan and are provided by IHS and IHS-funded Tribal health programs participating in the separate child health program. IHS only pays for items and services not covered by any other third-party coverage. The Indian Health Care Improvement Act grants IHS and IHS-funded Tribal health programs authority to bill Medicaid and all other third party insurance for services provided directly to the Indian person. The IHS or Tribal program also may require health care providers with whom they contract for other services for Indian beneficiaries to bill Medicaid and other health insurance before billing the IHS or Tribal program.

In addition, we would provide that the eligibility standards used for a separate child health program cannot violate any other Federal law. For example, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended (8 U.S.C. 1601 *et seq.*), a State must cover those legal immigrant children who meet the Federal definition of qualified alien and who are otherwise eligible. We believe that the following qualified alien children who are otherwise eligible must be covered:

- All qualified alien children who were in the United States before August 22, 1996.
- Refugees, asylees, certain Cuban, Haitian and Amerasian immigrants, and certain aliens whose deportation is being withheld.
- Unmarried, dependent children of veterans and active duty service members of the Armed Forces.
- The following children who enter the United States on or after August 22, 1996 and who are in continuous residence for 5 years (Earliest eligibility for this group will be August 22, 2001.):

— Alien lawfully admitted for permanent residence;
—Certain battered aliens or children of battered aliens;
—Certain parolees who have been paroled for at least 1 year;

We note that States implementing a separate child health program do not have the option provided to them under Medicaid to deny Medicaid to some qualified aliens.

In establishing eligibility for CHIP coverage, States must obtain proof of citizenship, (including nationals of the U.S.) and verify qualified alien status in accordance with section 432 of PRWORA, as amended (8 U.S.C. 1642).

In addition to verifying qualified alien status, PRWORA requires that Federal public benefit programs, such as Medicaid and CHIP, must also obtain proof that an applicant who so claims is a citizen of the United States. As required by law, on August 4, 1998, the Immigration and Naturalization Service (INS) published a notice of proposed rule making in the **Federal Register** that set forth proposed procedures for providing proof of citizenship and qualified alien status.

For verification purposes, the INS proposed rules require the applicant to declare in writing, under penalty of law, whether the applicant is a national of the United States. (National means either a US citizen or a person who, though not a citizen of the United States, owes permanent allegiance to the United States). For unemancipated minors under 18, the regulations provide for the declaration to be executed by a parent, legal guardian, or other person legally qualified to act on behalf of the applicant. The proposed rules set out what constitutes primary or secondary evidence of US national status. In lieu of evidence from the applicant, the proposals allow the option to consult agency records, or to accept a third party declaration in the case of an applicant who cannot produce evidence of US national status. The regulations also permit reliance upon attestation as temporary evidence of US nationality only until the applicant can provide the required evidence.

While a letter to State Health Officials issued by HCFA on September 10, 1998, advised States that they could accept self-declarations of US citizenship without further proof, once the INS regulation cited above becomes a final rule, it is very likely that self-declaration will no longer be permitted. States that currently permit self-declaration, as well as States that employ other procedures not consistent with the INS final rule, will need to come into compliance with the INS final rule within 2 years after the rule becomes final.

Section 2102(b)(1)(A) specifies that a State may adopt eligibility standards relating to duration of eligibility but does not prescribe a particular duration. We propose at § 457.320(a)(10) to allow the State to establish the period between eligibility redeterminations as long as the period does not exceed one year. During the period between eligibility redeterminations, a child need not have eligibility redetermined and thus will remain eligible throughout the period, unless the child reaches age 19 or (as discussed above) is found eligible for Medicaid. The State is required to reestablish eligibility of a child, with

respect to circumstances that may change, at least once every twelve months. This will allow States to provide continuous eligibility for children under a separate child health program without regard to changes in circumstances other than age or Medicaid eligibility, for a guaranteed period of time in the same manner as the State provides continuous eligibility under Medicaid (Section 1902(e)(12) of the Act). We will consider all payments made during a guaranteed period of eligibility after a final determination of initial eligibility to be correct. We believe a longer period between eligibility redeterminations would be inconsistent with the requirements and objectives of title XXI, in particular the goal to extend coverage primarily to targeted low-income children.

5. Application (§ 457.340)

We propose to require that the State must afford every individual the opportunity to apply for child health assistance without delay. Section 2101(a) of the Act requires States to provide child health assistance to uninsured, low-income children in an effective and efficient manner. The opportunity to apply without delay is necessary for an effective and efficient program.

In addition, we propose that a State may use either a separate application for CHIP or a joint application for CHIP and Medicaid. If a State chooses to use a separate application, the State must ensure that the screening procedures described in proposed § 457.350 are followed.

If a State chooses to use a joint application for CHIP and Medicaid, the application does not necessarily need to be an application for Medicaid under all possible Medicaid eligibility groups. The application for Medicaid could be an application only for a child-related Medicaid eligibility group that must be used for screening purposes as explained in the discussion of § 457.350. However, if a State chooses to use this type of limited application, the application must inform the individual that it is an application only for one kind of children's health benefits under Medicaid and is not a full Medicaid application, and that even if the child is not found eligible for this kind of children's health benefits under Medicaid, the child may be eligible for Medicaid on some other basis and has a right to complete a full Medicaid application. The Medicaid denial notice must also provide this information. For the same reasons that we believe it would be overly burdensome and contrary to the intent of title XXI to require that a State screen for eligibility under all Medicaid eligibility groups, we believe that it would be overly burdensome and against the intent of the program to require a State using a joint application to use a form that allows a full application for Medicaid under any eligibility group.

We encourage States to use a joint application for their CHIP and Medicaid programs. A joint application is an actual Medicaid application. It must be processed in the same manner as any other application for Medicaid. All of the Medicaid rules pertaining to application would apply to a joint application. Joint applications would ensure that the proposed screen and enroll requirements set forth at § 457.350 are met. Joint applications also permit a family to submit information once during the application process. On September 10, 1998, we released a model joint application form as an attachment to a letter clarifying eligibility procedures. This information can be found on the HCFA website.

If a State chooses to use separate applications for CHIP and Medicaid, there is considerable flexibility, within certain limits, in developing application forms and the eligibility intake process. For example, States that implement a separate child health program have flexibility to contract with independent entities to perform initial Medicaid screening and to make preliminary eligibility determinations. Title XXI does not prohibit this type of arrangement and the requirement to provide child health assistance in an effective and efficient manner allows this flexibility for a separate child health program. In addition, the State may contract with an independent entity for the purpose of eligibility screening if the State uses a joint application because this function is being performed under title XXI requirements and the funding comes from title XXI. However, if the screening shows that the child is potentially eligible for Medicaid, the evaluation of the application for Medicaid purposes and the determination of Medicaid eligibility must be made by State or local governmental merit personnel authorized by the State to perform these functions and the cost must be paid by title XIX.

In addition, there are requirements under other laws that may apply to the administration of eligibility under separate child health programs. For example, there are requirements in the Personal Responsibility and Work Opportunity Act of 1996, as amended, that apply to separate CHIP programs which call for verification of citizenship or national status, and of immigration status. Therefore, subject to the provisions noted above, States may use State employees or non-public employees to administer part or all of the eligibility determination process, may take and process applications at locations they determine, and establish application and enrollment procedures.

6. Eligibility Screening (§ 457.350)

Among our highest priorities is to ensure that CHIP actually provides health assistance to the individuals for whom Congress designed the program. That is, we want the State plan to ensure that individuals applying for CHIP, but who are eligible for Medicaid or any other form of health care assistance programs, are enrolled in those other programs and not inappropriately enrolled in CHIP. Section 2102(b)(3) (A) and (B) of the Act require that a State plan include a description of screening procedures used, at intake and any follow up including any periodic redetermination, to ensure that only children who meet the definition of a targeted low-income child receive child health assistance under the plan, and that all children who are eligible for Medicaid are enrolled in that program. In accordance with the statutory provisions, we propose at § 457.350(a) that a State plan must include a description of these screening procedures.

We believe that in establishing CHIP, Congress intended to make health insurance available to uninsured children at higher income levels than the income levels of children eligible for Medicaid and to identify the estimated 4 million children who are eligible for Medicaid but are not enrolled in that program. We believe that section 2110(b)(1)(C) clearly provides that children who would be eligible for Medicaid if they applied are not eligible for coverage under CHIP. The statute at 2110(b)(3)(B) also clearly provides that States have a responsibility to actually enroll children in Medicaid if they are ineligible for the separate child health program because they are Medicaid eligible. A simple referral to the Medicaid agency is not enough to meet this requirement.

We considered a number of options in interpreting these ''screen and enroll'' requirements. First we considered whether ''Medicaid eligible'' meant that the child had actually applied for Medicaid and been determined eligible. We decided that the intent of the provision was to identify children who would be eligible for Medicaid if they applied. We considered permitting any screening process that represented a

reasonable attempt to identify Medicaid eligible children. We, however, do not believe that this option meets the statutory requirement that children who are eligible for Medicaid be identified and enrolled in Medicaid. Nonetheless, while a ''reasonable attempt'' to identify all Medicaid eligible children may not be enough, we are aware of the complexity of Medicaid eligibility and the burden that would be placed on both States and families if we required that children be screened for Medicaid eligibility under every possible Medicaid eligibility group.

We therefore propose only to require States to use screening procedures that identify any child who is potentially eligible for Medicaid under one of the poverty-level-related groups described in section 1902(l) of the Act. However, States are not mandated to cover children below the age of 19 who were born before October 1, 1983 under the poverty-level-related Medicaid groups. Therefore, we also propose to require, at a minimum, that a State use screening procedures that identify any child who is ineligible for Medicaid under the poverty level related groups solely because of age but is potentially eligible under the highest categorical income standard used under the State's title XIX State plan for children under age 19 born before October 1, 1983. In almost all circumstances, we expect the highest categorical income standard used for such older children to be the standard used for the optional categorically needy group of children eligible under section 1902(a)(10)(A)(ii)(I). These children are sometimes referred to as ''Ribicoff children''. Mandatory coverage of the older children in poverty-level related groups are being phased in and by October 1, 2002, all children under age 19 will be included in the poverty-level-related groups in all States.

During the screening process, we encourage States to identify any pregnant child who is eligible for Medicaid as a poverty-level pregnant woman described in section 1902(l)(1)(A) of the Act even though she is not eligible for Medicaid as a child. As discussed above, Medicaid eligibility standards may be more advantageous to a pregnant teen than coverage under a separate child health program.

We have not proposed to require that a State screen for Medicaid eligibility under all possible groups because we believe that this would place an unreasonable administrative burden on States due to the complexity of the eligibility requirements under some Medicaid groups, particularly the group of low-income families with children described in section 1931 of the Act and the medically needy groups described in 1902(a)(10)(C) of the Act. We believe that screening for eligibility under these other Medicaid groups might deter families from applying for the title XXI State program because they would have to provide all the information necessary for these complicated Medicaid eligibility determinations. We believe that simplification of the eligibility process is essential to encouraging families to enroll their children. The poverty-level-related Medicaid eligibility groups usually have the highest standard under which a child is eligible for Medicaid, have no resource requirements, and no requirements pertaining to the child's living arrangement, so we believe that almost all children who are Medicaid eligible will be identified through the proposed policy.

However, as noted above, the proposed policy will not identify every Medicaid eligible child. Therefore, we also propose to require that States choosing not to screen for Medicaid eligibility under all possible groups provide certain written information to all families of children who, through the screening process, appear unlikely to be found eligible for Medicaid if a full Medicaid eligibility determination were done. The following information must be provided to the person applying for the child: (1) A statement that, on initial review, the child does not appear to be eligible for Medicaid but that a final full determination of Medicaid eligibility can only be made based on a review of a full Medicaid application; (2) information about Medicaid benefits (if such information has not already been provided); and (3) information about how and where to apply for Medicaid.

As indicated in section 2102(b)(3)(B), Congress intended that children eligible for Medicaid be enrolled in the Medicaid program. We propose that if a child is found through a State screening process to be potentially eligible for Medicaid but fails to complete the Medicaid application process for any reason, the child cannot be enrolled in CHIP. Enrollment in CHIP can occur only after an appropriate screen shows that the child is ineligible for Medicaid.

States should make every effort to ensure that a decision by a family not to apply for Medicaid or not to complete the application process is an informed one. The screen and enroll procedures must provide the family with full and complete information about Medicaid, including the early preventive, screening, diagnostic and treatment services, the prohibition against cost sharing and the difference between Medicaid and CHIP. States should inform families that they do not have a choice of programs because children may not be enrolled in CHIP if they are Medicaid eligible. The process should ensure that the family understands the consequences of not applying for Medicaid or failing to complete the application process. We believe that these policies are consistent with the Congressional intent to provide coverage to children who are not and cannot be covered under Medicaid.

However, we are aware that there is great concern among a number of States and others that children will go without health care because of these screen and enroll policies. The concern centers around the perceived stigma of Medicaid. Some States allege that families refuse to apply for Medicaid, which is free, because they associate it with ''welfare''. It is noted that some families will not complete the Medicaid application process because it may be more complicated than the application process for CHIP, require more documentation, and may be seen as more invasive into personal lives. We particularly solicit comments on the extent of these problems and possible solutions. In the meantime we encourage States to employ outreach efforts that work to change the perception that Medicaid is ''welfare'' and to simplify the Medicaid eligibility process.

7. Facilitating Medicaid Enrollment (§ 457.360)

Under section 2102(b)(3)(B) of the Act, States are required to ensure that children found through the screening process described above to be eligible for Medicaid apply for and are actually enrolled in Medicaid. We would require that the State take reasonable action to facilitate the Medicaid application process and to promote enrollment of eligible children into Medicaid. Under 457.360(b), States must establish a process whereby the State initiates the action to begin the Medicaid enrollment process and several options for States are provided. For example, States can forward the information received from the Medicaid screen onto the Medicaid eligibility unit and then this information could automatically trigger the beginning of the Medicaid application process. We do not believe that a simple referral to the Medicaid office meets this requirement. We also do not believe that it is reasonable to make the application for and enrollment in Medicaid dependent solely on actions by the applicant or the individual applying on the applicant's behalf. We encourage States to develop procedures which will

reduce or eliminate the need for applicants to provide information more than once. We also encourage the use of outstationed Medicaid eligibility workers who can take Medicaid applications at the same site as the one used to apply for CHIP. At a minimum, we urge that Medicaid and CHIP intake workers be well informed about the other program and its application procedures.

We have also proposed to require that a State ensure that families have an opportunity to make an informed decision of whether or not to complete the Medicaid application process by providing full and complete information, in writing, about: (1) The State's Medicaid program, including the benefits covered, restrictions on cost-sharing; and (2) the effect on eligibility for CHIP of neither applying for Medicaid nor completing the Medicaid application process.

8. Application for and Enrollment in CHIP (§ 457.361)

We propose to require that States afford individuals a reasonable opportunity to complete the application process and offer assistance in understanding and completing applications and in obtaining any required documentation. Furthermore, we have proposed to require that States inform applicants, in writing and orally if appropriate, about the eligibility requirements and their rights and responsibilities under the program.

Although not specifically addressed in statute, a State may choose to provide a period of presumptive eligibility during which services are provided, although actual eligibility has not been established. Unlike presumptive eligibility under Medicaid, which has rules prescribed by statute, a State has the flexibility to establish the rules for a program of presumptive eligibility under a separate child health program. (See section 435.1101 for the proposed rules pertaining to presumptive eligibility under Medicaid.) If a presumptively eligible child is subsequently determined to have been eligible during a period of presumptive eligibility, FFP will be provided at the enhanced FMAP rate for services provided during the presumptive period. However, if a child is not subsequently determined to have been eligible during the period of presumptive eligibility because either the State determined the child to be ineligible or the child's family did not complete the application process, the costs of services provided during the presumptive period will be considered administrative expenses. (For the rules pertaining to payments to States see 457.600 of the March 4, 1999 proposed rule on allotment and payment issues.)

The State agency must establish time standards for determining eligibility and inform the applicant of those standards. These standards may not exceed forty-five calendar days. In applying the time standards, the State must count each calendar day from the day of application to the day the agency mails written notice of its decision to the applicant.

The State agency must also determine eligibility within the State-established standards except in unusual circumstances, for example, when the agency cannot reach a decision because the applicant delays or fails to take a required action, or when there is an administrative or other emergency beyond the agency's control. The agency must not use the time standards as a waiting period before determining eligibility; or as a reason for denying eligibility (because it has not determined eligibility within the time standards). The State must also make eligibility effective as of the date specified in the State plan on which eligibility becomes effective.

9. Grievances and Appeals (§ 457.365)

Finally, we propose to require that States send each applicant a written notice of the decision on his application, and if eligibility is terminated or denied, the specific reason for the action and an explanation of his right to file a grievance or appeal within a reasonable time. (See § 457.985 in subpart I of these proposed regulations for rules on appeals and grievances.)

*D. Subpart D—Coverage and Benefits: General Provisions*

1. Basis, Scope, and Applicability (§ 457.401)

At proposed § 457.401 we would provide that this subpart interprets and implements section 2102(a)(7) of the Act, which requires that States make assurances relating to certain types of care; section 2103 of the Act, which outlines coverage requirements for children's health insurance; section 2109 of the Act, which describes the relation of the CHIP program to other laws; section 2110(a), which describes child health assistance; and section 2110(c) of the Act, which contains definitions applicable to this subpart. The requirements of this subpart apply to child health assistance provided under a separate child health program and do not apply to Medicaid expansion programs even when funding is based on the enhanced Federal medical assistance percentage.

2. Child Health Assistance and Other Definitions (§ 457.402)

Proposed § 457.402 sets forth the definition of child health assistance as specified in section 2110(a) of the Act. We considered whether we should further define the services listed in this section or add to the list. For example, we considered defining transportation as including coverage for urgent care and not just primary and preventive health care as included in the statute at section 2110(a)(27). We also considered whether traditional healers or alternative therapies should be specifically mentioned as providers and coverage options. However, we have not included any additional services in the definition or attempted to further define these services in order to give States the flexibility to provide these services as intended under the statute. Accordingly, we propose that the term ''child health assistance'' means payment for part or all of the cost of health benefits coverage, provided to targeted low-income children through any method described in § 457.410 for any of the following services as specified in the statute:

- Inpatient hospital services.
- Outpatient hospital services.
- Physician services and surgical services.
- Clinic services (including health center services) and other ambulatory health care services.
- Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.
- Over-the-counter medications.
- Laboratory and radiological services.
- Prenatal care and prepregnancy family planning services and supplies.
- Inpatient mental health services, other than inpatient substance abuse treatment services and residential substance abuse treatment services, but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.
- Outpatient mental health services, other than outpatient substance abuse treatment services, but including services furnished in a State-operated mental hospital and including community-based services.
- Durable medical equipment and other medically related or remedial

devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices and adaptive devices).

- Disposable medical supplies.
- Home and community-based health care services and related supportive services (such as home health nursing services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members and minor modification to the home).
- Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing, pediatric nurse services and respiratory care services) in a home, school, or other setting.
- Abortion only if necessary to save the life of the mother or if the pregnancy is the result of rape or incest.
- Dental services.
- Inpatient substance abuse treatment services and residential substance abuse treatment services.
- Outpatient substance abuse treatment services.
- Case management services.
- Care coordination services.
- Physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders. '' Hospice care.
- Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law; performed under the general supervision or at the direction of a physician; or furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.
- Premiums for private health care insurance coverage.
- Medical transportation.
- Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.
- Any other health care services or items specified by the Secretary and not excluded under this subchapter.

We propose to define the terms ''emergency medical condition,'' ''emergency services,'' and ''post-stabilization services'' to give full meaning to the statutory requirement that States assure access to emergency services, at section 2102(a)(7)(B), and consistent with the President's directive to Federal agencies to address the *Consumer Bill of Rights and Responsibilities,* which includes the right to access to emergency services. For purposes of consistency, we used the definitions found in the proposed regulations for Medicaid managed care, published in the **Federal Register** on September 29, 1998 (63 FR 52022). Because access to emergency services may not be possible if a delay is involved, we propose to require States to guarantee access to emergency services without any requirement for prior authorization for those services. In addition, we would expect that States and their contractors would treat post-stabilization services in the same manner as required for the Medicare and Medicaid programs, while recognizing that not all such services would necessarily be covered by the State for purposes of CHIP.

Specifically, we propose to define the term ''emergency medical condition'' as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in —

- Serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of a woman or her unborn child;
- Serious impairment of bodily function; or
- Serious dysfunction of any bodily organ or part. We would define the term ''emergency services'' as covered inpatient or outpatient services that are furnished by a provider qualified to furnish emergency services and needed to evaluate or stabilize an emergency medical condition.

We would define ''post-stabilization services'' to mean medically necessary non-emergency services furnished to an enrollee after he or she is stabilized following an emergency medical condition.

We would define ''health benefits coverage'' as an arrangement under which enrolled individuals are protected from some or all liability for the cost of specified health care services. We note that this term is included in the definitions at proposed § 457.10.

3. Health Benefits Coverage Options (§ 457.410)

At proposed § 457.410, we list the four options a State has in obtaining health benefits coverage for eligible children. Specifically, we propose that States may choose to provide benchmark coverage, benchmark-equivalent coverage, existing comprehensive State-based coverage, or Secretary approved coverage. These four options, specified in section 2103(a) of the Act, are described in full at §§ 457.420 through 457.450.

Based on the authority of section 2102(a)(7) of the Act, we also propose at § 457.410(b), to require that any health benefits coverage obtained in accordance with proposed § 457.410 must include coverage for well-baby and well-child care, immunizations and emergency services. We note that these services must be covered even if coverage for these services is not generally included in the health benefits coverage option selected by the State.

The statute does not define well-baby or well-child care. We have defined well-baby and well-child care for purposes of cost sharing at proposed § 457.520(b), but we propose to allow States to define well-baby and well-child care for coverage purposes. We encourage States, however, to adopt the benefits and periodicity schedules recommended by a medical or professional organization involved in child health care when defining well-baby and well-child care coverage. Well child care includes health care for adolescents and includes the cost sharing prohibitions mentioned at proposed § 457.520(b). We recommend the schedules from the American Academy of Pediatrics, the American Academy of Pediatric Dentistry, and *Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents.*

We propose to require all separate child health programs to follow the recommendations of the Advisory Committee on Immunization Practices (ACIP). The proposed requirements for immunizations under separate child health programs are identical to those under the Medicaid program. The Vaccines for Children (VFC) program, established under section 1928 of the Act also requires providers to immunize eligible children according to the recommendations of ACIP. We note that children enrolled in separate child health programs will not meet the VFC definition of Federally-vaccine eligible because they are not ''uninsured'' and therefore will not be eligible to receive free vaccines as part of the VFC program. State Medicaid programs are required to implement new recommendations of the ACIP within 90 days of their publication. Separate child health programs must also cover newly recommended vaccines within this timeframe. State contracts for CHIP

coverage should provide for coverage of newly recommended vaccines within 90 days of publication of the ACIP recommendations.

We have only recommended that States use the periodicity schedules recommended by certain medical or professional organizations while we propose to require the use of the ACIP schedule for the provision of immunizations. Under the Medicaid program, we do not require a specific periodicity schedule for well-baby and well-child visits except that we do require the ACIP schedule for immunizations. This is because the Medicaid program has no Federal requirements for using a certain periodicity schedule. We do not believe we can hold a State CHIP program to a higher standard than a Medicaid program.

We also propose at § 457.410(b) to require that any health benefits coverage obtained in accordance with this section include emergency services as defined in proposed § 457.402(c). We note that a State may offer different health benefit coverage to children with special needs consistent with the eligibility standards set forth at § 457.320 as long as each benefit package meets the basic coverage requirement. The State can define the health benefit coverage to include supplemental services for children with special needs or physical disabilities. Alternatively, a State may have more than one benefit package that meets all the requirements of this subpart including one designed for children with special needs or physical disabilities, as long as the State complies with the Americans with Disabilities Act in establishing eligibility standards. We also note that if no different benefit packages are offered for children with special needs, they are eligible for whatever child health assistance is available in the State if they meet all other eligibility criteria.

If a State offers a limited package of services to address special needs that is not part of the comprehensive coverage required under this subpart, State expenditures for the limited package would be subject to the 10 percent limitation on Federally-matchable expenditures for items other than the comprehensive coverage package, under section 2105(a)(2) of the Act.

4. Benchmark Health Benefits Coverage (§ 457.420)

Section 2103(b) of the Act sets forth the benchmark benefit packages from which a State may choose. We propose to implement these provisions at § 457.420. We considered the possibility that the health benefits coverage package available under a benchmark plan may change from year to year and the possible need to require an annual review to ensure that the plan continues to meet the requirements of this subpart. However, we do not propose to require an annual review in part because of the requirements of section 2106 of the Act, implemented at § 457.65 of these proposed regulations, which provides that an approved CHIP plan shall continue in effect unless and until the State amends the plan or the Secretary finds substantial noncompliance of the plan. For example, we believe it would be unduly burdensome to require States to review and alter their benchmark benefit package on an annual basis. Therefore, if a State has elected the State employee's health benefit package as its benchmark plan, and the benefit package changes from one year to another, the State is not required to submit a State plan amendment as long as it continues to offer the benefits described in its approved State plan. However, when a State chooses to increase, decrease, or substitute benefits available under its State plan, an amendment must be submitted for approval. The State would then decide whether to continue to use the benchmark plan (including any benefit changes to the original package), provide a benchmark-equivalent using an actuarial analysis, or use one of the other health benefits package options. We will monitor compliance with benchmark requirements as we will with all other requirements of the program as discussed in proposed § 457.150(e).

The statute provides that benchmark coverage must be ''equivalent'' to the benefits coverage in a reference benchmark benefit package. We are proposing to interpret this term to mean ''substantially equal,'' differing only from the reference package as necessary to meet other requirements of Title XXI. Clearly, the word ''equivalent'' cannot reasonably be read to mean ''actuarially equivalent,'' since the statute separately requires actuarial equivalence for benchmark-equivalent coverage. Therefore, we are proposing to require that a benchmark package offered under a separate child health plan can differ from what is otherwise available in the State under the benchmark package only to the extent that the CHIP package must differ to meet the requirements of title XXI. For example, benchmark coverage offered by a State under a separate child health program must include coverage for immunizations even if the benchmark coverage after which the State models the CHIP coverage does not include coverage for immunizations. If the benchmark package chosen by the State does not meet the requirements of title XXI, then the State must enlarge the benchmark benefit package so that it meets the title XXI requirements. The additional benefits should be coordinated to the greatest extent possible with the other benchmark package providers and benefits.

According to the statute, we propose to define benchmark coverage as health benefits coverage that is substantially equal to the health benefits coverage in one of the following benefit packages:

- The Federal Employee Health Benefits Program (FEHBP) Blue Cross/Blue Shield Standard Option Service Benefit Plan with Preferred Provider arrangements;
- A health benefits plan that the State offers and makes generally available to its own employees; or
- A plan offered by a Health Maintenance Organization (HMO) that has the largest insured commercial, non-Medicaid enrollment and is offered by an HMO (as defined in section 2791(b)(3) of the Public Health Service Act) in the State.

Each benchmark benefits package is discussed in detail below.

Federal Employee Health Benefits Plan Blue Cross/Blue Shield Standard Option Service Benefit Plan with Preferred Provider arrangements (FEHBP). The FEHBP is available to Federal employees in all parts of the United States, under 5 U.S.C. 8903(1). Contract No. CS 1039 between the Blue Cross and Blue Shield Association and the U.S. Office of Personnel Management contains a description of the benefits offered under the plan. In addition, the Federal Employees Health Benefits Plan publication RI–71–5 and the plan's home page on the Internet (http://www.fepblue.org) include descriptions of the benefits.

*State Employee Plan.* We propose to allow a State to design a separate child health program under which it offers coverage modeled after the coverage by a health benefits plan that is offered and generally available to its own employees.

*Plan of a health maintenance organization with the largest enrollment in the State. We propose to allow a State to choose as a model for the coverage offered under its separate child health plan the coverage offered by an HMO that has the largest insured commercial non-Medicaid enrollment in the State. As defined in section 2791(b)(3) of the Public Health Service Act, the term ''health maintenance organization'' means—*

- A Federally qualified health maintenance organization as defined in section 1301 of the Public Health Service Act and further described in regulations at 42 CFR part 417, subparts A, B, and C;
- An organization recognized under State law as a health maintenance organization; or
- A similar organization regulated under State law for solvency in the same manner and to same extent as a health maintenance organization as defined in State law.

If the health maintenance organization offers more than one coverage plan, the benchmark plan under the separate child health program must mirror the specific plan offered by the HMO that has the largest commercial enrollment. For example, if an HMO offers different benefit packages to Federal employees, postal employees and private industry employees, respectively, the CHIP benchmark plan must mirror the HMO plan with the largest enrollment. In calculating commercial enrollment, neither Medicaid nor public agency enrollees will be counted. However, Federal employees are considered to be commercial enrollees.

5. Benchmark-Equivalent Health Benefits Coverage (§ 457.430)

Section 2103(a)(2) of the Act provides that a State may opt to design a program under which it offers coverage with an aggregate actuarial value that is at least equal to the value of one of the benchmark benefit packages. In accordance with the statute, we propose at § 457.430 that the benchmark-equivalent coverage must have an aggregate actuarial value, determined in accordance with proposed § 457.431, that is at least actuarially equivalent to coverage under one of the benchmark packages outlined in § 457.420.

In § 457.430 we would set forth the coverage requirements for States selecting the benchmark-equivalent coverage option. Under the authority of section 2103(c)(1), we would specify that a benchmark equivalent plan must include coverage for inpatient and outpatient hospital services, physicians' surgical and medical services, laboratory and x-ray services, immunizations, and well-baby and well-child care, including age-appropriate immunizations provided in accordance with the recommendations of ACIP. We considered proposing minimum standards for basic sets of required services (for example, a minimum of 14 inpatient hospital days). We concluded that it would be unlikely that a State could provide greatly reduced benefits (such as only 2 inpatient hospital days) and still meet the actuarial value requirement. Therefore, we did not propose such minimum standards.

Under the authority of section 2110(a) of the Act (implemented at proposed § 457.402), a State may provide coverage for a wide range of services. If the State provides coverage for prescription drugs, mental health services, vision services, or hearing services the coverage for these services must have an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of service in the benchmark benefit package. In addition, we propose that if the benchmark plan does not cover one of the above additional categories of services, then the benchmark-equivalent coverage package may, but is not required to, include coverage for that category of service. A State may provide services listed in § 457.402 other than the services listed in § 457.430(b) without meeting the 75 percent actuarial value test.

6. Actuarial Report for Benchmark-Equivalent Coverage (§ 457.431)

In accordance with section 2103(c)(4) of the Act, at proposed § 457.431 we would require a State, as a condition of approval of benchmark-equivalent coverage, to provide an actuarial report, with an actuarial opinion that the benchmark-equivalent coverage meets the actuarial requirements of § 457.430.

States are free to pool their resources to obtain actuarial services. The actuarial value of the benchmark coverage and the State-designed benchmark-equivalent coverage, however, will vary from State to State so the determination of actuarial value must be made for each individual State.

We note that some States have suggested that to spare States some of the expense of hiring actuaries, we should determine the actuarial value for the FEHBP Blue Cross Blue Shield (BC/BS) preferred provider option (PPO) because it is a national health insurance plan. We have decided that it would not be feasible for HCFA to determine the actuarial value of the FEHBP plan because the value of the coverage under the plan will vary by State even though the benefit package remains the same. If a State offers benchmark-equivalent coverage, it must obtain an opinion from a member of the American Academy of Actuaries to determine the value of the FEHBP because the actuarial value of this plan will vary from State to State for several reasons, including regional cost variations and differences in the target population.

The actuarial opinion must meet all the provisions of the statute. We propose that the report must explicitly state the following information:

- The actuary issuing the opinion is a member of the American Academy of Actuaries (and meets Academy standards for issuing such an opinion).
- The actuary used generally accepted actuarial principles and methodologies of the American Academy of Actuaries, standard utilization and price factors, and a standardized population representative of privately insured children of the age of those expected to be covered under the State child health insurance plan.
- The same principles and factors were used in analyzing both the proposed benchmark-equivalent coverage and the benchmark coverage, without taking into account differences in coverage based on the method of delivery or means of cost control or utilization used. States must assure that the assumptions used to estimate the State-designed benchmark-equivalent package are the same as those used in the actuarial analysis of the benchmark package. These same assumptions must be used consistently throughout the actuarial analysis.
- The report should also state if the analysis took into account the State's ability to reduce benefits because of the increase in actuarial value due to limitations on cost sharing in the State child health insurance plan.

The report should specify which benchmark plan is being used for comparison. It should also specify the value of the benchmark plan, the value of the coverage under the plan being offered by the State and that the plan meets the overall requirement of actuarial equivalence. In addition, the value of coverage of the specific additional services listed in the statute (prescription drugs, mental heath services, vision services and hearing services) must also meet the 75 percent requirement of substantial actuarial value for each of the additional services included in the benchmark plan. The actuarial opinion should also outline the major differences, if any, in coverage.

The opinion should provide sufficient detail regarding the methodologies used to estimate the value so that HCFA's actuaries can review the States' calculations and assumptions for accuracy and completeness. Should discrepancies arise in the course of our review, the actuaries can request States to provide detail sufficient to allow the actuaries to replicate the results.

The opinion narrative should assure the reviewer that the actuary has taken

into account all factors that affect the relative value of the plans being compared. Adjustments made to data and the rationale for the adjustments should be included. In this way, even if the specifics and the derivation of the adjustments are not specified, we can feel confident that allowances were made for all relevant considerations.

Our review of State plans that elect to adopt an actuarially equivalent benchmark benefit plan may include review by our actuaries. States must submit to HCFA all information necessary for our actuaries to perform this review. We will review the actuarial report as part of the overall plan approval process as described in subpart A of these proposed regulations. When the actuarial report is not complete or raises questions, we will contact the State to request clarification and may request additional information from the State. If, even after the complete information is received, we determine that the benefits do not meet the requirements of title XXI, we may disapprove the State's child health plan.

Several issues and questions have been raised with respect to the actuarial determinations. While these issues have been addressed in the five sets of questions and answers released by HCFA, and available on the HCFA web site, www.hcfa.gov, we will address them here to ensure that States have full knowledge of the issues involved.

We were asked if a State must determine actuarial equivalence of coverage under a benchmark plan for an individual or for a family. The statute does not specify whether the States that decide to use a benchmark-equivalent plan must calculate actuarial equivalence to family coverage or to individual coverage. Therefore, a State may make either comparison. In addition, the coverage offered to families and individuals under a benchmark plan rarely differs. Employees usually have a choice of whether to cover themselves only or themselves and additional family members. Therefore, the actuarial value of family coverage and individual coverage should be essentially the same. We also want to clarify that States should not take premiums into account when determining the actuarial value of a health insurance plan. States should take into account only benefits and cost sharing (such as copayments, coinsurance and deductibles).

7. Existing Comprehensive State-Based Coverage (§ 457.440).

In accordance with section 2103(d) of the Act, at proposed § 457.440 we provide that existing comprehensive State-based health benefits coverage must include coverage of a range of benefits, be administered or overseen by the State and receive funds from the State, be offered in the State of New York, Florida, or Pennsylvania, and have been offered as of August 5, 1997. In essence, Congress deemed the existing State-based health benefit packages of three States as meeting the requirements of section 2103 of the Act. However, these States still need to meet other requirements of title XXI, including requirements relating to cost sharing such as copayments, deductibles and premiums as specified in subpart E of this proposed rule.

We would also specify that the State (Florida, New York, or Pennsylvania) may modify its existing, comprehensive, State-based program under certain conditions. First, the program must continue to offer a range of benefits. Second, the modification must not reduce the actuarial value of the coverage available under the program below either the actuarial value of the coverage as of August 5, 1997 or the actuarial value of a benchmark benefit package. A State must submit an actuarial report when it amends its existing State-based coverage.

Even though the benefits packages offered in Florida, New York, and Pennsylvania were deemed to have met title XXI benefits requirements, these States must still submit CHIP plans for approval by HCFA. Each State plan must demonstrate that the State meets all the title XXI requirements, including the cost sharing requirements specified in subpart E of this proposed rule.

8. Secretary-approved coverage (§ 457.450)

In proposed § 457.450 we discuss the option of providing health benefits coverage under the Secretary-approved health benefits coverage option. Section 2103(a)(4) of the Act defines Secretary-approved coverage as any other health benefits coverage that provides appropriate coverage for the population of targeted low-income children to be covered by the program. A State must select this health benefit coverage option when it submits its plan to HCFA for approval.

We propose that the following coverage be recognized as Secretary-approved coverage under a separate child health program:

- Coverage that is the same as the coverage provided under a State's Medicaid benefit package as described in the existing Medicaid State plan.
- Comprehensive coverage offered under a § 1115 waiver that either includes coverage for the full EPSDT benefit or that the State has extended to the entire Medicaid population in the State.
- Coverage that includes benchmark coverage, as specified in § 457.420, plus additional coverage. Under this option, the State must clearly demonstrate that it provides all the benchmark coverage.
- Coverage, including coverage under an employer-sponsored group health plan, purchased by the State that the State demonstrates to be substantially equal to benchmark coverage, as specified in § 457.420, through use of a benefit-by-benefit comparison of the coverage compared to a benchmark plan. Under this option, if there is just one benefit that does not meet or exceed the benchmark, the State must provide an actuarial analysis to determine actuarial equivalence. At this point, it would no longer be Secretarial approved coverage and would fall under benchmark equivalent health benefits coverage under § 457.430.

While these four options have been identified for permissible Secretarial-approved coverage, we solicit comments on other specific examples of coverage packages that States have developed that meet the title XXI requirements.

We also propose that no actuarial analysis is required for Secretary-approved coverage except for coverage that does not meet or exceed benchmark coverage. States should be cognizant, however, that to date we have not allowed a State to offer a health benefits package that does not provide all of the coverage provided under a benchmark plan without requiring the State to submit an actuarial analysis. We have approved some State plans under which the States offer health benefit packages that provide all the coverage of the benchmark package plus additional coverage. In approving State child health plans, we intend to ensure that children receive services that are cost effective, comprehensive, and high-quality. If a State wants to reduce any benchmark benefit, it must use the benchmark-equivalent coverage option.

9. Prohibited Coverage (§ 457.470)

In accordance with section 2103(c)(5) of the Act, we propose at § 457.470 that a State is not required to provide health benefits coverage under the plan for an item or service for which payment is prohibited under title XXI even if any benchmark package includes coverage for such item or service.

10. Limitations on Coverage: Abortions (§ 457.475)

This section would implement sections 2105(c)(1) and (c)(7) of the Act, which set limitations on payment for

abortion services under the CHIP program. At § 457.475, we propose that FFP is not available in expenditures for an abortion, or in expenditures for the purchase of health benefits coverage that includes coverage of abortion services, unless the abortion is necessary to save the life of the mother or the abortion is performed to terminate a pregnancy resulting from an act of rape or incest.

Additionally, we propose that FFP is not available to a State for any amount expended under its title XXI plan to assist in the purchase, in whole or in part, of health benefits coverage that includes coverage of abortions other than to save the life of the mother or resulting from an act of rape or incest.

We also would provide that, if a State wishes to have managed care entities provide abortions in addition to those specified above, those abortions must be provided pursuant to a separate contract using non-Federal funds. Under our proposal, a State may not set aside a portion of the capitated rate to be paid with State-only funds, or to append riders, attachments, or addenda to existing contracts to separate the additional abortion services from the other services covered by the contract. We believe that these requirements are necessary to enforce the statutory prohibition against the purchase of health benefits coverage that includes abortion services not explicitly permitted by the statute. However, the proposed regulation also specifies that this requirement should not be construed as restricting the ability of any managed care provider to offer abortion coverage or the ability of a State or locality to contract separately with a managed care provider for additional abortion coverage using State or local funds.

11. Preexisting Condition Exclusions and Relation to Other Laws (§ 457.480)

In proposed § 457.480 we discuss the provisions of sections 2103(f), 2109 and 2110(c) of the Act. We propose to adopt the definitions of ''creditable coverage,'' ''group health plan,'' ''group health insurance coverage,'' ''health insurance coverage,'' and ''preexisting condition exclusion'' set forth in the HIPAA regulations at 45 CFR 144.103 and 146.133. Definitions for these terms are set forth at proposed § 457.10.

In proposed § 457.480(a) we implement section 2103(f)(1) of the Act and provide that, subject to the exceptions in paragraph (b), a State child health plan may not permit the imposition of any preexisting condition exclusion for covered benefits under the plan. Further, in paragraph (b), we would specify that if the State child health plan provides for benefits through payment for, or a contract with, a group health plan or group health insurance coverage, the plan may only permit the imposition of a preexisting condition exclusion insofar as it is permitted under HIPAA.

In paragraphs (c)(1) through (c)(4), we would set forth the requirement of sections 2109 and 2103(f)(2) of the Act, which provides that State plans must comply with the requirements of subpart 2 of part A of title XXVII of the PHS Act and certain other provisions of law. Specifically, we have included section 514 of ERISA, HIPAA, the Mental Health Parity Act of 1996 (MHPA), regarding parity in the application of annual and lifetime dollar limits to mental health benefits, and the Newborns and Mothers Health Protection Act of 1996 (NMHPA), regarding requirements for minimum hospital stays for mothers and newborns. See regulations at 45 CFR 146.136 for a discussion of the MHPA and 45 CFR 146.130 and 148.170 for a discussion of the NMHPA.

12. Delivery and Utilization Control Systems (§ 457.490)

In accordance with section 2102(a)(4) of the Act, proposed § 457.490 requires that State plans include a description of the type of child health assistance to be provided including the proposed methods of delivery and proposed utilization control systems. In describing the methods of delivery of the child health assistance using title XXI funds, the State should address its choice of financing the insurance products and the methods for assuring delivery of the insurance product to children. These methods may include, but are not necessarily limited to, contracts with managed health care plans (including fully and partially capitated plans), contracts with indemnity health insurance plans, and other arrangements for health care delivery. The State should describe any variations based upon geography, as well as the methods for establishing and defining the delivery systems.

Utilization control systems are administrative mechanisms designed to ensure that children use only health care that is appropriate, medically necessary and approved by the State or its subcontractor. Examples of utilization control systems include, but are not limited to, requirements for referrals to specialty care, requirements that clinicians use clinical practice guidelines, or demand management systems (such as, use of an 800 number for after-hours and urgent care). The State should describe its plan for review, coordination, and implementation of utilization controls, addressing other procedures and State developed standards for review, in order to assure that necessary care is delivered in a cost-effective and efficient manner.

13. Grievances and Appeals (§ 457.495)

At proposed § 457.495, we would require States to provide enrollees in a separate child health program the right to file grievances or appeals for reduction or denial of services in accordance with proposed § 457.985.

*E. Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities*

1. Basis, Scope, and Applicability (§ 457.500)

States that implement a separate child health program may impose cost sharing charges on beneficiaries. A State that chooses to impose cost sharing charges on beneficiaries must meet the requirements described in section 2103(e) of the Act. These requirements apply to all separate child health programs regardless of the type of coverage (benchmark, benchmark equivalent, Secretary-approved or existing comprehensive State-based coverage) provided through the program. These requirements also apply when a State purchases family coverage for the targeted low-income child under the waiver authority of section 2105(c)(3) of the Act and proposed § 457.1010 and when a State provides premium assistance for employer-sponsored group health plan coverage under proposed § 457.810.

Under section 2103(e)(1) of the Act, when a State determines it will impose cost sharing, the State plan must include a description of the amount of premiums, deductibles, coinsurance and other cost sharing charges imposed. If the State chooses to vary cost sharing charges, the State plan may only vary premiums, deductibles, coinsurance, and other cost sharing based on family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income. Also, the State must make available a public schedule of any cost sharing charges imposed under the State plan.

Section 2103(e)(2) specifies that a State may not impose cost sharing charges on benefits for certain preventive services. Section 2103(e)(3) specifies the limitations on the amount of cost sharing charges that may be imposed on a beneficiary, including a cumulative cost sharing maximum on

cost sharing imposed on children in families with income above 150 percent of the FPL. Section 2103(e)(4) clarifies that CHIP cost sharing rules will not apply to beneficiaries who are provided child health assistance in the form of coverage under a Medicaid expansion program.

This subpart consists of provisions relating to the imposition under a separate child health program of cost sharing charges including enrollment fees, premiums, deductibles, coinsurance, copayments, and similar cost sharing charges. This subpart does not apply to States that provide child health assistance through a Medicaid expansion program.

2. General State Plan Requirements (§ 457.505)

Section 2103(e)(1)(A) of the Act specifies that a State plan must include a description of the amount (if any) of premiums, deductibles, coinsurance, and other cost sharing imposed. Section 2103(e)(1)(A) also specifies that any such charges be imposed pursuant to a public schedule. In accordance with the statute, at § 457.505, we propose that the State plan must include a description of the amount of premiums, deductibles, coinsurance, copayments, and other cost sharing imposed. We further propose that the State plan include a description of the methods, including the public schedule, the State uses to inform beneficiaries, applicants, providers, and the general public of cost sharing charges, the cumulative cost sharing maximum, and any changes in these amounts. Under § 457.525, the State may choose to include the public schedule in pamphlets, separate mailings, or newspapers to inform the public of beneficiary financial responsibilities under the program.

We also propose that States that purchase family coverage under the authority provided in section 2105(c)(3) and proposed § 457.1010, or provide premium assistance for employer-sponsored group health insurance (as defined in proposed § 457.10) have a process in place to ensure that providers do not charge beneficiaries for copayments, coinsurance, deductibles, or similar fees for well-baby and well-child care services as defined in proposed § 457.520 and do not charge AI/AN children cost sharing as required in proposed § 457.535. We would also provide that a procedure that primarily relies on a refund given by the State for a beneficiary's cost sharing payment of well-baby/well child-care services is not an acceptable procedure. An acceptable alternative approach would be one where a State requires that providers bill the State directly for copayments that are not permissible, or provides beneficiaries with identification that providers can use to verify that these beneficiaries are not subject to cost sharing on these services and therefore not charge cost sharing to such beneficiaries. We also propose that in States that purchase family coverage or provide premium assistance for employer-sponsored health insurance that the State have a process to ensure that beneficiaries do not pay cost sharing over the cumulative cost sharing maximums proposed in § 457.555. We emphasize that this process must not rely on a refund for cost sharing in excess of the cumulative cost sharing maximum.

3. Premiums, Enrollment Fees, or Similar Fees: State Plan Requirements (§ 457.510)

Section 2103(e)(1)(A) of the Act requires that the State plan include a description of the amount of premiums, deductibles, coinsurance and other cost sharing imposed pursuant to a public schedule. Section 457.510 proposes that when a State imposes premiums, enrollment fees, or similar fees on CHIP beneficiaries, the State plan must describe the amount of the premium, enrollment fee, or similar fee, the period of liability for the charge, and the group or groups that will be subject to the cost sharing charge.

We also propose that the State plan include a description of the consequences for a beneficiary who does not pay required charges. For example, some States disenroll a beneficiary for non-payment of certain co-payment or premium charges. Under our proposed regulations, these States would discuss this disenrollment policy in full, including the State's policy on reenrollment of the child once payment of the charge is made, and any ''grace period'' allowed after non-payment such as, notification to beneficiary for failure to pay after one month or cancellation after two months of non-payment. We would also require the State to indicate any beneficiary groups that are exempt from the disenrollment policy.

In addition, proposed § 457.510 would require that the State plan include a description of the methodology used to ensure that total cost sharing liability for a beneficiary's families does not exceed the cumulative cost sharing maximums as required by section 2103(e)(3)(B) of the Act and specified in proposed § 457.555. This description must explain how the State calculates total income for each family, and how the State will prevent charges over the cumulative costs sharing maximums.

The State's methodology should include a refund for a beneficiary who accidentally pays over his or her cumulative cost sharing maximum. However, as stated earlier, we propose that a methodology that primarily relies on a refund to the beneficiary for cost sharing payments made over the cumulative cost sharing maximum will not be an acceptable methodology.

Many States that impose cost sharing have established a ''shoe-box'' policy. Under this policy, the beneficiary's family is responsible for demonstrating with receipts that he or she has paid cost sharing charges up to the cumulative maximum cost sharing charges (5 percent of the family's total income). Concern has been raised that the beneficiary's family should not have the primary responsibility for ensuring that it does not make payments that exceed the cumulative cost sharing maximum.

We asked George Washington University's Center for Health Policy Research to conduct a study on the types of methods States and private insurance companies use to track cost sharing amounts against a beneficiary's out-of-pocket expenditure cap. The George Washington study concluded that the risk that a beneficiary in a family with income above 150 percent of the FPL will reach the cumulative cost sharing maximum (5 percent of family income cap) is minimal since the amounts of cost sharing States are currently imposing are relatively low. The study also found that most of the States hold the beneficiary responsible for demonstrating with receipts that he or she has paid cost sharing charges up to the cumulative cost sharing maximum. George Washington also noted that the private insurers typically rely on the beneficiary when tracking out-of-pocket expenses.

The George Washington study also found that while the risk of reaching the cumulative cost sharing maximum was relatively low for children in families above 150 percent of the FPL, this risk increases for a family that has a child with a chronic condition. The statute does not require States to count the beneficiary's costs of paying for services not covered under the plan towards the cumulative cost sharing cap. The George Washington study found that since States are not required to count non-covered services toward the cumulative cost sharing maximum, a chronically ill child could be subject to the financial burdens of cost sharing charges for services not covered under the State plan, in addition to the payments for

services that are covered under the State plan. This policy could be especially burdensome on children in States with benefit packages under a separate child health program that do not cover a wide range of services. Therefore, a family with a chronically ill child may be faced with extraordinary expenses. Based on these findings, we believe a statutory change will be needed to prevent the additional burden of cost sharing on children with chronic conditions.

Until any such statutory change is enacted, we recommend that States, when possible, develop a more formal tracking mechanism when imposing cost sharing charges, especially when States impose cost sharing charges on children with chronic conditions. We believe that a tracking mechanism that does not rely on the beneficiary demonstrating to the State that he or she has met the cumulative cost sharing maximum would be preferable. An example of a formal tracking mechanism is when a State issues a swipe card to a beneficiary at the time of enrollment which is used to record the cost sharing amounts a provider collects. Once the beneficiary reaches his or her cumulative cost sharing maximum as indicated by the swipe card, the provider cannot collect additional cost sharing amounts from the beneficiary. Another example of a formal tracking mechanism is to issue a credit card to the beneficiary. The beneficiary can use this card to pay his or her copayments to the provider. The State will bill the beneficiary for the copayments and reimburse the provider. A provider would be able to determine if the beneficiary has reached his or her credit card maximum by calling the State agency to obtain the credit limit available.

To address the needs of the chronically ill child, the George Washington University study also suggests that States assign chronically ill children to a case manager who will be responsible for assuring that the beneficiary's cost sharing does not exceed the cumulative cost sharing maximum. Also, while a State is not required to count non-covered services costs towards the cumulative maximum, we recommend that a State count these costs towards the cumulative cost sharing maximum, when possible.

While we require that the State plan describe a method of ensuring that beneficiaries do not exceed the cumulative cost sharing maximum, the previous examples are only recommendations. We solicit comments on tracking mechanisms States can use that do not place the burden of tracking cost sharing charges on the beneficiary.

4. Copayments, Coinsurance, Deductibles, or Similar Cost Sharing Charges: State Plan Requirements (§ 457.515)

In addition to proposed § 457.510, proposed § 457.515 is also based on section 2103(e)(1)(A) of the Act, which requires that the State child health plan include a description of the amount of premiums, deductibles, coinsurance and other cost sharing imposed. We propose that the State plan describe the following elements regarding copayments, coinsurance, deductibles or similar fees: the amount of the copayments, coinsurance, deductibles, or similar fees; the time period for which the charge is imposed; the group of beneficiaries to whom the charge applies; the consequences for a beneficiary who does not pay a charge; and the service on which the charge is made. Also, as stated in the discussion of § 457.510, for State plan requirements for imposing premiums, we propose that the State plan describe the methodology used to ensure that total cost sharing liability for a beneficiary's family does not exceed the cumulative cost sharing maximums. This description must explain how the State calculates total income for each family, and how the State will prevent charges over the cumulative cost sharing maximums.

Finally, we propose that, in accordance with the prudent layperson standard in the *Consumer Bill of Rights and Responsibilities*, States must provide assurances that enrollees will not be held liable for costs for emergency services above and beyond the copayment amount that is specified in the State plan. We propose that States must work with their managed care contractors to absorb any additional costs associated with providing emergency room services at a facility that is not a participating provider in the enrollee's managed care plan or network. In addition, although no State has proposed to include such a provision in a State child health plan, we considered options for requiring States to assure that copayment amounts for emergency services do not vary depending on the location (in or out of the managed care network) at which those services were provided. In keeping with the prudent layperson standard of assuring immediate access to emergency care, we have elected to propose this prohibition on differential copayments. However, we have also taken into consideration the importance of consistency between HCFA's programs (Medicare, Medicaid and CHIP) in this area. For example, we considered adopting the policy outlined in the proposed Medicare+Choice regulation, which limits cost sharing for emergency services obtained outside of the M+C plan's provider network equal to the lesser of $50 or what the organization may charge within the managed care network. We also considered that it would be appropriate to lower this dollar limit to accommodate the lower income population being served in this program. We welcome comments on these issues.

5. Cost Sharing for Well-Baby and Well-Child Care (§ 457.520)

Under section 2103(e)(2) of the Act, the State plan may not impose copayments, deductibles, coinsurance or other cost sharing with respect to well-baby and well-child care services in either the managed care or the fee-for-service delivery setting. We have set forth in the proposed regulation services that constitute well-baby and well-child care for purposes of cost sharing. We propose to define these well-baby and well-child services to include the definition of well-baby and well-child care used by the *American Academy of Pediatrics* (AAP) and incorporated in the Federal Employees Health Benefits Program (FEHBP) Blue Cross and Blue Shield benchmark plan.

We also propose to apply the prohibition on cost sharing to services that fit the definition of routine preventive dental services used by the *American Academy of Pediatric Dentistry* (AAPD) when a State opts to cover these services under its program. We propose to prohibit cost sharing for these services for two reasons. First, preventive dental care can be viewed as the oral health equivalent of immunizations in that it can prevent most cavities and subsequent tooth loss, both of which are highly correlated to poverty and lack of access to dental care. Second, we found that the prevailing practice among State employee plans and large health maintenance organizations (HMOs) is to pay 100 percent for any routine preventive and diagnostic dental benefits offered.

Accordingly, we propose at § 457.520 that when the State opts to cover the following services, they must be considered well baby and well child care services for the purposes of the prohibition of cost sharing under section 2103(e)(2):

- All healthy new born inpatient physician visits, including routine screening (inpatient and outpatient).
- Routine physical examinations.
- Laboratory tests.

• Immunizations, and related office visits as recommended in the AAP's ''Guidelines for Health Supervision III'' (June 1997), and described in ''*Bright Futures:* Guidelines for Health Supervision of Infants, Children, and Adolescents'' (Green M., (ed.). 1994).

• When covered under the State plan, at the State's option, routine preventive and diagnostic dental services (for example, oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays) as described by the AAPD's current Reference Manual (Pediatric Dentistry, Special Issue, 1997–1998, vol 19:7, page 71–2).

6. Public Schedule (§ 457.525)

Section 2103(e)(1)(A) of the Act requires that the State provide a public schedule of all cost sharing charges. The statute does not specify the standards a State must meet when making the cost sharing schedule available to the public, and allows States a great amount of flexibility in developing cost sharing policies. Therefore, we believe that the more information the State includes in the public schedule regarding its cost sharing policy, the more informed beneficiaries will be about their financial responsibilities under their State's separate child health program. We propose that the public schedule contain at least the current CHIP cost sharing charges, the beneficiary groups on which cost sharing will be imposed (for example, cost sharing imposed only on children in families with income above 150 percent of the FPL), the cumulative cost sharing maximum allowed under § 457.555, and the consequences for a beneficiary who fails to pay a cost sharing charge. We also propose that the State must make the public schedule available to beneficiaries at the time of enrollment and when the State revises the cost sharing charges and/or cumulative cost sharing maximum, applicants at the time of application, and the general public. To ensure that providers impose appropriate cost sharing charges at the time services are rendered, we also propose that the public schedule must be made available to all CHIP participating providers.

7. General Cost Sharing Protection for Lower Income Children (§ 457.530).

At proposed § 457.530, we would implement section 2103(e)(1)(B) of the Act, which specifies that the State plan may only vary premiums, deductibles, coinsurance, and other cost sharing charges based on the family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income. This statutory provision and the implementing regulations apply to all cost sharing imposed on children regardless of family income level. A State would not be in compliance with this provision if, for example, it imposed cost sharing charges on families at 150 percent of the FPL that were more than the cost sharing amounts imposed on children in families at 200 percent of the FPL.

8. Cost Sharing Protection To Ensure Enrollment of American Indians/Alaska Natives (§ 457.535)

Section 2102(b)(3)(D) of the Act requires the State plan to include a description of the procedures used to ensure the provision of child health assistance to targeted low-income children in the State who are American Indians. We are concerned that States that impose cost sharing on children in American Indian/Alaska Native (AI/AN) families will restrict access to essential CHIP services for this vulnerable beneficiary group, and may impact the State's ability to ensure coverage for this group as required under section 2102(b)(3)(D) of the Act.

Title VI of the Civil Rights Act of 1964 prohibits programs receiving Federal financial assistance from discriminating on the basis of race, color or national origin. But title VI does not preclude the Federal government from requiring States to recognize unique obligations to AI/ANs under Federal law. Based upon the unique legal status of Tribes under Federal law, the Federal government's trust and responsibility toward AI/ANs as authorized by Congress, and the requirements under section 2102(b)(3)(D) of the Act, HCFA must affirmatively address barriers to AI/AN enrollment. Moreover, access to health care funded by the Indian Health Service (IHS), which is available without charge, creates a unique disincentive to AI/AN enrollment in a CHIP program that imposes cost sharing. Thus, we believe that in some States, targeted incentives for AI/AN enrollment, including waiver of cost sharing, is consistent with title VI of the Civil Rights Act of 1964 and warranted by the CHIP statute.

Therefore, we propose that States must exclude children from AI/AN families from the imposition of premiums, deductibles, coinsurance, copayments or any other cost sharing charges. For the purposes of this section, we propose to use the definition of Indians referred to in section 2102(b)(3)(D) of the Act, which defines Alaska Natives and American Indians as Indians defined in section 4(c) of the Indian Health Care Improvement Act, 25 U.S.C. 1603(c). We would also specify in the regulation that the State only grant this exception to AI/AN members of a Federally recognized tribe (as determined by the Bureau of Indian Affairs).

We realize that when States impose cost sharing on their CHIP beneficiaries States will need to identify AI/AN children of Federally recognized tribes for the purpose of waiving this group from premiums and other cost sharing. States will need to request from applicants identification that verifies the AI/AN status of the child. For example, the State may ask for Tribal membership identification or a Certificate of Indian Blood (CIB) to verify the applicant's AI/AN status. Eligibility enrollment staff should be trained to present, in a culturally sensitive manner, the option to AI/AN beneficiaries of either presenting their identification to the State or foregoing their option to be exempt from cost sharing.

States should strive to inconspicuously identify AI/AN children when waiving cost sharing that is typically collected by providers (for example—deductibles, copayments, and coinsurance). For example, a State that waives lower-income CHIP children from copayments in addition to AI/AN children should provide both waived groups with similar identification. The AI/AN child should not be separately identified from other beneficiary groups whose copayments have been waived. Another example of inconspicuously identifying AI/AN children is by providing identification (via a special code or color on the CHIP insurance card, or providing cost sharing amounts on the card) to those who are subject to cost sharing.

We believe that most States and their providers will not realize a negative financial impact by the mandatory waiver on AI/AN cost sharing. However, we understand that those States with a significant AI/AN population enrolled in their CHIP program may have to adjust payment rates to providers or capitation payments to MCOs since these entities can no longer collect cost sharing from AI/AN children. State eligibility systems and billing systems will also need to be adjusted to account for the mandatory waiver of cost sharing for the AI/AN children.

9. Cost Sharing Charges for Children in Families at or Below 150 Percent of the Federal Poverty Line (FPL) (§ 457.540)

Section 2103(e)(3) of the Act sets forth the limitations on premiums and other

cost sharing charges for children in families at or below 150 percent of the FPL. In accordance with section 2103(e)(3)(A)(i) of the Act, we propose that in the case of a targeted low-income child whose family income is at or below 150 percent of the FPL, the State plan may not impose any enrollment fee, premium, or similar charge that exceeds the charges permitted under the Medicaid regulations at § 447.52, which implement section 1916(b)(1) of the Act. Section 447.52 specifies the maximum monthly charges in the form of enrollment fees, premiums, and similar charges, for Medicaid eligible families. We propose to apply these Medicaid maximum monthly charges to the charges imposed on children of families whose incomes are at or below 150 percent of the FPL under CHIP. The Medicaid rules limit premiums to a specified monthly amount per family according to a sliding income scale. For example, the maximum monthly charge for a family with $1001 monthly income is $19 for a family of 1 or 2 persons, $16 for a family of 3 or 4, and $15 for a family of 5 or more. The regulations prescribe lower maximum monthly charges for families with lower income.

Section 2103(e)(3)(A)(ii) provides that copayments, coinsurance or similar charges imposed on children in families with income at or below 150 percent of the FPL must be equal to or less than the amounts considered nominal (as determined consistent with regulations referred to in section 1916(a)(3) of the Act), with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable. The Medicaid regulations that set forth these nominal amounts are located at § 447.54. For children whose family income is at or below 100 percent of the FPL, we propose that any copayments, coinsurance, deductibles or similar charges remain equal to or less than the amounts permitted under the Medicaid regulations at § 447.54. Because the statute gives the Secretary the authority to adjust the limitations found in § 447.54, for children whose family income is 101 percent to 150 percent of the FPL we propose adjusted nominal amounts for copayments, coinsurance, and deductibles to reflect the CHIP beneficiary's ability to pay higher cost sharing. We also propose that the frequency of cost sharing meet the requirements noted in proposed § 457.550. These restrictions are adopted from the Medicaid rules at § 447.53(c). The proposed restrictions are discussed more fully in the discussion regarding § 457.550 below.

We propose that the cost sharing imposed on children in families with income at or below 150 percent of the FPL be limited to a cumulative maximum. Specifically, we have proposed that total cost sharing imposed on children in this population be limited to 2.5 percent of a family's income for a year (or 12 month eligibility period). A more in-depth discussion on the cumulative cost sharing maximum as proposed in § 457.555, and our rationale for the 2.5 percent cumulative cost sharing maximum is discussed later in the preamble to this proposed rule.

10. Cost Sharing for Children in Families Above 150 Percent of the FPL (§ 457.545)

Section 2103(e)(3)(B) mandates that the total annual aggregate cost sharing with respect to all targeted low-income children in a family with income above 150 percent of the FPL not exceed 5 percent of such a family's income for the year involved. The proposed regulation provides that the plan may not impose total premiums, enrollment fees, copayments, coinsurance, deductibles, or similar cost sharing charges in excess of 5 percent of a family's income for a year (or 12 month eligibility period).

11. Restriction on the Frequency of Cost Sharing Charges on Targeted Low-Income Children in Families at or Below 150 Percent of the FPL (§ 457.550)

Section 2103(e)(3)(A)(ii) of the Act specifies that the State plan may not impose a deductible, cost sharing, or similar charge that exceeds an amount that is nominal as determined consistent with regulations referred to in section 1916(a)(3) of the Act, ''with such appropriate adjustments for inflation or other reasons as the Secretary determines to be reasonable''. In order to protect families at or below 150 percent of the FPL from excessive charges, we would adopt the Medicaid rule at § 447.53(c) that does not permit the plan to impose more than one type of cost sharing charge (deductible, copayment, or coinsurance) on a service. Under this rule, for example, a plan could not impose a copayment for a service if there is a deductible for the same service. We would also provide that a State may not impose more than one cost sharing charge for multiple services provided during a single office visit. For example, a beneficiary cannot be charged two copayments for two sets of lab tests performed during one visit. In addition, under our proposal a beneficiary cannot be charged two copayments if the beneficiary was seen by two different physicians during one visit.

We would also adopt the Medicaid rules at § 447.55 regarding standard copayments. Specifically, we would provide that States can establish a standard copayment for any service. We propose to expand upon the Medicaid rules and allow States to provide a standard copayment amount for any visit. Similar to the provisions at § 447.55 that allow a standard copayment to be based upon the average or typical payment of the service, our provision would allow a State to impose a standard copayment per visit based upon the average cost of a visit up to the copayment limits specified at proposed § 457.555(a).

12. Maximum Allowable Cost Sharing Charges on Targeted Low-Income Children at or Below 150 Percent of the FPL (§ 457.555)

Section 2103(e)(3)(A)(ii) of the Act specifies that the State plan may not impose a deductible, cost sharing, or similar charge that exceeds an amount that is nominal as determined consistent with regulations referred to in section 1916(a)(3) of the Act, ''with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable''. Because CHIP is designed for families with incomes above the Medicaid eligibility levels, we believe it is reasonable to set maximum copayments that are higher than those under the Medicaid program, which are set forth at §§ 447.53 and 447.54. Therefore, we propose provisions regarding maximum allowable cost sharing charges on targeted low-income children at 101 to 150 percent of the FPL that mirror the provisions of §§ 447.53 and 447.54 but are adjusted to permit higher amounts.

For noninstitutional services provided to targeted low-income children whose family income is from 101 to 150 percent of the FPL, we propose a maximum copayment charge of $5.00 (as opposed to the $3.00 maximum copayment charge under Medicaid). When deciding how to adjust the Medicaid copayment maximums for the CHIP population, we considered adjusting for current dollars the copayment maximums at § 447.54(a)(3) (which were published in 1976) using the Consumer Price Index (CPI) for all items, CPI—Medical Services, and Real Personal Income Growth. After considering the figures computed using these inflation adjustments, current copayment levels under State programs, and the potential overall impact of copayments on the utilization of services by children in families with incomes at or below 150 percent of the FPL, we propose the following service

payment and copayment maximum amounts:

| Payment for the service | Maximum amount chargeable to beneficiary |
|---|---|
| $15.00 or less | $1.00 |
| $15.01 to $40 | 2.00 |
| $40.01 to $80 | 3.00 |
| $80.01 or more | 5.00 |

We also propose to set a maximum per visit copayment amount for beneficiaries enrolled in managed care organizations. The Medicaid regulations do not address cost sharing for HMO enrollees and therefore do not address a maximum charge on cost sharing in this setting. The $5.00 maximum copayment per visit is based upon the maximum copayment per service amount noted in the preceding chart. We urge States to apply this requirement in a way that continues to protect beneficiaries from unnecessarily high out-of-pocket costs that would prevent children from accessing essential services.

We propose to set a maximum on deductibles of $3.00 per month per family. This CHIP maximum deductible is higher than the Medicaid maximum deductible of $2.00 per month per family. If a State imposes a deductible for a time period other than a month, the maximum deductible for that time period is the product of the number of months in the time period and $3.00. For example, the maximum deductible that a State may impose on a family for a three-month period is $9.00.

We also propose, for the purpose of maximums on copayments and coinsurance, that the maximum copayment or coinsurance rate relate to the payment made to the provider, regardless of whether the payment source is the State or an entity under contract with the State.

With regard to institutional services provided to targeted low-income children whose family income is from 101 to 150 percent of the FPL, we propose to use the standards set forth in the Medicaid regulations at § 447.54(c). Accordingly, we propose to require that for targeted low-income children whose family income is at or below 150 percent of the FPL, the State plan must provide that the maximum deductible, coinsurance or copayment charge for each institutional admission does not exceed 50 percent of the payment made for the first day of care in the institution. Again, we have clarified that the percentage applies to the payment of the service regardless of the payment source.

We propose to allow States to impose a charge for non-emergency use of the emergency room up to twice the nominal charge for noninstitutional services provided to targeted low-income children whose family income is from 101 to 150 percent of the FPL. Medicaid regulations at § 447.54(b) specify that a waiver of the nominal requirement is permitted when non-emergency services are furnished in a hospital emergency room. We propose that the State be permitted, without a waiver from HCFA, to charge twice the noninstitutional copayment amount permitted when a beneficiary uses an emergency room for nonemergency services, capped at a maximum of ten dollars. This requirement would allow States the flexibility to charge cost sharing amounts on inappropriate use of the emergency room, without the burden of requesting a waiver from HCFA. The proposed ten dollar maximum is twice the proposed nominal copayment maximum ($5.00) for noninstitutional services under CHIP. Finally, in § 457.555(d), we proposed that States must assure that enrollees can receive emergency services from any qualified provider, regardless of whether the enrollee's managed care plan has a contract with that provider. We proposed this provision because emergency care, by its nature, may need to be obtained from the nearest available qualified provider. In addition, we propose that States must assure that enrollees are not held liable for any additional costs, beyond the standard co-payment amount, of emergency services furnished outside of the individuals managed care network.

13. Cumulative Cost Sharing Maximum (§ 457.560)

Section 2103(e)(3)(B) of the Act provides that any premiums, deductibles, cost sharing or similar charges imposed on targeted low-income children in families above 150 percent of the FPL may be imposed on a sliding scale related to income, except that the total annual aggregate cost sharing with respect to all targeted low-income children in a family may not exceed 5 percent of the family's income for the year involved. We refer to this cap on total cost sharing as the cumulative cost sharing maximum.

We propose two general rules regarding the cumulative cost sharing maximum. First, a State may establish a lower cumulative cost sharing maximum than that specified in § 457.560. Second, a State must count cost sharing amount that the family has a legal obligation to pay when computing whether a family has met the cumulative cost sharing maximum. We propose to define the term ''legal obligation'' as the family's obligation to pay amounts the provider actually charges the family and any other amounts for which the family is legally liable even if the family never pays those amounts. For example, a cost sharing charge that is billed to the family but not paid must nevertheless be counted toward the cumulative cost sharing maximum. We note that a State that purchases family coverage under the authority of 2105(c)(3) of the Act may want to count cost sharing imposed on adult family members against the cumulative cost sharing maximum. This practice is permissible but not mandatory because the statutory provisions on the cumulative cost sharing maximum specify that only cost sharing charges associated with targeted low-income children be counted toward the cumulative cost sharing maximum. However, the statute does not preclude a State from including other cost sharing charges.

We propose that for children in families above 150 percent of the FPL, the plan may not impose premiums, enrollment fees, copayments, coinsurance, deductibles, or similar cost sharing charges in excess of 5 percent of a family's income for a year (or 12 month eligibility period). We propose that for targeted low-income children in families at or below 150 percent of the FPL, the plan may not impose premiums, deductibles, copayments, co-insurance or similar cost sharing charges that, in the aggregate, exceed 2.5 percent of total family income for the year. Section 2103(e)(3)(A) gives the Secretary the authority to adjust cost sharing amounts so that they remain nominal, consistent with Medicaid regulations. The requirement at section 2103(e)(1)(B), which does not allow a State to impose cost sharing that favors children from families with higher income over children from families with lower income, and the Secretary's authority to make appropriate adjustments to permissible cost sharing amounts under section 2103(e)(3)(A)(ii), serve as the basis for our proposal to place a cumulative cost sharing maximum on the amount of cost sharing imposed on children at or below 150 percent of the FPL.

We believe that the lower maximum is consistent with the Congressional intent of section 2103(e)(1)(B) because it will ensure that children from families with higher income (over 150 percent of the FPL) are not favored over children from families with lower income (at or below 150 percent of the FPL). In addition, we reviewed cost sharing and

premium maximums for families whose incomes are under 150 percent of the FPL, under approved State plans. After this review, we specifically analyzed cost sharing maximums in six States that impose a maximum other than the 5 percent maximum imposed under § 457.560(c) to determine the percentage of income that a full payment of the cost sharing represents for a family of four at 100 percent of the FPL, which for FY 1998 is $16,450. For example, one State imposed a $250 per year per family cap on cost sharing. This amount represents approximately 1.5 percent of the income of a family at 100 percent of the FPL. We found that the cost sharing maximums range from a low of .72 percent of the income at 100 percent of the FPL to a high of 3 percent of the family's income at 100 percent of the FPL.

The majority of the States' cost-sharing maximums represented between 2 to 3 percent of the income of a family at 100 percent of the FPL. We therefore propose that a cumulative cost sharing maximum of 2.5 percent of the family's income (or an equivalent dollar amount) be placed on cost sharing imposed on children in families below 150 percent of the FPL. We encourage States and beneficiary groups to submit comments regarding our proposed limit on this population, because our historical data regarding cost sharing on this part of the CHIP population is limited.

Depending on the income level of the family, the cumulative cost sharing maximum would thus be set as 2.5 or 5 percent of a family's income. The State may define family income as it chooses, as long as under the State's definition, family income is no more than gross family income used by the State for determining CHIP eligibility prior to the application of disregards or exclusions.

14. Grievances and Appeals (§ 457.565)

We propose that the State must provide enrollees in a separate child health plan the right to file grievances and appeals in accordance with proposed § 457.985 for disenrollment from the program due to failure to pay cost sharing.

15. Disenrollment Protections (§ 457.570)

Section 2101(a) of the Act provides that the purpose of title XXI is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Based upon this provision of the statute, we propose in § 457.570 to require that States establish a process that gives beneficiaries reasonable notice of and an opportunity to pay past due cost sharing amounts (premiums, copayments, coinsurance, deductibles and similar fees) prior to disenrollment. We would require that States have this process in place because we do not believe it would be effective and efficient to disenroll a child without notice to the family of the impending disenrollment, or if a family was experiencing temporary financial hardship and could not afford to pay a premium or any other cost sharing amount. Examples of State processes that provide a reasonable notice and opportunity to pay include—waiving cost sharing for families experiencing temporary financial hardship, implementing grace periods before disenrolling beneficiaries, observing a beneficiary's pattern of non-payment before disenrollment, or establishing payment schedules to allow beneficiaries time to pay their outstanding cost sharing debts. We request comments on this requirement, including specific comments on the determination of an amount of time that would give beneficiaries reasonable notice and opportunity to pay cost sharing amounts prior to disenrollment. HCFA will request that States with approved plans submit this additional information once this proposed rule is published and prior to the State's onsite review. We will also ask the State to include its process in future amendments to its State plan.

*F. Subpart G—Strategic Planning, Reporting, and Evaluation*

1. Basis, Scope, and Applicability (§ 457.700)

This subpart sets forth the State plan requirements for strategic planning, monitoring, reporting, and evaluation under title XXI. Specifically, this subpart implements sections 2107(a), (b), and (d) of the Act, which relate to strategic planning, reports and program budgets; section 2108 of the Act, which sets forth provisions regarding annual reports and evaluation; and sections 2102(a)(7)(A) and (B), relating to assurances of quality and appropriateness of care, and access to covered services.

Although States are given great flexibility in developing title XXI programs, sections 2107 and 2108 of the Act emphasize accountability at both the State and Federal level. Title XXI provides for performance measurement, evaluation, and reporting that promote the collection and analysis of data critical to understanding the impact of CHIP on children's insurance coverage, access to care, and use of health care services. Reporting and evaluating the progress of program design and implementation involve articulating program objectives and translating them into meaningful, measurable evaluation goals; using valid and reliable performance measures; and developing data collection and analysis strategies that are relevant to the measures. Sections 2107 and 2108 of the Act require the Secretary to monitor State program development and implementation, and to evaluate and compare the effectiveness of State plans. Under section 2108(a) of the Act, States must assess the operation of their State plans in each preceding Federal fiscal year and report to the Secretary annually on their progress in reducing the number of uncovered, low-income children. In addition, section 2108(b)(1) requires States to submit an evaluation of their program by March 31, 2000. Under section 2108(b)(2), the Secretary is required to submit a report to Congress based on these evaluations by December 31, 2001 and to make the report available to the public.

Sections 2107 and 2108 of the Act contain guidance on reporting, performance measurement, and evaluation activities. These activities will provide the critical information necessary for meeting Federal reporting requirements, documenting program achievements, improving program function, and assessing program effectiveness in achieving policy goals. Data that facilitate the objective assessment of how programs are working will allow States to examine critical program design decisions and take action to improve their programs. Reporting and evaluation also will assist States and program advocates in documenting title XXI achievements. We share States' concern for the need to accurately measure the impact of CHIP. While this section outlines current Federal requirements related to measuring program achievements, we are soliciting comments for additional measures that will assist in articulating the success of programs implemented under title XXI. As part of our effort to increase understanding and knowledge of title XXI programs, we plan to establish an information dissemination policy that includes making State annual reports, State evaluations, and a summary of State expenditures and statistical reports regularly available on the Internet.

States have a strong interest in developing data collection strategies and capabilities that will allow them to

document that title XXI funds are being used efficiently and effectively to provide children with affordable, quality health insurance coverage. By enacting title XXI, Congress has made a significant investment in providing health insurance coverage to a substantial proportion of uninsured children. Continued support and funding will depend on providing policy makers with objective and accurate data about the success of the program.

Reporting and evaluating data will be critical to following the progress of States as they develop their own unique approaches to insuring children. Title XXI affords States broad flexibility and choice in program design and implementation. The array of choices available to States allows them to develop programs that address their specific needs. However, the variability in programs complicates the effort to measure and document program effectiveness and to make State-to-State comparisons. In developing their reporting strategy, States may find it helpful to work with their HCFA Regional Offices to identify technical assistance needs and to coordinate approaches to meeting those needs. We plan to work collaboratively with States on technical assistance issues in order to encourage utilization of relevant and valid program and quality of care performance measures that facilitate reporting and evaluation.

2. State Plan Requirements: Strategic Objectives and Performance Goals (§ 457.710)

In accordance with section 2107(a) of the Act and the intent of the Government Performance and Results Act of 1993 (GPRA), proposed § 457.710 encourages program evaluation and accountability by requiring the State plan to describe the strategic objectives, performance goals, and performance measures the State has established for providing child health assistance to targeted low-income children under the plan and for otherwise maximizing health benefits coverage for other low-income children and children generally in the State.

In accordance with section 2107(a)(2) of the Act, at § 457.710(b), we propose that the State plan must identify specific strategic objectives related to increasing the extent of health coverage among targeted low-income children and other low-income children. We understand there will be variation among States in specific evaluation approaches and terminology. However, we encourage States to view development of strategic objectives as a process that involves translating the basic overall aims of the State plan into a commitment to achieving specific performance goals or targets. One of the strategic objectives established in the Act is the reduction in the number of low-income, uninsured children. Although this objective is of central importance, States must articulate other strategic objectives, such as increasing access to health care and improving the quality of health services delivered to beneficiaries.

Under section 2107(a)(3) of the Act, States must identify one or more performance goals for each strategic objective. We propose to implement this statutory provision at § 457.710(c). The performance goals should be central to the State's strategic objectives and should facilitate assessing the extent to which strategic objectives are being achieved. Performance goals should be more specific than strategic objectives. Performance goals express target levels of performance in the form of tangible, measurable expected levels of achievement against which actual achievements for an explicit time frame can be measured.

In formulating strategic objectives and performance goals, States should consider not only the general population targeted for CHIP enrollment but also special population subgroups of particular interest. Such subgroups may include racial or ethnic minorities, specific high-risk groups such as children with special needs, children in foster care, homeless children, or hard to reach groups such as children who live in under-served rural areas or urban areas. Health services research studies have documented racial, ethnic, and cultural differences in health insurance coverage and patterns of care. For example, studies show that non-white children are more likely to be uninsured and under-immunized. Therefore, States may want to consider developing performance goals that relate to improving coverage, access, and utilization for specific subgroups.

In accordance with section 2107(a)(4) of the Act, proposed § 457.710(d) provides that the State plan must describe how performance under the plan will be measured through objective, independently verifiable means and compared against performance goals. For purposes of measurement, States may find it helpful to conceptualize performance in two broad categories: quality of care measures and program operations measures. Quality of care measures focus on access to care, health status and delivery of clinical services. A measure of performance in either category must be valid (that is, reflect the concept it is intended to capture) and reliable (that is, yield results that are reproducible in repeated analyses). For example, waiting time for appointments with health care providers is a widely used, standardized measure of access.

Developing and testing performance measures to ensure their validity and reliability can prove expensive and time-consuming. For this reason, States may want to carefully review widely used measures including all of the following:

- The percentage of Medicaid-eligible children enrolled in Medicaid;
- The percentage of children with a usual source of health care;
- The percentage of children with unmet need for physician services and/or delayed care;
- The reduction of hospitalization for ambulatory-sensitive conditions;
- The array of measures in the Health Employer Data and Information Set (HEDIS) and the Consumer Assessments of Health Plans Study (CAHPS).

We note that HEDIS is widely used by private sector purchasers of managed care services. It contains a wide range of quality measures, including child and adolescent immunization measures and well child care and well adolescent care visits. The Agency for Health Care Policy and Research (AHCPR) has sponsored the development of a set of standardized CAHPS surveys and reporting formats. CAHPS measures and reports on consumer experience and satisfaction with specific aspects of health care such as access, interpersonal interactions between patients and providers, and service availability.

States may also find it helpful to use their measures to compare performance with widely recognized standards, benchmarks or guidelines. Prominent examples include:

- The US Preventive Services Task Force Guidelines;
- Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents;
- The Office of Disease Prevention and Health Promotion's Healthy People 2000 and Healthy People 2010.

States also may want to keep apprised of major efforts that are currently underway to develop new child quality measures such as the National Committee for Quality Assurance (NCQA) and Foundation for Accountability (FACCT) Child and Adolescent Health Measurement Initiative (CAHMI).

Similarly, States should also consider using widely accepted program performance measures. For example, many States are likely to adopt outreach

and substitution of private coverage performance goals because of the substantial public policy focus on these areas. In order to report and evaluate progress in these two areas, States may want to adopt a broad measurement strategy that characterizes structural aspects of program operations, program processes, and program outcomes. To use such a broad array of performance measures, States may want to consider a variety of data collection approaches including administrative data collection; mail, in-person, or telephone beneficiary surveys; disenrollee surveys; surveys of employers; site visit interviews and observation; and focus group interviews with beneficiaries, potential enrollees and employers.

Potential substitution of coverage performance measures include: beneficiary self-reported coverage status at eligibility determination, beneficiary self-reported coverage status after disenrollment, self-reported knowledge of low-income workers and small employers about the availability of public insurance, and length of waiting period for child health insurance. We understand that substitution is particularly challenging to measure because assessment relies so heavily on beneficiaries' self reported behavior and employers reports of their motivation for reducing or eliminating employer coverage. However, the public policy importance of the issue of substitution of coverage suggests that States should try to design data collection and analysis strategies that promote assessing the effectiveness of their substitution prevention policies.

Potential outreach performance measures include: proportion of families who know about the program, application simplification, enrollment application processing time, number of outreach workers per estimated eligible child, time elapsed between initial coverage request and enrollment, the percentage of mail-in applications (instead of on-site applications), number and productivity of out-stationed eligibility workers, total expenditures on outreach per estimated number of eligible children, number of children using a 12-month continuous eligibility option, the number of times an enrollee reports having been exposed to CHIP information prior to requesting an application, and enrollee satisfaction with the intake/enrollment process.

3. State Plan Requirement: State Assurance Regarding Data Collection, Records, and Reports and State Annual Reports and Evaluation (§§ 457.720 and 457.730)

Section 2107(b)(1) of the Act requires the State plan to provide an assurance that the State will collect the data, maintain the records, and furnish the reports to the Secretary, at the times and in the standardized format that the Secretary may require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under title XXI. In accordance with the statute, we would implement this provision at § 457.720.

Section 2107(b)(2) of the Act discusses the requirement that the State plan include a description of the State's approach to submitting annual reports and the State evaluation. Accordingly, we would implement this provision at § 457.730. In order to facilitate report submission, a group of States has worked with staff from the National Academy of State Health Policy, with HCFA representation, to develop an optional model framework for the State evaluation due March 31, 2000. This framework has been finalized and sent to every State and territory with an approved State plan. States are permitted to submit their FY 1999 annual report and their State evaluation on March 31, 2000, together as one comprehensive document. Each State's submission will need to meet the title XXI requirements for both the FY 1999 annual report and the State evaluation. The NASHP framework has been designed to accommodate these requirements. The State workgroup facilitated by NASHP will reconvene to develop an optional model framework for future annual reports. We encourage States to use this optional framework to assure the reporting of timely and consistent data. We will continue to work with States to support this effort.

4. State Plan Requirement: State Assurance of the Quality and Appropriateness of Care (§ 457.735)

Sections 2102(a)(7)(A) and (B) of the Act require the State plan to describe the strategy the State has adopted for assuring the quality and appropriateness of care, particularly with respect to providing well baby care, well-child care, well adolescent care, and childhood and adolescent immunizations and for ensuring access to covered services, including emergency services and covered post-stabilization services. We propose to implement this provision at § 457.735. In this section of the State plan, States should discuss the specific elements of its quality assessment and improvement strategies, including the use of any of the following methods: Quality of care standards; performance measurement, information and reporting strategies, licensing standards, credentialing/recredentialing processes, periodic reviews and external reviews. In developing quality assessment strategies, States may find it helpful to refer to the Medicaid Managed Care proposed rule, published on September 29, 1998, for a discussion of standardized methods and tools in quality assurance and improvement and the Quality Improvement System for Managed Care (QISMC) Initiative (63 FR 52039). States are encouraged but not required to describe the State's strategy to assure that children have access to pediatricians and other health care providers with expertise in meeting the health care needs of children.

We propose to include an additional set of assurances that we believe is necessary to ensure the quality and appropriateness of care for enrollees. In § 457.735(b) we propose that States must assure that there are appropriate procedures in place to monitor and treat enrollees with complex and serious medical conditions, including access to specialists. While we believe that treatment plans are a desirable approach to address the needs of individuals with such medical conditions, we did not propose to require treatment plans. In addition, our proposed language does not mirror the language set forth in the proposed Medicaid managed care rule, which requires an adequate number of ''direct access'' visits because this language implies the use of a managed care approach that may not be applicable under CHIP.

5. State Expenditures and Statistical Reports (§ 457.740)

The recent implementation of CHIP, results of welfare reform, increased economic stability and reductions in unemployment have affected the scope of health insurance coverage for children. Because each of these factors may confound the coverage level, additional data is needed from States to measure the effectiveness of CHIP in providing coverage to low-income, uninsured children. Consistent quarterly enrollment data for separate child health programs, Medicaid expansions, and regular Medicaid is necessary for HCFA to effectively administer CHIP, to understand its relative impact on rates of uninsurance among low-income children, and to

meet the changing needs of this population.

Therefore, section 2107(b)(1) of the Act, as implemented in proposed §§ 457.720 and 457.730, requires that the State plan contain certain assurances regarding the submission of reports to the Secretary. In addition, § .16 of the Medicaid regulations specifies that a State plan must provide that the Medicaid agency will submit all reports required by the Secretary, follow the Secretary's instructions with regard to the format and content of those reports, and comply with any provisions that the Secretary finds necessary to verify and assure the correctness of the reports. These statutory provisions and regulations serve as our authority for proposing State expenditure and statistical reporting requirements at § 457.740. (For information on forms that States should use in reporting expenditures and statistical data, see the proposed rule concerning State Children's Health Insurance Program Allotments and Payments to States, published in the **Federal Register** on March 4, 1999 (64 FR 10412). The final approved forms were published on December 2, 1998 (64 FR 66552).

We would require that the State collect required data beginning on the date of implementation of the approved State plan. States must submit quarterly reports on the number of children under 19 years of age who are enrolled in separate child health programs, Medicaid-expansion programs, and regular Medicaid programs (at regular FMAP) by age, income and service delivery categories. (Territories are excepted from the definition of ''State'' for the purposes of quarterly statistical reporting.) We also propose to require that thirty days after the end of the Federal fiscal year, the State must submit an unduplicated count for that Federal fiscal year of children who are enrolled in the separate child health program, the Medicaid expansion program and the Medicaid program as appropriate by age, service delivery, and income categories. Reporting an unduplicated count will provide insight into the continuity of coverage by clarifying the dynamics of program retention, dropout, and re-enrollment and facilitate designing and implementing more effective outreach policies.

We propose that the age categories that must be used to report the data are: Under 1 year of age, 1 through 5 years of age, 6 through 12 years of age, and 13 through 18 years of age. These age categories were chosen because they correspond with eligibility categories as well as with health status/health risk categories. States also are required to report by service delivery categories because it is important to understand the provider setting in which care is organized and delivered. The service delivery system categories that the State would be required to use are: Managed care, fee-for-service, and primary care case management.

We propose that States must report income by using State-defined countable income and State-defined family size to determine Federal poverty level (FPL) categories. We propose that States that do not impose cost-sharing and States that only impose cost-sharing based on a fixed percentage of income (such as 2 percent) in their Medicaid-expansion program or their separate child health program must report their CHIP and Medicaid enrollment by using two categories: At or below 150 percent of the Federal poverty level (FPL) and over 150 percent of FPL. States that impose cost-sharing at defined levels (for example, at 185 percent and over of FPL) in their Medicaid-expansion program and separate child health program would be required to report their CHIP and Medicaid enrollment by poverty level (that is, countable income and household size) categories that match their Medicaid-expansion program and separate child health program cost sharing categories.

We propose to require enrollment reporting by countable family income as defined by the State consistent with the definition at proposed § 457.10 rather than gross income. We are requiring the use of countable income because this maintains consistency with the program operational level definition of income and recognizes the wide variation that exists in how States compute enrollee family income and household size.

We also propose to require enrollment reporting by income for Medicaid as well as for CHIP. Because the income of low-income families tends to vary, children's eligibility status may change quite frequently and many children may be required to shift back and forth between Medicaid and the Medicaid-expansion or separate child health program. Therefore, it is important to understand program enrollment by income levels.

We propose that required standardized reporting be limited to expenditure data and enrollment data as reported by age, poverty level, and service delivery categories. We developed these proposed reporting requirements through extensive consultation with interested States and agencies within the Department and careful consideration of the need to document the progress of title XXI programs.

We also believe States should, as a matter of sound administration of their programs, collect other relevant demographic data on enrollees such as sex, race, national origin, and primary language. Collection of such data will encourage design of outreach and health care delivery initiatives that address disparities based on race and national origin. It also will facilitate State compliance with Office for Civil Rights data needs in the event of complaint investigations or compliance reviews.

In order to streamline State reporting requirements, we plan to develop an option for States to provide the needed CHIP data through existing statistical reporting systems in the future. We are currently evaluating possible modifications to the Medicaid Statistical Information System (MSIS), which captures State eligibility and claims records on a quarterly basis. The modifications will give States the option of using MSIS to supply the data elements that will meet the title XXI quarterly statistical reporting requirements. Under the implementation schedule for the FY 1999 MSIS changes, this option will not be available at an early enough date for States to report the data required by these regulations.

6. Annual Report (§ 457.750)

Section 2108(a) of the Act provides that the State must assess the operation of the State child health plan in each fiscal year, and report to the Secretary, by January 1 following the end of the fiscal year, on the results of the assessment. In addition, this section of the Act provides that the State must assess the progress made in reducing the number of uncovered, low-income children. We would implement the statutory provision requiring assessment of the program and submission of an annual report at proposed § 457.750(a).

At § 457.750(b), we set forth the proposed required contents of the annual report. Specifically, in accordance with the statute, the annual report must provide an assessment of the operation of the State plan in the preceding Federal fiscal year including the progress made in reducing the number of uncovered, low-income children. In addition, we propose to require that the State report on progress made in meeting other strategic objectives and performance goals identified by the State, successes in program design, planning, and implementation of the State plan, identify barriers to program development and implementation, and

the State's approach to overcoming these barriers. We also propose to require that the State report on the effectiveness of its policies in discouraging the substitution of public coverage for private coverage. Further, we would require that the annual report discuss the State's progress in addressing any specific issues, such as outreach, that it agreed to assess in its State plan. In accordance with section 2107(d) of the Act, we also propose that a State also must provide the current fiscal year budget update, including details on the planned use of funds and any changes in the sources of the non-Federal share of plan expenditures. We also propose that the State must identify the total State expenditures for family coverage and total number of children and adults covered by family coverage during the preceding Federal fiscal year. We believe that a State must report on these issues in order to appropriately assess the operations of the State plan under section 2108(a) of the Act.

We propose that, in order to report on the progress made in reducing the number of uncovered low-income children in the annual report, a State must choose a methodology to establish an initial baseline estimate of the number of low-income children who are uninsured in the State and provide estimates, using the chosen methodology, of the annual change in this number of low-income uninsured children at two poverty levels: 200 percent FPL and at the current upper eligibility level of the State's CHIP program. In making these estimates, a State would not be required to use the same methodology that it used in identifying the estimated number of CHIP eligibles in the State plan.

We are requiring States to provide an estimate of the number of low-income, uninsured children at two poverty levels in order to gain insight into the progress made in providing low-income children with health insurance coverage. By requiring an estimate at the current upper eligibility level of the State's program, we can obtain data on the state interpretation of the number of low income children current targeted for enrollment. Over time, as some States choose to increase their upper eligibility levels, we will be able to identify how the number of targeted children has changed because of expanded income eligibility thresholds. By also requiring the State to provide a baseline estimate at the 200 percent FPL, we can obtain an aggregated state interpretation of the number of low income children in the United States. Title XXI generally defines low income children as children in families with income below 200 percent of the FPL. Most public policy and survey research experts also adopt this definition. Therefore, requiring the State to estimate the baseline number of uninsured children at this FPL will allow us to compare an aggregated State estimate with estimates obtained from other sources.

We would require that a State base the annual baseline estimates on either : (1) Data from the March supplement to the Current Population Survey (CPS); (2) data from State-specific surveys; (3) other statistically adjusted CPS data; or (4) other appropriate data. We also propose that a State must submit a description of the methodology used to develop these estimates and the rationale for its use, including the specific strengths and weaknesses of the methodology, unless the State bases the estimate on March CPS data. We propose that once a State submits a specific methodology in the annual report for estimating the baseline numbers, the State must use the same methodology to provide annual estimates unless it provides a detailed justification for adopting a different methodology.

We propose to give States the option of deciding how to estimate the number of uninsured children in the State, rather than requiring the use of one standard methodology. We note that making such estimates is inherently difficult and all the existing data sources have limitations. Traditionally, most national estimates of uninsured children have been based on the Bureau of Census March Current Population Survey (CPS). In fact, Congress used CPS estimates of the uninsured to allocate the CHIP funds available to each State. The CPS is a monthly survey of approximately 57,000 households in the United States. Each March the CPS includes supplemental survey questions about health insurance status. More specifically, individuals are asked whether they had any of various types of private or public health insurance in the previous year. Individuals who do not report insurance coverage are categorized as having been uninsured.

One major reason for the CPS's widespread use is that it is the only data source with the capacity to generate State-by-State estimates of uninsured children. However, in States with small populations, CPS State-specific estimates rely on very small sample sizes and may not be reliable. Because of this concern, Congress used 3-year averages of CPS estimates to allocate CHIP funds to States.

Despite its shortcomings, the CPS generally is relied upon by policy makers to provide an overall estimate of insurance status and insurance trends in the nation. Other major surveys that provide insight into the number of uninsured Americans include the Survey of Income and Program Participation (SIPP), the Medical Expenditure Panel Survey (MEPS), the Community Tracking Study, the National Health Interview Survey (NHIS) and the National Survey of American Families. However, these surveys produce estimates with a significant time lag, and several are conducted on an irregular or infrequent basis. For example, the Urban Institute conducted the National Survey of American Families in a sample of households in 13 States in 1997 and plans additional survey rounds in 1999 and 2001, but results of the 1997 survey will not be available until Spring of 1999 and the results of the 1999 survey will not be available until late 2000.

Although the National Center for Health Statistics has been developing the State and Local Area Integrated Survey (SLAITS) with a health care module, it currently remains unfunded and some methodological concerns have been raised about its applicability to CHIP. Therefore, we expect that most State-specific estimates of the number of uninsured children will use the CPS, a statistically adjusted CPS, or a State funded survey of the uninsured population. A well-designed State-specific survey can maximize the opportunity to capture information that is most relevant and of greatest interest. However, cost and time considerations will limit the reliability and validity testing of State-specific surveys, and these limitations can increase concerns about methodological shortcomings. Because data sources and methodologies for estimating the number of uninsured children may vary significantly across States, State-by-State comparisons of the estimates may be difficult. We will continue to work with States to give us the ability to compare estimates and develop comparable data.

7. State Evaluations (§ 457.760)

Proposed § 457.760 discusses the requirement that States submit a comprehensive evaluation by March 31, 2000 that analyzes the progress and effectiveness of the State child health program. In the evaluation, a State must report on the operation of its Medicaid expansion program, separate child health program, or combination program. As specified in section 2108(b)(1)(B) of the Act, the State evaluation must include all of the following:

- An assessment of the effectiveness of the State plan in increasing the

number of children with creditable health coverage. In addition, the State must report on progress made in meeting other strategic objectives and performance goals identified by the State plan.

- An assessment of the State's progress in meeting other strategic objectives and performance goals identified by the State plan.
- A description and analysis of the effectiveness of elements of the State plan, including the following elements:

—The characteristics of the children and families assisted under the State plan, including age of the children and family income. The State also must report on children's access to, or coverage by, other health insurance prior to the existence of the State program and after eligibility for the State program ends (the child is disenrolled). As an optional strategy, the State also should consider reporting on other relevant characteristics of children and their families such as sex, ethnicity, race, primary language, parental marital status, and family employment status.

—The quality of health coverage provided under the State plan, including the results or plans to assess the results of any quality assurance and improvement, monitoring, and performance measurement process or other process that is used to assure the quality and appropriateness of care.

—The amount and level of assistance including payment of part or all of any premiums, copayments, or enrollment fees provided by the State.

—The service area of the State plan (for example, Metropolitan Statistical Area (MSA) or non-MSA).

—The time limits for coverage of a child under the State plan. As an optional strategy, the State should consider reporting the average length of time children are assisted under the State plan.

—The extent of substitution of public coverage for private coverage and the State's effectiveness in designing policies that discourage substitution.

—The State's choice of health benefits coverage, including types of benefits provided and the scope and range of these benefits, and other methods used for providing child health assistance.

—The sources of non-Federal funding used in the State plan.

- An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.
- A review and assessment of State activities to coordinate the CHIP plan with other public and private programs providing health care and health care financing, including Medicaid and maternal and child health services;
- An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.
- A description of any plans the State has for improving the availability of health insurance and health care for children.
- Recommendations for improving the CHIP program.

*G. Subpart H—Substitution of Coverage*

1. Basis, Scope, and Applicability (§ 457.800)

One of the fundamental principles of title XXI is that CHIP coverage should not supplant existing public or private coverage. Title XXI contains provisions specifically designed to ensure that States use CHIP funds to provide coverage only to uninsured children. These provisions maximize the use of Federal dollars. Specifically, title XXI requires that States ensure that coverage provided under CHIP does not substitute for coverage under either private group health plans or Medicaid. Section 2102(b)(3)(C) of the Act requires that State plans include descriptions of procedures used to ensure that the insurance provided under the State child health plan does not substitute for coverage under group health plans. A final provision in title XXI relating to substitution of coverage is in section 2105(c)(3)(B), which sets out the conditions for a waiver for the purchase of family coverage as described in proposed § 457.1010. Under this provision, States must establish that family coverage would not be provided if it would substitute for other health insurance provided to children. In addition, title XXI contains three provisions aimed at preventing CHIP from substituting for current Medicaid coverage.

First, section 2102(c)(2) of the Act requires States to describe procedures used to coordinate their CHIP programs with other public and private programs. Second, section 2105(d) of the Act includes ''maintenance of effort'' provisions for Medicaid eligibility. That is, under section 2105(d) of the Act, a State that chooses to create a separate child health program cannot adopt income and resource methodologies for Medicaid children that are more restrictive than those in effect on June 1, 1997. Furthermore, title XXI also provides that a State that chooses to create a Medicaid expansion program, is not eligible for enhanced matching for CHIP coverage provided to children who would have been eligible for Medicaid in the State under the Medicaid standards in effect on March 31, 1997. Third, section 2102(b)(3)(B) of the Act requires that any child who applies for CHIP must be screened for Medicaid eligibility and, if found eligible, enrolled in Medicaid.

This subpart interprets and implements section 2102(b)(3)(C) of the Act regarding substitution of group health coverage and sets forth State plan requirements relating to substitution of coverage in general and specific requirements relating to substitution of coverage under employer-sponsored group health plans. These requirements apply to separate child health programs.

2. State Plan Requirements: Private Coverage Substitution (§ 457.805)

The potential for substitution of CHIP coverage for private group health coverage exists because CHIP coverage costs less or provides better coverage than coverage some individuals and employers purchase with their own funds. Specifically, employers who make contributions to coverage for dependents of lower-wage employees could potentially save money if they reduce or eliminate their contributions for such coverage and encourage their employees to enroll their children in CHIP. At the same time, families that make significant contributions towards dependent group health coverage could have an incentive to drop that coverage and enroll their children in CHIP if the benefits would be comparable or better and their out-of-pocket costs would be reduced.

In accordance with section 2102(b)(3)(C) of the Act, we propose at § 457.805 to require that each State plan include a description of reasonable procedures that the State will use to ensure that coverage under the plan does not substitute for group health plans. We will review State CHIP plans for the procedures.

The following is a discussion of the procedures relating to substitution of coverage under CHIP.

*State plan requirements to prevent substitution.* States that operate a separate child health program will be required in their State plans to describe procedures to address the potential for substitution. There is general agreement that substitution is a more significant problem at higher levels of income where a greater proportion of children have access to coverage. Therefore, we propose to more closely scrutinize State

plans that expand eligibility for children in families with higher income levels.

We would consider the following to be reasonable procedures to prevent substitution:

- States that provide coverage to children in families at or below 150 percent of the Federal poverty line (FPL) should, at a minimum, have procedures to monitor the extent of substitution of that coverage for existing private group health coverage. We believe that there is limited evidence of substitution at income levels below 150 percent of FPL.
- States that provide coverage to children in families between 150 and 200 percent of FPL should, at a minimum, have procedures to study the incidence of substitution of that coverage for existing private group health coverage. In addition, States should specify in their State plans the steps they will take to prevent substitution in the event that the States' monitoring efforts discover substitution has occurred at an unacceptable level. In the event that the Secretary finds an unacceptable level of substitution, the State in question should implement the procedures to limit substitution that were identified in its State plan. We would apply a stricter standard for this higher income group because of the increased potential risk of substitution at this income level.
- States that provide coverage to children in families above 200% of FPL should implement, concurrent with program implementation, specific procedures or a strategy to limit substitution. We will not prescribe a particular strategy, but will evaluate each State's strategy separately.

We will ask States to assess the procedures to limit substitution in their evaluations submitted in March of 2000. States that monitor substitution in their plans will also submit information on substitution in their annual reports. We will examine any data on the effectiveness of States' procedures to prevent substitution of coverage. If our review of States' experience shows that substitution is occurring at an unacceptable rate, we may issue new requirements and require States to alter their plans at a future date.

The other option that we considered was to require a set of specific procedures that each State would have to use to address substitution. We rejected this option because the statute authorizes States to design approaches to prevent substitution, not the Federal government. We also recognized that there is not substantial evidence favoring any specific approach to reduce the potential for substitution.

We have received questions about applying substitution provisions to the Medicaid eligibility group for the ''optional targeted low-income children'', which was added to section 1902(a)(10)(A)(ii)(XIV) of the Act in accordance with section 4911 of the BBA. We are not proposing to require States to apply eligibility-related substitution provisions such as periods of uninsurance to the ''optional targeted low-income children'' group, because we believe that such eligibility conditions are inconsistent with the entitlement nature of Medicaid. States that currently apply eligibility-related substitution provisions to optional targeted low-income children will need to come into compliance with this policy. We recognize that States expanding Medicaid to this group at higher income levels may be particularly concerned about the potential for substitution of coverage. We will review section 1115 demonstration requests for substitution provisions and consider those that are consistent with our proposed policy under title XXI. State proposals to apply substitution provisions must satisfactorily demonstrate how the proposal will test new ideas of policy merit and be formally evaluated, consistent with the research and demonstration objectives of section 1115 of the Act. States that have approved Medicaid demonstration projects under section 1115(a)(2) that currently apply substitution provisions, such as waiting periods, to expansion populations under this demonstration authority may continue to do so. Moreover, States may use mechanisms other than eligibility restrictions to discourage substitution of coverage.

3. Premium Assistance for Employer-Sponsored Group Health Plans: Required Protections Against Substitution (§ 457.810)

We will particularly scrutinize CHIP programs under which States subsidize coverage under employer-sponsored group health plans, regardless of the income levels of the children who benefit from the subsidies, because we believe there is a greater potential for substitution of public funding for existing private funding for health insurance in this type of arrangement. First, we believe that State subsidies of private coverage under CHIP might increase the likelihood that families that purchase dependent coverage under employer-sponsored plans would drop that coverage and seek CHIP coverage if these families could obtain the same coverage under CHIP at lower cost. Lower income families may actually be more likely to drop their contribution to employer-sponsored coverage than higher income families because of the higher cost of insurance relative to their income. Second, employers with low-wage workers may have incentives to reduce or eliminate their premium contributions for dependent coverage if the CHIP assistance could replace that contribution.

We propose under § 457.810 to require any State that implements a separate child health program under which the State provides premium assistance for coverage under employer-sponsored group health plans, to adopt specific protections against substitution. A State must describe these protections in the State plan. We believe that without these additional protections, new Federal dollars will not extend coverage to as many uninsured, low-income children. The following four requirements must be met to protect against substitution:

- The child must not have been covered by employer-sponsored group health insurance during a period of at least six months prior to application for CHIP. States may require a child to have been without insurance for a longer period, but that period may not exceed 12 months. We believe that any longer waiting period would conflict with the overall goal of title XXI to provide child health assistance to uninsured, low-income children. We do not believe a waiting period of longer than 12 months is a reasonable procedure to prevent substitution of coverage. Exceptions to the minimum period without insurance would be allowed if the prior coverage was involuntarily terminated. Newborns who are not covered by dependent coverage would not be subject to any such waiting period.

We proposed this waiting period without employer-sponsored group health insurance to ensure that coverage is targeted to children in families that previously were unable to afford dependent coverage. We chose a minimum waiting period of 6 months because we felt that this time period would be long enough to significantly deter families from dropping existing coverage. The other option we considered was a 3 month waiting period. We believe, however, that parents would be more willing to drop existing coverage and allow their children to be uninsured for this shorter time period in order to take advantage of the premium assistance coverage through CHIP.

We believe that States that do not impose a 6-month waiting period must have a viable alternative to waiting periods, subject to approval by HCFA.

For example, a State could not simply reduce the waiting period from our minimum period of 6 months. It is important to note, however, that the waiting period is based only on coverage by employer-sponsored group health insurance, not CHIP or Medicaid coverage. If an otherwise eligible child does not meet the requirement for a minimum period without employer-sponsored group health coverage, the State can enroll the child in a separate State program or in Medicaid without purchasing employer-sponsored coverage for the interim waiting period, and can still consider the child uninsured for purposes of the waiting period. That is, coverage under a separate State program or Medicaid does not count for purposes of the waiting period.

• The employer must make a substantial contribution to the cost of family coverage, equal to 60 percent of the total cost of family coverage. We propose this requirement to discourage employers from lowering or eliminating their existing contributions for dependent coverage. We chose 60 percent based on several employer studies, which show that, on average, employers contribute roughly two thirds of the cost of family coverage. The Department is reluctant to permit a rate of contribution significantly lower than the 60 percent standard. States proposing an employer contribution rate below this standard must provide the Department with data that exemplify a lower average employer contribution in their State. The data must support the State's contention that the lower level of contribution will be equally effective in ensuring maintenance of statewide levels of employer contributions. We would also consider a somewhat lower level if a State had additional, effective, provisions to limit employers' ability to lower contribution levels or a State could show through specific data that the average employer contribution in the State is lower than 60 percent. For example, one State demonstrated to us by using the Medical Expenditures Panel Survey (MEPS) that the contribution rate was lower than 60 percent (55 percent) in that State. For ease of administration, the State may establish a minimum dollar employer contribution or some other method that is roughly equivalent to the 60 percent requirement to assure that employers continue to pay a meaningful share of the costs in these programs. The employee must apply for the full premium contribution available from the employer. We propose this requirement to promote cost-effectiveness and maximum employer contribution. This employer contribution would reduce the CHIP contribution toward the premium.

• The State's premium assistance for employer-sponsored coverage must not be greater than the payment that the State otherwise would make on the child's behalf for other coverage under the State's CHIP program. We have proposed this requirement to ensure that the provision of child health assistance through employer-sponsored group health plans is cost-effective and that the State is not inappropriately providing premium assistance for coverage for the adults in a family.

• The State must collect information and evaluate the amount of substitution that occurs as a result of the subsidies and the effect of subsidies on access to coverage. To conduct this evaluation, States must assess the prior insurance coverage of enrolled children. States may obtain information on prior coverage through the enrollment process, separate studies of CHIP enrollees, or other means for reliably gathering information about prior health insurance status. States should consider collecting the following information on the application to evaluate the prevalence of substitution:

—When did you last have insurance? __ Never __ less than 3 months ago __ 3–6 months ago __ 6–12 months ago __ more than 12 months ago

—What type of insurance did you have most recently? __ Medicaid __ Employer-sponsored insurance __ Individual __ Other (e.g., CHAMPUS, Medicare , VA) [**Note:** More than one may apply.]

—What reason best characterizes why you don't have insurance today? __ No longer working for the employer who offered the insurance __ Can't afford insurance __ Employer dropped coverage __ Public benefits are better __ No longer need insurance __ Employer does not offer health insurance

These questions may need to be adapted by survey researchers to obtain the appropriate information. Proposed § 457.750 and § 457.760 provide additional information on reporting and evaluation requirements. To determine the level of substitution, we encourage States to analyze the number of families who choose to enroll in CHIP who might have retained or bought private insurance had they not received CHIP funding for employer-sponsored insurance. We would ask States that choose to provide premium assistance for children's coverage through employer-sponsored group health plans to describe in their State plan and annual reports (described in proposed § 457.750) their compliance with these guidelines. We would also ask States to discuss their adherence to these guidelines in their March 31, 2000 evaluations. Based on the State evaluations submitted in March of 2000, we will reevaluate our position on these requirements for States that subsidize employer-sponsored group health plans.

*H. Subpart I—Program Integrity and Beneficiary Protections*

We propose to add a new subpart I, that would specify the provisions necessary to ensure the implementation of program integrity measures and beneficiary protections within the State Children's Health Insurance Program. In addition, this subpart discusses the President's *Consumer Bill of Rights and Responsibilities* as it relates to the CHIP program. This subpart also describes how the intent of the GPRA can be upheld by including program integrity performance and measures as part of the State plans.

1. Basis, Scope, and Applicability (§ 457.900)

We remain committed to our proactive efforts to preserve the integrity of our Federal and State government health care programs. Indeed, among HCFA's top priorities is to strengthen our ability to fight waste, fraud, and abuse in the Medicare and Medicaid programs and now in CHIP. We specify in § 457.900, that sections 2101(a) and 2107(e) authorize HCFA to set forth fundamental program integrity requirements and options for the States.

Specifically, section 2101(a) of the Act specifies that the purpose of the Children's Health Insurance Program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner. We believe that assuring program integrity is an integral part of an effective and efficient CHIP program and we have used this section of the Act as part of the authority for this subpart. In addition, section 2107(e) of the Act lists specific sections of title XIX and title XI and provides that these sections apply to States under title XXI in the same manner they apply to a State under title XIX. Therefore, we include the provisions set forth in section 2107(e) in specifying the authority for this subpart.

We note that the program integrity provisions contained in this proposed rule only apply to States that implement separate child health programs under the authority of section 2101(a)(1) of the

Act. States that implement a Medicaid expansion program are subject to the Medicaid program integrity provisions set forth in the Medicaid regulations at part 455, Program Integrity: Medicaid. While we are dedicated to preserving the inherent flexibility the Act provides to States that implement separate child health programs, we are proposing that States design programs that address the fundamental program integrity protections established for the Medicaid program. We believe this approach to program integrity will ensure continuity among States in implementing CHIP, while at the same time allowing States the opportunity to maximize efficiencies from existing administrative processes and practices that States have established for program integrity.

2. Definitions (§ 457.902)

We have included five definitions for the purpose of this subpart. The terms ''contractor,'' ''managed care entity,'' and ''fee-for-service entity'' relate to the entities with which States may contract in order to provide services to the CHIP population. We defined the terms ''contractor'' and ''managed care entity'' in this subpart because the two terms are used most significantly in reference to accountability for ensuring program integrity. We wanted to find a term that would encompass all health care related entities involved in service delivery to this population. We defined the term ''grievance'' to provide some context into the section requiring States to have written procedures for grievances and appeals. In addition, we defined the term ''State program integrity unit'' because separate child health programs may elect to create an organization whose purpose is to conduct program integrity activities. We created this term to have a uniform way of describing this organization for States that take the opportunity to develop a fraud and abuse prevention system for separate child health programs. Such a system could be similar to that of the Medicaid Fraud Control Units (MFCUs), but activities would be funded through Title XXI rather than Medicaid.

Specifically, we propose that ''contractor'' means any individual or entity that enters into a contract, or a subcontract to provide, arrange, or pay for services under title XXI. This definition includes, but is not limited to, managed care organizations, prepaid health plans, primary care case managers, and fee-for-service providers and insurers.

We propose that a ''managed care entity'' is any entity that enters into a contract to provide services in a managed care delivery system, including but not limited to managed care organizations, prepaid health plans, and primary care case managers. We propose that ''fee-for-service entity'' means any entity that provides services on a fee-for-service basis, including health insurance. We propose that ''State program integrity unit'' means a part of an organization designated by the State (at its option) to conduct program integrity activities for separate child health programs.

Finally, we defined the term ''grievance'' to be consistent with the proposed Medicaid managed care regulations, and to give the States the opportunity to utilize the process that is already in place for the Medicaid program.

3. State Program Administration (§ 457.910)

We are aware of the need to provide States with maximum flexibility as they implement their State plans, while balancing the need of the Federal government to remain accountable to Congress for the integrity of the program. We note that section 2101(a) of the Act allows flexibility by requiring States to provide child health assistance to uninsured, low-income children in an effective and efficient manner. Toward that end, we would specify in § 457.910 that the State child health plan must provide for methods of administration that the Secretary finds necessary for the proper and efficient operation of the State child health program. We would also provide that the State's program must provide the safeguards necessary to ensure that eligibility as set forth in subpart C of these proposed regulations will be determined appropriately, and services will be provided in a manner consistent with simplicity of administration and with the provisions of proposed subpart D regarding benefits. We believe these requirements are relevant and consistent with the general program integrity protections that are common to most Federal and State health programs and provide States with flexibility in tailoring their individual CHIP programs.

4. Fraud Detection and Investigation (§ 457.915)

Section 2107(e) references sections 1903(i)(2), and 1128A of the Act, which authorize certain fraud detection and investigation activities. Section 2107(e) states that these provisions apply under title XXI in the same manner as applied to a State under title XIX. Moreover, these provisions are cited as authority in the Medicaid regulations at part 455, subpart A—Medicaid Agency Fraud Detection and Integrity Program. We recognize that States that implement their State plans through the Medicaid expansion option are subject to all Medicaid program integrity requirements under part 455, Program Integrity: Medicaid. However, States that implement separate child health programs have more flexibility in designing and implementing program integrity procedures for their programs. In recognition of this flexibility, we considered three possible options to ensure that separate child health programs develop and implement adequate fraud detection and investigation processes and procedures.

We considered declining to specify any fraud detection and investigation assurances, thereby providing States with full discretion in designing processes and procedures to meet their specific needs. However, we are not proposing this option because we do not believe it supports the Secretary's need for accountability and responsibility to Congress for CHIP evaluation and reporting requirements. We also considered proposing to require that all separate child health programs follow the same processes and procedures for fraud detection and investigation for the Medicaid program (and CHIP Medicaid expansions) specified under § 455.13 regarding methods for identification, investigation and referral. However, while there are several advantages in maintaining a central focal point for all State Medicaid and CHIP activities, we did not propose this option because we believed that this approach was not sufficiently flexible for separate child health programs, which vary in structure from Medicaid. The compromise option that we are proposing is to require States to address, specifically, the Medicaid goals for fraud detection and investigation, but allow States to design specific procedures needed to meet the requirements of § 455.13. We believe this option balances the need for maintaining State flexibility while establishing an acceptable minimum standard that will satisfy our need for accountability in the program. For example, under this option we would indicate that States may consider Medicaid agency criteria for identifying suspected fraud cases in CHIP and work in collaboration with the State program integrity unit, legal authorities, and law enforcement officials in referring suspected fraud and abuse cases.

Specifically, we propose that the State must establish procedures for assuring program integrity and detecting fraudulent or abusive activity. We propose that HCFA and the States develop program integrity standards and

measures, such as payment error rate, acceptable levels of payment error, and the recovery of funds from erroneous payments. These examples of measures demonstrate Federal and State commitment to the principles and the intent of the GPRA. We would provide that the procedures must include, at a minimum, the methods and criteria for identifying and investigating suspected fraud and abuse cases that do not infringe on the legal rights of persons involved and afford due process of law. We also propose that the State may establish an administrative agency responsible for monitoring and maintaining the integrity of the separate child health program, which would be referred to as the ''State Program Integrity Unit.'' We further provide that in the event that a State chooses to establish a State Program Integrity Unit, the State must develop and implement procedures for referring suspected fraud and abuse cases to law enforcement officials. We would specify that law enforcement officials include, but are not limited to the Department of Health and Human Services Office of Inspector General(OIG), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the State Attorney General's office.

5. Accessible Means To Report Fraud and Abuse (§ 457.920)

We propose that States with separate child health programs must establish and provide access to a mechanism that facilitates communication between the State and the public for information exchange on instances of potentially fraudulent and abusive practices by and among participating contractors, and other entities. This communication mechanism may include a toll-free telephone number. We realize that toll-free service is the primary means for referring fraud and abuse in the Medicaid program, and that these toll-free services are unique and vary from State to State. While States that expand current Medicaid programs can utilize the existing toll-free services, we note that States with separate child health programs may establish similar toll-free service as a viable method to provide the public with an accessible means for reporting fraud and abuse. For example, States are free to use discretion in establishing new toll-free services specifically designed for their enrollees, or in maximizing the benefits of an existing Medicaid fraud and abuse toll-free service by expanding these toll-free services to include fraud and abuse reporting. As evidenced by the Medicare, Medicare+Choice, and Medicaid programs, we believe that providing access to toll-free service for the reporting of potentially fraudulent and abusive practices is an integral part of any sound program integrity strategy.

6. Preliminary Investigation (§ 457.925)

We would specify that if the State receives a complaint of fraud or abuse from any source, or identifies any questionable practices, the State agency must conduct a preliminary investigation or implement otherwise appropriate actions to determine whether there is sufficient basis to warrant a full investigation. We are proposing that the State has the option of creating a ''State program integrity unit'' for separate child health programs that would conduct fraud and abuse prevention activities parallel to the activities of Medicaid Fraud Control Units. States have flexibility to define the role, if any, that State program integrity units play. However, such activities must be funded with monies from the State's CHIP allotment. While we are proposing that preliminary investigations be conducted, we remain flexible with regard to the processes and procedures that separate child health programs may employ in conducting preliminary investigations. We would encourage States to work closely with the State Medicaid program integrity unit or units in structuring the approach to program integrity and developing procedures for conducting these investigations. Since the Medicaid and separate State program integrity units would be working on similar issues, sometimes on parallel investigations, the two units could reside in the same organization, entity, or division within the State. We believe this represents a feasible option to help States bolster their effectiveness and efficiency in conducting fraud and abuse investigations for separate child health programs.

7. Full Investigation, Resolution, and Reporting Requirements (§ 457.930)

We would specify that the State must establish and implement effective procedures for investigating and resolving suspected and apparent instances of fraud and abuse. While we would preserve State flexibility in tailoring processes to best suit their specific State program needs, we note that States may model their approaches, to the extent necessary as determined by the State, after fraud and abuse investigation, resolution, and reporting congruent with the Medicaid State agency processes and procedures as outlined in §§ 455.15, 455.16, and 455.17 of the Medicaid regulations. For example, the State must work in conjunction with law enforcement officials and the Medicaid State program integrity unit. Some States may choose to adopt the existing Medicaid State agency process for fraud and abuse investigation, resolution, and reporting activities. However, MFCUs may only use Medicaid funding for fraud and abuse activities in States that provide child health assistance under a Medicaid expansion program. Medicaid funding cannot be used for fraud investigation activities in separate child health programs. This is because all MFCU professional staff being paid with Medicaid dollars must be full-time employees of the Medicaid fraud agency and devote their efforts exclusively to Medicaid fraud activities. However, to the extent that States want to allocate additional non-MFCU full-time staff, using CHIP dollars, to work exclusively on fraud and abuse investigation in separate child health programs, they may do so. States may choose to do this in conjunction with a State program integrity unit. We note that expenditures for this purpose would be subject to the 10 percent cap on administrative costs.

States with separate child health programs may choose to implement distinct and separate processes for investigating and resolving fraud and abuse cases. In addition, some States may choose to use some of the existing processes in their Medicaid State agency together with new and separately developed fraud and abuse processes. Regardless of the approach that States choose, we believe it is imperative that fraud and abuse processes under a separate child health program maintain a sense of continuity including elements that are generally consistent with other State programs and that are familiar to State officials, law enforcement officials, and the general public. Moreover, maintaining this sense of commonality in the State's programs may help to mitigate the risk of increasing confusion among entities that report fraud and abuse, and may help to promote synergy between CHIP and other State programs regarding fraud and abuse investigation, resolution, and reporting activities.

Therefore, we propose that the State must establish and implement effective procedures for handling suspected and apparent instances of fraud and abuse. We further propose that, once the State determines that a full investigation is warranted, the State may implement certain procedures. Specifically, we would provide that, to the greatest extent possible, the State must cooperate with and refer fraud and abuse cases to the State program integrity unit when requested to do so

by that unit. The State program integrity unit would also refer fraud cases to appropriate law enforcement officials.

8. Sanctions and Related Penalties (§ 457.935)

Under the authority of section 2107(e) of the Act, and consistent with the requirements under Federal and State health care programs, we would specify that a State may not make payments for any item or service furnished, ordered, or prescribed under a separate child health program to any contractor who has been excluded from participating in the Medicare and Medicaid programs. We note that our authority stems from section 1128 of the Act regarding exclusion of certain individuals and entities from participation in Medicare and State administered health care programs. We assert this authority because section 1128 specifically references the authority in sections 1124, 1126, 1128A, and 1128B of the Act, which also have been included under section 2107(e) of the Act and apply to the Children's Health Insurance Program in the same manner as applied to a State's Medicaid program under title XIX. Accordingly, we would specify that the separate child health programs are subject to program integrity provisions set forth in the Act including: (1) Section 1124 relating to disclosure of ownership and related information; (2) section 1126 relating to disclosure of information about certain convicted individuals; (3) section 1128A relating to civil monetary penalties; and (4) section 1128B(d) relating to criminal penalties for acts involving Federal health programs. In an effort to promote enforcement of this subsection and to provide HCFA and the Secretary with critical fraud and abuse data, we would specify that the separate child health programs are subject to the requirements of section 1128E of the Act in the same manner as applied to the Medicare and Medicaid programs. In accordance with section 1128E of the Act, we would consistently specify that the State child health plan be subject to the requirements pertaining to the reporting of final adverse actions on liability findings made against health care providers, suppliers, and practitioners. In addition, States must share such information and data with the Office of the Inspector General in an effort to promote enforcement.

9. Procurement Standards (§ 457.940)

Section 2101(a) of the Act requires that States provide services in an effective and efficient manner. We believe that Congress intended that title XXI funds be used to provide health services to the maximum number of uninsured children possible. Therefore, we have an obligation to ensure that States use these funds in a cost-effective manner. In order to meet this obligation, we have set forth provisions at proposed § 457.940 regarding procurement standards. We note that these provisions do not include Federal oversight of provider payments. Rather, we propose to require that States set rates in a manner that most efficiently utilizes limited CHIP funds.

We propose to require that States provide HCFA with a written assurance that title XXI services will be provided in an effective and efficient manner. The assurance must be submitted with the initial CHIP plan or, for States with approved CHIP plans, with the first request to amend the CHIP plan submitted to HCFA following the effective date of these regulations.

If States contract with entities for CHIP services, they must provide for free and open competition, to the maximum extent possible, in the bidding of all contracts for title XXI services in accordance with the procurement requirements of 45 CFR 74.43. As a grant program, title XXI is subject to the requirements of 45 CFR part 74 (Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments), including part 74.43.

Alternatively, States may base title XXI fee-for-service or capitated rates on public or private payment rates for comparable services. We believe that this option will give States maximum flexibility and will permit them to take advantage of local market forces in establishing CHIP rates. We propose that if a State finds it necessary to establish higher rates than would be established using either of the above methods, it may do so if those rates are necessary to ensure sufficient provider participation or to enroll providers who demonstrate exceptional efficiency or quality in the provision of services. This method will allow States the flexibility to establish higher rates to attract providers in under-served areas or to enroll more costly specialty providers.

We also propose that States must provide HCFA with a description of the manner in which they develop CHIP rates. The description would include an assurance that the rates were competitively bid or an explanation of the applicability of the exceptions of 45 CFR part 74, a description of the public or private rates that were used to set the CHIP rates, if applicable, and/or an explanation of why rates higher than those that would be established using either of these two methods is necessary. The description must be submitted to HCFA when a State first determines its rates or, for approved CHIP plans, when it updates its rates or changes its reimbursement methodology.

10. Certification for Contracts and Proposals (§ 457.945)

In addition to the proposed requirements in § 457.950, which specify that contractors must certify payment data is accurate, truthful, and complete, we would also specify in § 457.945 that entities that contract with the State must also certify the accuracy, completeness, and truthfulness of information in contracts, requests for proposals, information on subcontractors, and other related documents as specified by the State. We are proposing this requirement to meet our need for accountability under CHIP (as discussed in our rationale for proposed § 457.915) and to address the concerns of the OIG, DOJ, and HCFA regarding program integrity assurances from its contractors.

11. Contract and Payment Requirements Including Certification of Data That Determines Payment (§ 457.950)

We believe it imperative that CHIP payments for health care services are based on accurate and validated claims information and supporting data from managed care organizations and health care providers. As the majority of approved State child health plans offer some type of managed care delivery, we believe the issue of certification of payment data is important to ensuring program integrity in State child health plans. In addition, we share the concerns of our other Federal government partners that adequate steps must be taken by States to ensure the accuracy, completeness, and truthfulness of data by contracting entities.

Therefore, at § 457.950 we propose that when CHIP payments to managed care entities are based on data submitted by the MCE, the State must ensure their contracts with MCEs provide that the data include, but are not limited to, enrollment information and other information required by the State. We also provide that as a condition for receiving payment, the MCE must attest to the accuracy, completeness, and truthfulness of claims and payment data. We would provide that as a condition of participation in the

separate child health program, MCEs must provide the State with access to enrollee health claims data and payment data, as determined by the State and in conformance with the appropriate privacy protections in the State. We also propose that managed care contracts must include a guarantee that the MCE will not avoid costs for services, such as immunizations, covered in its contract by referring individuals to publicly supported resources (for example, clinics that are funded by grants provided under section 317 of the Public Health Service Act).

We would provide that when CHIP payments are made to fee-for-service entities, the State must establish procedures to ensure and attest that information on provider claim forms is truthful, accurate, and complete. We also propose that as condition of participation in the State plan, fee-for-service entities must provide the State with access to enrollee health claims data and payment data, as determined by the State.

12. Conditions Necessary To Contract as a Managed Care Entity (MCE) (§ 457.955)

In addition to implementing program integrity protections at the State level, we would specify under § 457.955 that the State must ensure MCEs have in place fraud and abuse detection and prevention processes. These processes would include mechanisms for the reporting of information to appropriate State and Federal agencies on any unlawful practices by subcontractors or enrollees of MCEs. In order to maintain privacy protections for enrollees, we propose that the reporting of information on enrollees would be limited only to information on violations of law pertaining to the actual enrollment, provision of, and payment for health services. Furthermore, we would provide that the State maintains the authority and the ability to inspect, evaluate and audit MCEs as determined necessary by the State in instances where the State determines that there is a reasonable possibility of fraudulent or abusive activity.

We believe these requirements are necessary because the majority of States utilize managed care delivery for children's health benefits coverage. In addition, we believe that our proposed requirements for CHIP managed care contracting in the area of program integrity are similar to the program integrity assurances specified in § 438.606 of the proposed Medicaid managed care provisions, published on September 29, 1998 (63 FR 52022). However, we note that MCEs are accountable to the State, and not to the Federal government. We believe this approach allows MCEs and States maximum flexibility in developing mechanisms for reporting on violations of law that are most effective and efficient for the unique operation of the MCE, and are also in the best interest of the specific State child health plan.

We propose that States that have Medicaid expansion programs and contract with MCEs under section 1903(m) of the Act may arrange for an annual independent, external review of the quality of services (EQR) delivered by each MCE as provided for under section 1932(c)(2) of the Act. States are permitted to draw down 75 percent FFP for this activity. States with separate child health programs are encouraged to provide for EQR of each MCE under contract to provide services to CHIP enrollees; however, the State must use funds within the 10 percent limit for administrative activities.

13. Reporting Changes in Eligibility and Redetermining Eligibility (§ 457.960)

If a State chooses to require that individuals report changes in circumstances during an eligibility period, we propose to require that the State: (1) establish procedures to ensure that beneficiaries make timely and accurate reports of any changes in circumstances that may affect eligibility; and (2) promptly redetermine eligibility when it receives information about changes in a child's circumstances that may affect his or her eligibility.

We believe that these two requirements are important in addressing our concern that children are appropriately enrolled in the program.

14. Documentation (§ 457.965)

To ensure the integrity of the program, we propose to require that each applicant's record include certain facts that would, if necessary, support the State's determination of a child's eligibility. This documentation should be consistent with standard State laws and procedures.

15. Eligibility and Income Verification (§ 457.970)

A key to successfully enrolling children in CHIP and Medicaid is a simple application and enrollment process. A burdensome application and enrollment process can be a significant barrier to successful enrollment. However, it is important that States have in place procedures designed to assure program integrity. We propose to require that States have in place procedures designed to assure the integrity of the eligibility determination process, and to abide by verification and documentation requirements applicable to separate child health programs under other Federal laws and regulations. We propose that States have flexibility to determine these documentation and verification requirements, and can use self-declaration of income and assets.

States with separate child health programs are not required to use the Medicaid income and eligibility verification system (IEVS) for income and resources or to adopt a similar system.

Nonetheless, the establishment of effective program integrity procedures as part of the eligibility determination process is an integral part of providing coverage under a separate child health program in an effective and efficient manner as required under section 2101(a), and of ensuring accountability to State and Federal executive and legislative authorities. We encourage States to adopt procedures that assure accountability but do not create barriers in the application and enrollment process. For example, a State that provides for self-declaration by the applicant of income and assets could conduct random post-eligibility verification or adopt other procedures designed to assure program integrity.

The State could also use the Medicaid IEVS verification system, or some variation of it. For eligibility requirements that pose particular program integrity problems, the State could require verification or documentation as part of the eligibility determination process.

We would also allow a State to terminate the eligibility of a beneficiary for ''good cause'' other than failure to continue to meet the requirements for eligibility. An example of ''good cause'' would be if any information or other action causes the beneficiary to fail to meet the requirements of income and eligibility verification as reasonably determined by the State. For example, a reasonable basis for termination would exist in a case where the applicant provided false information about an eligibility requirement. Beneficiaries terminated for good cause must be given a notice of the termination decision that sets forth the reasons for termination and provides a reasonable opportunity to appeal the termination decision as specified in section 457.985.

16. Redetermination Intervals in Cases of Suspected Enrollment Fraud (§ 457.975)

Among our highest priorities is to ensure that a State child health assistance program actually provides health assistance to the individuals

Congress designed the program to serve. That is, we want the State to ensure that children applying for CHIP, but who are eligible for Medicaid or any other form of health assistance, are enrolled in those programs if appropriate. Furthermore, if a State suspects enrollment fraud, the State should periodically disenroll from the program beneficiaries that no longer meet the eligibility standards under section 2102 of the Act for any reason including a change in age, income, or source of other health coverage. If a State suspects enrollment fraud, the State may, at its own discretion, perform eligibility redeterminations at any frequency that the State considers to be in the best interest of the CHIP program.

17. Verification of Enrollment and Provider Services Received (§ 457.980)

Integral to a sound program integrity strategy is the ability to ensure that services billed by contractors are actually received by enrollees. Under the Medicaid program, this is accomplished in large part by the claims processing system used by States, the Medicaid Management Information System (MMIS). The MMIS captures provider and service information on claims and provides individual notices, within 45 days of the payment of claims to all or a sample group of enrollees receiving the services. These requirements and procedures under the Medicaid program are specified under §§ 455.20 and 433.116 accordingly. While States with Medicaid expansion programs are subject to these Medicaid requirements, we want to ensure that separate child health programs have procedures in place to verify receipt of provider services. We recognize that some States may choose to use the existing claims processing system for Medicaid expansion programs. However, some States may choose to use separate systems for the separate child health program. In these cases, we would specify that the program must have established systems and procedures for verifying enrollee receipt of provider services. In addition, we would specify that the State must establish and maintain systems to distinguish and report enrollee claims for which the State receives enhanced FMAP payments under section 2105 of the Act. We believe that the requirements specified above would serve as a fundamental component of other program integrity activities in this proposed rule, including the fraud detection and investigation efforts as discussed under §§ 457.915, 457.925, 457.930.

18. Enrollee Rights To File Grievances and Appeals (§ 457.985)

Section 2101 of the Act allows the Secretary to provide health assistance in an effective and efficient manner that promotes the best interests of enrollees. Under this authority, we would specify that the State must allow enrollees the right to due process in circumstances where their health care services were denied, suspended, terminated or reduced by the State or by its providers. Specifically, we propose that States must afford individuals the opportunity to file grievances and appeals regarding denial, suspension or termination of eligibility; reduction or denial of services provided for in the State's plan; and disenrollment for failure to pay cost-sharing. Sections 457.365, 457.495, and 457.560 respectively require that this section applies in these specific circumstances.

We would specify that separate child health programs must establish and maintain written procedures for grievances that are consistent with the health industry practices currently in effect in the particular State. Such procedures must include a guarantee that the grievance and appeals processes will be resolved within a reasonable period of time. An example of a reasonable period of time would be as proposed in the Medicaid managed care rule (63 FR 52022), a period of 30 calendar days or 72 hours in an expedited case.

We would further require that these procedures for grievances meet the State rules and regulations for grievances and appeals that are currently in effect for health insurance issuers (as defined in section 2791(b) of the Public Health Service Act) within the State. We would require these provisions for grievances and appeals on a State-specific basis because we realize that procedures may vary from State to State, and States may also modify their own requirements as circumstances warrant. Furthermore, we encourage States to use the grievance procedures as described in part , subpart E regarding fair hearings for Medicaid applicants and recipients, and the Medicaid grievance and appeal procedures for Medicaid managed care entities, which were set forth in the Medicaid Managed Care proposed rule (63 FR 52022).

The State should maintain effective, efficient, and timely processes for grievances, appeals, and determinations for its enrollees. In addition, the State child health program and its providers should ensure that all enrollees receive written information about the grievance and appeal procedures that are available to them. We believe that assuring CHIP enrollees of their grievance rights is consistent with the Administration's ongoing efforts to institute the *Consumer Bill of Rights and Responsibilities* for all Federal health programs.

We are concerned that beneficiaries be afforded the right to make informed decisions about their medical care free from any form of financial incentive or conflict of interest involving their provider of care that could directly or indirectly affect the kinds of services or treatment offered or provided. Therefore, we propose that the State must guarantee, in all contracts for coverage and services, beneficiary access to information related to actions which could be subject to appeal in accordance with the ''Medicare+Choice'' regulation at § 422.206, which discusses the prohibition of ''gag rules'' and protection of enrollee-provider communications, and § 422.208 and § 422.210(a) and (b) which discuss physician incentive limitations and requirements for information disclosure to beneficiaries. We remain committed to ensuring that appropriate actions are taken to guarantee the protection of enrollee rights regarding their health care services under the Medicare, Medicaid, and CHIP programs.

19. Privacy Protections (§ 457.990)

Privacy protections are an essential part of an effective and efficient program because these protections ensure beneficiary trust and honest communication with caregivers and payers. Furthermore, protecting the rights of beneficiaries is of paramount importance in our overall efforts to manage and oversee Federal and State health care programs. This can be evidenced through recent activities including the Administration's commitment to the *Consumer Bill of Rights and Responsibilities,* as well as HCFA's focus on beneficiary rights as demonstrated in the recent Medicare+Choice regulations set forth at part 422 and the proposed Medicaid managed care regulations published on September 29, 1998 (63 FR 52022). For example, the Medicare+Choice regulations at § 422.118 and the proposed Medicaid managed care regulations at § 438.324 set forth provisions that address enrollee privacy protections in the areas of ensuring original medical records and information are released only in accordance with Federal or State law, or court orders or subpoenas; safeguarding the privacy of information; maintaining accurate and timely information and

records; abiding by all State and Federal laws concerning confidentiality and disclosure of information; protecting the confidentiality and privacy of minors in accordance with Federal and State law; prohibiting the access to or tampering with records by unauthorized individuals; ensuring that enrollees have timely access to their records and to information that pertains to them; and ensuring that MCOs release records and information only to authorized individuals.

In light of these concerns, and our obligation under section 2102(a)(1) to ensure that States provide child health assistance in an effective and efficient manner, we would specify that the State plan must assure that the program complies with the title XIX provisions as set forth under part , subpart F—Safeguarding Information on Applicants and Recipients. Moreover, we would provide that the State plan must assure the protection of information and data pertaining to beneficiaries by providing that all contracts will include guarantees that:

- Original medical records are released only in accordance with Federal or State law, or court orders or subpoenas;
- Information from or copies of medical records are released only to authorized individuals;
- Medical records and other information are accessed only by authorized individuals;
- Confidentiality and privacy of minors is protected in accordance with applicable Federal and State law;
- Enrollees have timely access to their records and to information that pertains to them; and
- Beneficiary information is safeguarded by following all Federal and State laws that pertain to confidentiality and disclosure of mental health records, medical records, and all other applicable health and other information specific to enrollees.

Furthermore, we continue to be concerned about privacy issues as more States utilize electronic media such as the Internet to transmit enrollee health care information. For example, some States have indicated their intent to allow for the completion of CHIP applications on-line, to allow for the downloading of completed applications and patient enrollment records by authorized users, and to allow on-line access to eligibility systems for qualified providers. For States choosing to pursue these types of activities, we would specify that State child health plans sending data to HCFA through the Internet will be subject to *HCFA's Internet Security Policy* regarding confidentiality of data transmissions (found on HCFA's website at ''www.hcfa.gov''). Data transmissions between providers, health plans, and the State would also be subject to these requirements. In addition, we would specify that State child health plans are subject to any Federal requirements as well as requirements set forth by their State regarding information disclosure, including use of the Internet to transmit CHIP data between and among the State and its providers. Data transmissions between providers, health plans, and the State would be subject to these requirements also. Finally, we would provide that the State must assure that the program will be operated in compliance with all applicable State and Federal requirements to protect the confidentiality of information transmitted by electronic means, including the Internet.

20. Overview of Beneficiary Rights (§ 457.995)

In February 1998, the President directed the Department of Health and Human Services, along with the Departments of Labor, Defense and Veterans' Affairs and the Office of Personnel Management, to use their regulatory and administrative authority to bring their health programs into compliance with the *Consumer Bill of Rights and Responsibilities,* as proposed by the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

Since that time, HHS has moved aggressively to strengthen existing consumer protections under the Medicare and Medicaid programs. In particular, in developing regulations implementing the Medicare and Medicaid managed care provisions of the Balanced Budget Act of 1997, we have been able to meet or substantially address all of the rights identified in the *Consumer Bill of Rights and Responsibilities.* The Interim Final Rule for Medicare, published on June 26, 1998 (63 FR 34968), has largely taken effect as of January 1999, with the implementation of the Medicare+Choice program. The Notice of Proposed Rulemaking for Medicaid managed care, published on September 29, 1998 (63 FR 52022), expanded and codified protections for Medicaid beneficiaries enrolled in managed care arrangements. However, this regulation will not be fully implemented until the States incorporate the changes into their new contracts, one year after the publication of the final rule, which is expected to be issued in late 1999.

The Children's Health Insurance Program was also established by the Balanced Budget Act of 1997. The protections that apply to the general Medicaid program also apply to States that expand existing Medicaid programs as a means of implementing CHIP. In considering how to apply the President's directive for consumer protections in separate child health programs, we have attempted to balance the Administration's desire to ensure consumer rights for the broadest population with the need to preserve State flexibility. In this spirit, we have identified the following rights for enrollees in separate child health programs. We welcome public comments on how best to address the *Consumer Bill of Rights and Responsibilities* or other needed beneficiary protections in this regulation.

- Information Disclosure

The Consumer Bill of Rights and Responsibilities provides that consumers should receive accurate, easily understood information and assistance in making informed health care decisions about their health plans, professionals, and facilities.

Section 2102(c) of the Act requires that State plans include procedures ''to inform children of the availability of child health assistance and to assist in enrolling children.'' We implement this provision of the Act at § 457.65—Duration of State plans and plan amendments, and § 457.110—Enrollment assistance and information requirements, and § 457.525—Public notice of cost sharing requirements.

- Choice of Providers and Plans

The State must provide applicants and enrollees with assistance in making informed health care decisions (§§ 457.110 and 457.985(e)) and have methods to assure appropriate and timely procedures to monitor and treat enrollees with complex and serious medical conditions, including access to specialists (§ 457.735). We note that this provision is similar to the provisions set forth in the proposed Medicaid Managed Care regulation.

- Access to Emergency Services

The *Consumer Bill of Rights and Responsibilities* provides that consumers should have access to emergency health services. Health plans should provide payment when a consumer presents to an emergency department with acute symptoms of sufficient severity—including severe pain—that a ''prudent layperson'' could reasonably expect the absence of medical attention to result in placing that consumer's health in serious jeopardy, serious impairment to bodily

functions, or serious dysfunction of any bodily organ or part.

Section 2102(a)(7)(B) of the Act expressly requires that States include in their CHIP plans methods ''to assure access to covered services, including emergency services.'' We have proposed to apply in the benefits section (§ 457.402) the definitions of emergency services, emergency medical condition, and post-stabilization services, which were included in the President's directive and proposed in the Medicaid managed care regulation. In addition, the proposed regulation text at § 457.735—State plan requirement: State assurance of the quality and appropriateness of care, further addresses the right to emergency services.

- Participation in Treatment Decisions

The *Consumer Bill of Rights and Responsibilities* would give consumers the right and responsibility to participate in treatment decisions and to be represented if not able to do so. Enrollees in separate child health programs have the opportunity to make such decisions and to receive the pertinent information (§ 457.110). In addition, States must prohibit gag rules and establish principles for disclosure of physician financial arrangements that could affect treatment decisions (§ 457.985(e)).

- Respect and Nondiscrimination

The *Consumer Bill of Rights and Responsibilities* sets forth that consumers have the right to considerate, respectful care that is free of discrimination in the delivery of health care services, as well as, marketing and enrollment practices based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, genetic information, or source of payment.

We have proposed to apply general grant requirements to both States and contractors (health plans) that preclude discrimination based on race, sex, ethnicity, national origin, religion, or disability. The proposed regulation text addresses this right at § 457.130—Civil rights assurance.

- Confidentiality of Health Information

The *Consumer Bill of Rights and Responsibilities* provides that consumers should be permitted to communicate with health care providers in confidence and to have the confidentiality of their individually-identifiable health care information protected. Consumers also have the right to review and copy their own medical records and request amendments to their records.

We believe that privacy protections are essential to effective and efficient operation of a separate child health program, and have proposed to require such protections at proposed § 457.990—Privacy protections. In addition, we would require that the State program comply with other applicable Federal and State laws used to enforce confidentiality. These proposed requirements are based on our authority under section 2102(a)(1) of the Act to require that child health assistance is furnished in an effective and efficient manner. We believe protecting the confidentiality of patient information is essential to ensure that families will be willing to enroll eligible children and seek benefits under the program. We would require the program to be in compliance with all applicable State and Federal rules concerning confidentiality.

- Grievances and Appeals

The *Consumer Bill of Rights and Responsibilities* provides that a fair and efficient process should be in place for resolving differences with health plans and other health care providers, including a system of timely internal and external review of grievances and a meaningful process for addressing complaints.

Section 2103 specifies the parameters of the coverage that must be part of a CHIP plan. In order to ensure that this coverage is actually furnished as specified in that section, and in the approved State plan, we propose to require that States and their contractors afford beneficiaries a ''fair and efficient'' appeals process, consistent with rules applicable to health insurance issuers in the State.

The regulation also proposes at § 457.985 that States must have written processes in place and notify enrollees of those processes and rights in accordance with procedures used by health insurance issuers in the State and that States must ensure that resolution is reached within a reasonable time period (for example, 30 days or 72 hours in an expedited case).

### *I. Subpart J—Allowable Waivers: General Provisions*

#### 1. Basis, Scope, and Applicability (§ 457.1000)

At proposed § 457.1000 we would provide that this subpart interprets and implements the requirements for a waiver to permit a State to exceed the 10 percent cost limit on expenditures under section 2105(c)(2)(B) and to permit the purchase of family coverage under section 2105(c)(3) of the Act. This subpart applies to a separate child health program and to a Medicaid expansion program only to the extent that the State claims administrative costs under title XXI and seeks a waiver of limitations on such claims in light of a community-based health delivery system.

#### 2. Waiver for Cost-Effective Coverage Through a Community-Based Health Delivery System (§ 457.1005)

Proposed § 457.1005 would interpret and implement section 2105(c)(2)(B) of the Act regarding waivers authorized for cost-effective alternatives. As stated above, on March 4, 1999, we published a proposed regulation that set forth financial requirements for the CHIP program (64 FR 10412). In § 457.618 of that proposed rule, we set forth requirements to implement sections 2105(c)(1) and (c)(2)(A) of the Act, which contain provisions related to the 10 percent limit on certain CHIP expenditures. In § 457.1005, we specify the proposed requirements for a State wishing to obtain a waiver of the 10 percent limit on expenditures not used for child health assistance in the form of health benefits coverage that meets the requirements of § 457.410 of these proposed regulations. This section also clarifies the extent to which the State will be allowed to exceed the 10 percent limitation on expenditures in order to provide child health assistance to targeted low-income children under the State plan through cost-effective, community-based health care delivery systems. This waiver was designed to create flexibility for States to provide child health coverage using community-based delivery systems. A State could use the waiver, for example, to provide child health coverage for special groups, such as children who are homeless or who have special health care needs. Congress did not intend that the waiver be used simply to allow for more administrative spending or outreach services under section 2105(a)(2), and the statute does not provide this flexibility.

To receive payment for cost effective coverage through a community-based health delivery system under an approved waiver, we propose that the State must demonstrate that—

- Such coverage meets the coverage requirements of section 2103 of the Act and subpart D of these proposed regulations; and
- The cost of coverage through the community-based health care delivery system, on an average per child basis, does not exceed the cost of coverage that

would otherwise be provided under the State plan.

A State may establish a community-based health delivery system through contracts with health centers receiving funds under section 330 of the Public Health Service Act or with hospitals receiving disproportionate share payment adjustments under section 1886(d)(5)(F) or section 1923 of the Act. However, these are not the only types of community-based health delivery systems. We believe a community-based delivery system would include a network of providers that has a contract with the State to provide care under title XXI and that traditionally serves the population of targeted low-income children. A State may define a community-based delivery system to meet the specific needs and resources of a community. A State must ensure that its community-based delivery system (either through direct provision or referral) can provide all appropriate services to targeted low-income children in accordance with section 2103 of the Act. In addition, all participating community-based providers must comply with all other title XXI provisions.

It is not necessary for States to serve all of their CHIP enrollees through a cost-effective, community-based delivery system in order to receive an approved waiver. A State may receive a waiver for each system or network delivering care in a particular geographic area in order to avail itself of cost-effective health coverage alternatives.

We propose that an approved waiver will remain in effect for two years. A State may reapply three months before the end of the two-year period.

We propose that, notwithstanding the 10 percent limit on expenditures described in proposed § 457.618, if the cost of coverage of a child under a community-based health delivery system is equal to or less than the cost of coverage of a child under the State plan, the State may use the cost savings for—

- Child health assistance to targeted low-income children and other low-income children other than the required health benefits coverage, health services initiatives, and outreach; or
- Any reasonable costs necessary to administer the State Children's Health Insurance Program.

The following example clarifies this permissible use of cost savings. In a given State, assume that a child has three health benefit plans under title XXI from which to choose. Two options are title XXI managed care plans that have annual capitated rates of $1000 and $1020 respectively. One option is a plan offered through a community-based delivery system at an annual cost of $900. By enrolling a child in the community-based plan, the State has saved at least $100. If there are 4,000 children enrolled in the community-based provider system, the State has saved at least $400,000. As a result, the State could exceed the 10 percent cap by, and receive match for, an additional $400,000. If the 10 percent cap on expenditures in this State had been estimated to be $1,000,000 without the waiver, then the waiver under this scenario would increase the estimated cap to $1,400,000.

3. Waiver for Purchase of Family Coverage (§ 457.1010)

A State must apply for a family coverage waiver when any title XXI funds are used to purchase coverage for adult family members in addition to targeted low-income children. For example, the State may wish to purchase employer sponsored group health coverage for a child but the employer does not offer a policy that covers only the child(ren) in addition to the employee. In this case, the State will be subsidizing the cost of both children and adults and, therefore, the State must apply for a family coverage waiver. In the case where employers offer ''tiered'' coverage where a State can identify the cost of one, two or more dependents, the State may use title XXI funds to only cover a child and, therefore, does not need to seek a family coverage waiver. In addition, if the State has created a special child-only option in which employers may participate and, as a result, is providing coverage for children only, a family coverage waiver would not be needed. In this context, the State simply needs to identify in its State plan how it intends to provide this coverage. All other requirements of title XXI must be met.

We are seeking comments on whether the benefits specified in title XXI also apply to adults in a family coverage waiver. For example, if a State offers ''wraparound coverage'' to bring an employer's benefits up to the title XXI standards, we would seek comments as to whether the State should be required to offer this additional coverage to adults under the family waiver.

Proposed § 457.1010 would implement section 2105(c)(3) of the Act under which the Secretary may allow a State to purchase family coverage under a group health plan or health insurance coverage that includes coverage of targeted low-income children. As set forth in subpart A of this proposed rule, ''group health plan'' has the same meaning as given the term under section 2791 of the Public Health Service Act. The term means an employee welfare benefit plan (as defined in section 3(1) of ERISA) to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.

Also as set forth in subpart A, ''health insurance coverage'' has the same meaning as given the term under section 2791 of the Public Health Service Act. It means benefits consisting of medical care (provided directly through insurance or reimbursement or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer.

There is no statutory definition of family coverage for the purposes of this subpart. We are therefore soliciting input from commenters on the definition of ''family'' for purposes of this subpart. We believe ''family'' may be defined differently for different subparts of this regulation and are requesting input on this issue. A specific definition may be important for this subpart because it may define what types of adult family members can receive health benefits coverage under a family coverage waiver. However, we may not want to define ''family'' in this subpart since it is also possible that a group health plan offered by an employer may include a definition of ''family'' for coverage purposes.

Based on the language of section 2105(c)(3) of the Act, we propose at § 457.1010 that a waiver for family coverage will be approved by the Secretary if—

- Purchase of family coverage is cost-effective under the standards described in § 457.1015 of this subpart;
- The State will not purchase such coverage if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage; and
- The coverage for the child otherwise meets the requirements of this part.

4. Cost-Effectiveness (§ 457.1015)

This section defines cost-effectiveness and describes the procedures for establishing cost-effectiveness for the purpose of a waiver for the purchase of family coverage.

We propose that cost-effectiveness means that the cost of purchasing family

coverage under a group health plan or health insurance coverage that includes coverage for targeted low-income children is not greater than the State's cost of obtaining such coverage only for the eligible targeted low-income children involved. Stated more simply, cost effectiveness means that the cost of providing family coverage (including coverage for the parents) under title XXI is equal to or less than the cost of covering only the uninsured children.

• Cost Comparisons

The following is a discussion of our proposed requirements regarding methods for cost comparison the State may use to demonstrate cost-effectiveness. A State may demonstrate cost-effectiveness by comparing the cost of family coverage that meets the requirements of § 457.1010 and 457.1015 of this subpart, to the cost of coverage only for the targeted low-income children under the health benefits packages offered by the State under the State plan for which the child is eligible. We have not identified specific alternatives for cost comparison for family coverage under CHIP. However, we recognize the growing interest of States to utilize this option in order to keep families together under one health plan as this practice may result in increased access to and utilization of preventive and other necessary health services for children. Therefore, we are willing to examine alternatives and invite comment on additional methods to demonstrate cost-effectiveness. We note that the most likely option for meeting the cost-effectiveness standard is the purchase of family coverage through an employer sponsored group health plan because the employer is subsidizing a large part of the costs. States must meet the requirements designed to prevent substitution of coverage (as specified in subpart H), when employer-sponsored coverage is purchased.

*Illustration of cost comparison.* The cost of employer-sponsored family coverage (for the employee and two children) is $600. The employer pays 60 percent of the cost, which is $360, and the employee therefore pays $240. Under the State's CHIP plan there is a $10 monthly premium for each child with a maximum premium amount of $30 per family. The State pays $150 per child per month for the State CHIP coverage less the premiums paid by the family. The State would apply the cost-effectiveness test by calculating the cost to the State of the family coverage, which would be $220 for the employee and two children ($240 − $20 premium = $220), and comparing that cost to the cost of the State CHIP coverage for the children, which would be $280 ($150×2 − 2×$10 premium = $280). The comparison of $220 compared to $280 shows that family coverage costs $60 less per month than CHIP coverage only for the children. When there is such a savings the State could buy family coverage through the employer or provide CHIP coverage to the uninsured child or children only.

Thus far, no State has proposed to provide cost-effective family coverage other than through employer-sponsored coverage. However, the proposed regulation provides flexibility so that, if a State develops another type of cost-effective coverage, we may consider that alternative. We are also working with States to identify other feasible, cost-effective models. We have identified this method through the State plan approval process as one that States have proposed for applying the cost-effectiveness test that meets Federal requirements. We also note that the cost comparison must be made to the health benefits package the child is actually eligible for if a State offers different packages of services to different populations of children. For example, a State may offer children with special health care needs additional services under a separate health benefits package. The cost comparison would have to be made to this separate health benefits package if the cost effectiveness test was being done for a special needs child.

• Cost-Effective Comparison to Actual Coverage Available in the State

We propose that the determination of cost-effectiveness must be made based on costs for health benefit coverage that is actually available for purchase in the State. States should not use hypothetical premium rates and family sizes in demonstrating cost-effectiveness. For example, if a State proposed to demonstrate cost-effectiveness based on the assumption that the average family consists of 3.14 family members (1.7 children and 1.44 adults), we would not approve of this approach as further explained. Using this example and assumptions, the cost to cover 1.7 children in a State employees' health plan would be $407.13 (if the total family premium was $752 divided by 3.14 family members, times 1.7 children). The State asserts it can cover the entire family under its separate child health program for $367.38 (3.14 family members times $117 per member per month). This comparison shows that it costs $39.75 less to cover the family ($407.13 to cover 1.7 children minus $367.38 to cover the family). However, this would not be acceptable because it is a hypothetical plan and not a plan that a family can actually buy for its children in the State. In addition, we believe demonstrations of cost-effectiveness must examine the actual family sizes, rather than average family size.

With respect to applying the cost-effective test, we are requiring States to make available to HCFA documentation on how much was spent on family coverage and report how many children and adults were covered. We are proposing that the State may base its demonstration of the cost-effectiveness of family coverage on an assessment of cost-effectiveness of family coverage for individual families, done on a case-by-case basis, or for family coverage in the aggregate.

We are proposing to require the State to apply the cost-effectiveness test annually. If an annual assessment of the cost-effectiveness of family coverage in the aggregate reveals that it is not cost-effective, the State must begin assessing cost-effectiveness on a case-by-case basis.

• Cost-Effectiveness of Family Coverage on a Case-by-Case Basis

If a State chooses to apply the cost-effectiveness test on a case-by-case basis, the State must compare the cost of coverage for each family to the cost of coverage for only the child or children in the family under CHIP.

This approach favors larger families because most insurers offer one rate for family coverage regardless of the number of children in the family. Also, this approach may be resource and labor intensive for some States.

• Cost-Effectiveness of Family Coverage in the Aggregate

If a State chooses to apply the cost-effective test in the aggregate, the State must provide an estimate of the projected total costs of the family coverage program compared to the cost the State would have incurred for covering just the children in those families under the publicly available CHIP plan. Subsequently, on an annual basis, the State must compare the total cost of covering all families for whom the State has purchased family coverage to the cost the State would have incurred covering just the children in those families under the publicly available CHIP plan as outlined below. If the aggregate cost of family coverage was less than the cost to cover the children in the publicly available program, then the family coverage would be considered cost-effective. If the State determines through its annual

assessment of cost effectiveness that family coverage is not cost-effective in the aggregate, then the State must begin to apply the cost-effectiveness test on a family-by-family basis.

Under this approach, States would report how much was spent on family coverage and report how many children and adults were covered. This test would be applied retrospectively and would represent an aggregate cost of family coverage across all plans. The aggregate cost would be verified by the claims submitted by the State. No additional FFP above the cost-effective amount will be paid for these children and families if the test shows that family coverage is not cost-effective for the period. This option requires States clearly to separate the costs of the family coverage from the costs of coverage under the rest of the program.

Using the retrospective approach may potentially create some difficulties for States in calculating cost-effectiveness (for example, timely submission of State data, State systems may not be able to produce necessary data, vagaries of using historical data that may not capture recent changes). We will work with States to develop guidance on how to conduct retrospective assessments of cost-effectiveness.

*K. Expanded Coverage of Children Under Medicaid and Medicaid Coordination*

The proposed regulations discussed in this subsection are changes to Medicaid regulations found in parts, 433, and 435. This subpart applies to Medicaid only.

Section 4911 of the Balanced Budget Act of 1997 (BBA '97), Public Law 105–33, enacted on August 5, 1997 and amended by section 162 of the DC Appropriations Act, Public Law 105–100, enacted on November 19, 1997, established a new optional categorically needy eligibility group known as ''optional targeted low-income children.'' The law provides for an enhanced Federal matching rate to be used to determine the Federal share of State expenditures for services to children eligible under this group. The BBA also provides for States to receive this enhanced Federal matching rate for services to children who meet the definition of ''optional targeted low-income children'' and whom the State covers by expanding an existing Medicaid eligibility group (for example, poverty-related children). ''CHIP'' itself is not a new or separate Medicaid eligibility group. Medicaid expansion programs under CHIP, which may be referred to as ''M–CHIP,'' consist of the new optional Medicaid eligibility group just mentioned, or coverage of optional targeted low-income children through an expansion of an existing Medicaid eligibility group, or a combination of the two. Section 4912 of the BBA added a new section 1920A to the Act to allow States to provide services to children during a period of presumptive eligibility. Although these proposed regulations are related to title XXI and CHIP, they constitute changes to the Medicaid program. All existing Medicaid regulations also continue to apply.

1. Enhanced FMAP Rate for Children

Section 4911 the BBA as amended by section 162 of Public Law 105–100, authorized an increase in the Federal medical assistance percentage (FMAP) used to determine the Federal share of State expenditures for services provided to certain children. Federal financial participation for these children will be paid at the enhanced FMAP rate determined in accordance with § 457.622 if certain conditions are met. The State's allotment under title XXI will be reduced by payments made at this enhanced FMAP (see § 457.616).

In order to be eligible to receive Federal payments at the enhanced FMAP, a State must:

(1) Not adopt income and resource standards and methodologies for purposes of determining a child's eligibility under the Medicaid State plan that are more restrictive than those applied under the State plan in effect on June 1, 1997;

(2) Have an approved title XXI State plan in effect;

(3) Have sufficient funds available under the State's title XXI allotment to cover the payments involved; and

(4) Maintain a valid method of identifying services eligible for the enhanced FMAP.

For purposes of determining whether an income or resource standard or methodology is more restrictive than the standard or methodology under the State plan in effect on June 1, 1997, we would compare it to the standard or methodology that was actually being applied under the plan on June 1, 1997. For purposes of this section, a pending Medicaid State plan amendment that would establish a more restrictive standard or methodology, but that has an effective date later than June 1, 1997, would not be considered ''in effect'' on June 1, 1997, regardless of when it was submitted. Also, although a State that adopted more restrictive income or resource standards or methodologies than those in effect on June 1, 1997 would not be eligible for enhanced FMAP, we believe that, if a State drops an optional eligibility group entirely, this prohibition against receiving enhanced FMAP does not apply.

The enhanced FMAP discussed in this section will be used to determine the Federal share of State expenditures for services provided to three groups of children. The first group for whom the enhanced FMAP is available is the new optional eligibility group of ''optional targeted low-income children'' described in the new § 435.229.

The second group is children who meet the definition of ''targeted low-income children'' and who would not be eligible under the Medicaid policies in effect under the State plan on March 31, 1997. Thus, a State need not necessarily adopt the new optional group of ''optional targeted low-income children'' to receive the enhanced FMAP for targeted low-income children. The State may receive the enhanced FMAP for these children by covering them under expansions of existing Medicaid groups, as long as the children meet the definition of ''targeted low-income children,'' including the requirement that they be uninsured. (The State may claim its regular FMAP for children with creditable health insurance who are covered under the expansion.)

The third group for whom the State may receive the enhanced FMAP consists of children born before October 1, 1983 who would not be eligible for Medicaid under the policies in the Medicaid State plan in effect on March 31, 1997, but to whom the State extends eligibility by using an earlier birth date in defining eligibility for the group of poverty-level-related children described in section 1902(l)(1)(D) of the Act. Under the law, the enhanced FMAP is available for services to children in this third group even if they have creditable health insurance. We note that, as the statutory phase-in of poverty-level-related children under age 19 proceeds, the numbers of children in this third group will diminish; by October 1, 2002, all the children in this group will be included in the mandatory group of children described in section 1902(l)(1)(D) of the Act, and State spending for services to them matchable at the State's regular FMAP.

Concerning the second group above, we do not believe that Congress intended to provide enhanced FMAP for services provided to children who, although not eligible under the policies in effect in the Medicaid State plan in effect on March 31, 1997, became eligible after that date due solely to a Federal statutory change or a scheduled periodic cost-of-living increase. We believe that such changes are inherent

in the State plan policies in effect on March 31, 1997. Enhanced FMAP will be available only when children are made eligible because a State elects to adopt an optional policy.

Federal payments made at the enhanced FMAP rate reduce the title XXI appropriation in accordance with section 2104(d) of the Act. Thus, HCFA must apply such payments against a State's title XXI allotment until that allotment is exhausted. After the title XXI allotment is exhausted, expenditures will be matched at the State's regular FMAP rate.

2. Optional Targeted Low-income Children

Section 4911 of the BBA amended the Social Security Act by adding a new section 1902(a)(10)(A)(ii)(XIV) to establish an optional categorically needy group of optional targeted low-income children. The optional eligibility group is defined as ''optional targeted low-income children described in section 1905(u)(2)(C) of the Act.'' Section 1905(u)(2)(C), as added by section 4911 of the BBA, was subsequently revised by section 162 of Public Law 105–100 and, in the process, ''(C)'' was changed to ''(B)''. In an apparent oversight, no conforming change was made to section 1902(a)(10)(A)(ii)(XIV) of the Act to refer to section 1905(u)(2)(B), rather than to 1905(u)(2)(C). Because we believe this was simply a drafting error, we consider the reference to 1905(u)(2)(C) in this section to be a reference to 1905(u)(2)(B).

Section 1905(u)(2)(B), defines an optional targeted low-income child as a child who meets the definition of a targeted low-income child in section 2110(b)(1) of the Act (see § 457.310(a)) and who would not qualify for Medicaid under the Medicaid State plan as in effect on March 31, 1997.

The very specific cross reference in section 1905(u)(2)(B) to section 2110(b)(1) for the definition of an optional targeted low-income child indicates that the Medicaid definition of an optional targeted low-income child is based only on section 2110(b)(1). Thus, the Medicaid definition does not include the exclusions described in section 2110(b)(2) that would by contrast apply in a separate child health program. Specifically, the exclusions from the definition of targeted low-income children that apply in a separate child health program but not in Medicaid are (1) children who are inmates of public institutions and patients in institutions for mental diseases (IMD), and (2) children of State employees, as outlined in section 2110(b)(2).

Under normal Medicaid eligibility rules, there is no eligibility exclusion of children who are inmates of a public institution, patients in an institution for mental diseases, or members of a family eligible for health benefits coverage under a State health benefits plan on the basis of a family member's employment with a public agency in the State (although restrictions on Federal financial participation may apply under some circumstances). Restrictions on Federal financial participation under Medicaid, however, apply for services provided to inmates of public institutions and patients in institutions for mental diseases. This means no payment can be made for services to individuals residing in an IMD. We note that under Medicaid, FFP is available for services furnished to children in psychiatric facilities for individuals under age 21 that meet certain standards and conditions (see § 441.150ff).

The definition of optional targeted low-income child at section 1905(u)(2)(B) of the Act excludes a child who would have been eligible for Medical assistance under the State plan on March 31, 1997 on any basis including medically needy. This exclusion applies to all children eligible for Medicaid including those eligible under States' medically needy groups. We propose to interpret the exclusion in the following manner. Children who are eligible for Medicaid only after paying a spenddown would not be excluded, because they are not eligible under title XIX until the spenddown is met. However, a child who is medically needy without a spenddown is eligible for Medicaid and therefore cannot be an optional targeted low-income child. Thus, if a child would have qualified for Medicaid as medically needy without a spenddown under the State's March 31, 1997 Medicaid State plan, even if not eligible under current rules, the child could not be covered as an optional targeted low-income child.

The regular Medicaid financial methodologies that govern eligibility of children in a State must also be used to determine whether a child in that State is eligible under the new optional group of optional targeted low-income children. These are the income and resource methodologies under the State's AFDC plan in effect on July 16, 1996. However, a State may use the authority of § 1902(r)(2) to adopt less restrictive methods of determining countable income and resources for this group.

States that choose to cover the group of optional targeted low-income children are not required to provide coverage to all children who meet the definition of an optional targeted low-income child. As with the current Medicaid program, eligibility can be limited to a reasonable group or reasonable groups of such children. We do not consider it reasonable to limit a group by geographic location because of the requirement in section 1902(a)(1) of the Act that a State plan be in effect in all political subdivisions of the State. Also, we do not consider it reasonable to limit a group by age other than those specified by Congress in section 1905(a)(1) and referenced in section 1902(a)(10)(A)(ii). We believe that if Congress intended to allow use of age to establish a reasonable category, the statutory language would not have specified any ages. We note that in the case of the optional targeted low-income children, a State does not have the option to have a reasonable category of children under age 21 or 20, because the group itself is limited to children under age 19. Although a State may not define a reasonable group by age, the income standard used to determine eligibility under the optional targeted low-income children's group because it is related to income standards used for existing poverty level groups, may be different for infants, children under age 6, and children who have attained age 6 but have not attained age 19, if the State's Medicaid applicable income levels for these age groups differ. Eligibility standards for optional targeted low-income children must be uniform throughout the State. A State is required to provide all services covered under the plan, including EPSDT services, to optional targeted low-income children and apply all regular Medicaid rules, including those pertaining to immigration status.

We are not proposing to require States to apply eligibility-related substitution provisions such as periods of uninsurance to the ''optional targeted low-income children'' group because we believe that such eligibility conditions are inconsistent with the entitlement nature of Medicaid.

A State is obligated to continue to provide services to eligible optional targeted low-income children after the title XXI allotment is exhausted, unless the Medicaid State plan is amended to drop the group of optional targeted low-income children. Once the title XXI allotment is exhausted, Medicaid matching funds are available for these children at the regular matching rate rather than the enhanced rate.

3. Furnishing a Social Security Number

Section 1137(a)(1) of the Social Security Act requires applicants and recipients of Medicaid to furnish the State with their social security number(s) as a condition of eligibility. While the United States Supreme Court in *Bowen* v. *Roy*, 476 U.S. 693 (1986) upheld this requirement, it did so in a plurality decision in which some of the Justices held that the challenge was moot since the claimant had obtained a social security number. That decision did foreclose a challenge to the requirement by an individual who had not already secured a social security number and had religious objections to applying for a number. The Religious Freedom Restoration Act of 1993 also raised questions about the requirements of section 1137(a) of the Act in these cases. Thus, in 1995 HCFA announced a policy which permits States to obtain or assign alternative identifiers to eligible individuals who object to obtaining an SSN on religious grounds. This policy was adopted in order to enable States to administer Medicaid in the most efficient manner possible. While, in 1997, a portion of the Religious Freedom Restoration Act was held to be unconstitutional, that portion only involved the applicability of that Act to State and local officials. The proposed rule seeks to accommodate the purpose of section 1137(a) with the Constitution's protection of freedom of religion and the dictates of the 1993 Act by permitting alternative identifiers.

4. Exemption From the Limitation on FFP

Section 162 of Public Law 105–100 amended section 1903(f)(4) of the Act to add the optional group of targeted low-income children and other children for whom enhanced FMAP is available under § 456.622 (or would be available except for the fact that the title XXI allotment is exhausted) to the list of those who are exempt from the limitations on FFP found in section 1903(f). All previous citations in section 1903(f) were references to Medicaid eligibility groups, whereas this new provision adds not an eligibility group but children on whose behalf enhanced FMAP is available.

With certain exceptions, section 1903(f) limits FFP to families whose income does not exceed 133⅓ percent of the amount that would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments under the program of Aid to Dependent Children. As explained in § 435.1007, this provision effectively limits the use of the authority under section 1902(r)(2) to expand eligibility through the use of more liberal income and resource methodologies for those groups that are not exempt from the limitation. However, to the extent that section 162 of Public law 105–100 resulted in the exemption from the FFP limitation of children other than those in the optional eligibility group of optional targeted low-income children or in other groups already exempt from the FFP limitation, a conflict with the comparability requirements of section 1902(a)(17) of the Act and § 435.601(d)(4) of the Medicaid regulations would arise. We would continue to require that all children within a given group be treated comparably. Therefore, the FFP limitations described in § 435.1007 would continue to apply to all children who are covered as medically needy, and to those covered under an optional categorically needy group other than the new group of optional targeted low-income children or the optional categorically needy groups which are already exempt. However, Federal matching may be available at the enhanced rate for some children in the group.

5. Presumptive Eligibility for Children

Section 4912 of the BBA added a new section 1920A to the Act to allow States to provide services to children during a period of presumptive eligibility. Under section 1920A, services are available to children under age 19 prior to a formal determination of Medicaid eligibility. Under the statutory provisions, a qualified entity, as defined in section 1920A(b)(3)(A), determines whether a child is presumptively eligible for Medicaid on the basis of preliminary information about the child's family income. At the time of the determination, the qualified entity must refer the child to the Medicaid agency. The State must provide the qualified entity with application forms for Medicaid and information about how to assist in completing and filing an application for regular Medicaid. If an application for regular Medicaid is filed, the Medicaid agency will establish whether or not the child is eligible for regular Medicaid. We propose to require that if a State chooses to provide services to children during a period of presumptive eligibility, the State must make presumptive eligibility available Statewide to all children. We considered whether to allow States to limit the availability of presumptive eligibility to certain jurisdictions or certain groups of children but found no indication in the statute or legislative history that such a limitation should be allowed. Although we consider presumptive eligibility a special status, we believe that the requirements pertaining to Statewideness and comparability which apply to the provision of regular Medicaid should apply here as well.

In some respects, the provisions of section 1920A mirror the provisions related to section 1920, which provide for presumptive eligibility for pregnant women. Where this is the case, we propose policies associated with section 1920A that are consistent with the March 23, 1994 notice of proposed rulemaking related to presumptive eligibility for pregnant women (59 FR 13666). We make one exception. The proposed regulations pertaining to presumptive eligibility for pregnant women would require that States use gross income alone to determine presumptive eligibility. We propose here that in determining presumptive eligibility for children, States be permitted to request some additional information and to apply simple disregards as explained later in this section.

In accordance with section 1920A(b)(2), the period of presumptive eligibility begins on the day that a qualified entity makes a determination that a child is presumptively eligible. The child then has until the last calendar day of the following month to file a regular Medicaid application with the Medicaid agency. If the child does not file a regular Medicaid application by that last day, presumptive eligibility ends on that last day. If the child files an application for regular Medicaid, presumptive eligibility ends on the date that a determination is made on the regular Medicaid application.

Although section 1920A places no restrictions on the number of periods of presumptive eligibility for a child, we believe it is unreasonable to provide a child with unrestricted number of periods of presumptive eligibility. Such a policy would effectively allow continuous eligibility for children who never file an application for regular Medicaid and are never determined to be eligible for regular Medicaid. Also, by reinforcing the ability to establish immediate short term eligibility for medical assistance, such an approach could be counter productive to efforts to promote the use of preventive and primary care and effective management of care for children. At the same time, we also believe that it is unreasonable to limit a child to one period of presumptive eligibility in a lifetime. Therefore, we propose to allow States to establish reasonable methods of limiting the number of periods of presumptive

eligibility that can be authorized for a child in a given time frame. We are particularly seeking comments on what would constitute a reasonable limitation and whether specific limitations on the number of periods of presumptive eligibility should be imposed by regulation.

In implementing the provisions of section 1920A that specify that determinations of presumptive eligibility must be based on family income, we would provide limited flexibility to States in calculating income for this purpose. We would also allow States to require that qualified entities request and use general information other than about income, as long as the information is relatively simple to obtain and is requested in a fair and nondiscriminatory manner. In States that adopt the most conservative approach to presumptive eligibility, the qualified entity would use gross family income. The qualified entity would compare family income to the highest income eligibility standard established under the plan that is most likely to be used to establish the regular Medicaid eligibility of a child of the age involved. As a result, there may not be a single income standard for all children. For example, the standards for presumptive eligibility might be 133 percent of the Federal poverty level (FPL) for children under 6 and 100 percent FPL for children age 6 through 19, if these were the highest standards applicable to children of the specified ages under a State's Medicaid plan.

We would specifically allow a State to require that qualified entities apply simple income disregards, such as the general $90 earned income disregard. However, we would not allow a State to require that qualified entities deduct the costs of incurred medical expenses in order to reduce income to the allowed income level. We believe that Congress intended by the use of the term ''applicable level'' to require qualified entities to make simple calculations and not complicated adjustments of income such as those involved in applying spenddown rules or in disregarding certain types of income. To impose detailed and complicated calculations on qualified entities would be administratively burdensome and contrary to efficient administration because of the short-term nature of presumptive eligibility and because no eligibility requirements other than income need be considered.

We do not believe that we are imposing an undue hardship on a child by not allowing spenddown or not disregarding certain income. If a qualified entity decides that the child does not ''appear'' to meet the income criteria, the child has a right to apply for regular Medicaid and have a formal eligibility determination made. We are specifically seeking comments on whether States should be allowed to require that qualified entities make certain adjustments to gross income and ways that these adjustments could be limited.

Section 1920A(b)(3)(A) of the Act defines qualified entity as an entity that:

(1) Furnishes health care items and services covered under the approved Medicaid State plan and is eligible to receive payments under the approved plan; or

(2) Is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act; or

(3) Is authorized to determine eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990; or

(4) Is authorized to determine eligibility of an infant or child to receive assistance under the special nutrition program for women, infants, and children (WIC) under section 17 of the Child Nutrition Act of 1966; and

(5) Is determined by the agency to be capable of making determinations of presumptive eligibility for children.

Section 1920A(b)(3)(B) authorizes the Secretary to issue regulations further limiting those entities that may become qualified entities. We have not proposed any further limitations at this time. We have also found no authority to expand those entities that may be designated qualified entities.

In accordance with section 1920A(c)(1), we would require States to provide qualified entities with regular Medicaid application forms and information on how to assist parents, guardians, and other persons in completing and filing such forms. As provided by section 1920A(c)(3), the application provided may be an application developed by the State for use by children who wish to apply as low-income children described in section 1902(l)(1) of the Act. We would not require States to provide any other application forms. The date that the regular Medicaid application form is received by the Medicaid State agency is the Medicaid filing date for Medicaid eligibility unless State agency staff are located on site at the qualified entity, in which case the Medicaid filing date is the date that the onsite State agency staff person receives the completed form. However, even though State agency staff can receive and process applications for regular Medicaid, they cannot make presumptive eligibility determinations unless they themselves meet the definition of ''qualified entity'' under section 1920A(b)(3) of the Act.

Since we are considering presumptive eligibility a special status, we propose not to apply to a decision on presumptive eligibility the notification requirements that a State must meet when it makes a decision on a regular Medicaid application. Existing regulations under §§ 435.911 and § 435.912 and part , subpart E, require Medicaid agencies to send Medicaid applicants written notice within a specified period of time of the agency's decision on a regular Medicaid application, and if eligibility is denied the reasons for the denial, the regulatory basis for it, and an explanation of rights to a hearing. Although we propose not to apply these requirements to presumptive eligibility determinations, we are proposing to require that the qualified entity inform the parent or custodian of the child, in writing, of the presumptive eligibility decision at the time of the determination. In a case of a denial of presumptive eligibility, the qualified entity would be required to inform the parent or custodian of the child, in writing, of the reason for the denial and his/her right to apply for regular Medicaid.

In accordance with section 1920A(c)(2) of the Act, we propose to require the qualified entity to provide written information to the parent or custodian of a child who is determined presumptively eligible, indicating that a regular Medicaid application must be filed on the child's behalf by the last day of the following month if the child wishes to continue to receive services after that date. The qualified entity must also inform the parent or custodian of the child, in writing, that if an application for regular Medicaid is not filed on the child's behalf by the last day of the month following the month of the determination of presumptive eligibility, the presumptive eligibility will end on that date. However, if an application is filed on the child's behalf, the child will remain presumptively eligible until a determination of the child's eligibility for regular Medicaid has been made. Under section 1920A(c)(2), the qualified entity also must notify the State agency within 5 working days after the date on which the entity determines that the child is presumptively eligible.

We considered defining ''custodian'' for purposes of presumptive eligibility but have decided to allow States flexibility to determine who is a child's custodian. We expect that some States

will consider any interested adult who has the child in his/her care at the moment to be the custodian for purposes of presumptive eligibility under section 1920A. We expect that other States will only consider an adult to be a child's custodian if the adult has a legal responsibility for the child.

Because we do not consider presumptive eligibility to be eligibility for Medicaid *per se*, and because termination of presumptive eligibility occurs automatically after specified time periods, we propose not to apply the existing provisions of the regulations that require Medicaid agencies to provide timely written notice of reduction or termination of Medicaid benefits and rights to appeal of an adverse action (part , subpart E and § 435.919). As indicated earlier, we propose to require a qualified entity to provide written notice of the date that the child can expect the presumptive eligibility to end. However, we propose not to grant rights to appeal a denial or termination of services under a presumptive eligibility decision because it is not considered to be a determination of Medicaid eligibility. If a regular Medicaid application is filed on the child's behalf and is denied, the child would have the right to appeal that denial.

We do not believe that we are imposing an undue burden on qualified entities by requiring that notification be in writing. We do not foresee that this written notice will necessarily be individual personal letters. We considered requiring States to supply qualified entities with preprinted notices. However, we decided to allow States the flexibility to determine how best to arrange for this notification within each State program.

Existing regulations at § 435.914 permit States to provide Medicaid for an entire month when the individual is eligible for Medicaid under the plan at any time during the month. We propose not to permit States to provide full-month eligibility for presumptive eligibility periods because by definition a presumptive determination is not a determination of Medicaid eligibility but eligibility for a special status. In addition, section 1920A(b)(2) of the Act expressly defines the period of presumptive eligibility.

Since presumptive eligibility is a special status, we considered whether States should be required to provide all services to presumptively eligible children or should be required or allowed to limit the services provided. For example, we considered allowing States to limit services to ambulatory care. Although presumptive eligibility for pregnant women includes a statutory restriction on services, there is no similar statutory restriction pertaining to presumptive eligibility for children. We propose to require that States provide all services covered under the State plan, including EPSDT, to presumptively eligible children. We believe most presumptively eligible children will be found retroactively eligible for Medicaid during what was a presumptive eligibility period, and complete and adequate medical care should not be delayed pending the decision on the regular Medicaid application.

Section 4912 of the BBA provides that, for purposes of Federal financial participation, services that are covered under the plan, furnished by a provider that is eligible for payment under the plan, and furnished to a child during a period of presumptive eligibility, will be treated as expenditures for medical assistance under the State plan. See § 447.88 and § 457.616 for a discussion of the options for claiming FFP payment related to presumptive eligibility.

Other than payments made for children during a presumptive eligibility period, section 4912 of the BBA does not hold States harmless for Medicaid payments made for services provided to ineligible children. However, HCFA and the States share a mutual commitment to enrolling uninsured children in Medicaid. An estimated 4 million children are eligible for Medicaid but remain uninsured due partly to the complexities associated with outreach and enrollment efforts. A basic strategy for overcoming this problem is simplification of States' Medicaid applications for children, and the removal of other enrollment barriers, such as burdensome documentation requirements.

For eligibility groups that are new, States often have no eligibility determination experience, and may be reluctant to ease the documentation and verification requirements because they can help ease Medicaid eligibility quality control concerns until experience has been gained. To remove this potential barrier to simplification, and to encourage States to simplify the Medicaid application process and enroll uninsured children, HCFA is asserting its policy to waive MEQC eligibility errors resulting from the coverage of children under new eligibility groups added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the BBA, including the optional group of optional targeted low-income children described in section 1902(a)(10)(A)(ii)(XIV) of the Act. If a State has an error rate over three percent, the State is subject to a disallowance of FFP. The State can appeal this disallowance through a waiver process outlined in § .865. As part of this waiver process error cases and associated claims identified by the State as directly attributable to the enrollment of children in these groups will be excluded from the error rate calculation.

*L. Medicaid Disproportionate Share Hospital (DSH) Expenditures*

Section 4911 of the BBA amended section 1905(b) of the Act to require that for expenditures for section 1905(u)(2)(A)(medical assistance expenditures of optional targeted low-income children) or section 1905(u)(3) (Waxman children), the Federal medical assistance percentage is equal to the *enhanced* FMAP described in section 2105(b)of the Act to the extent of the available title XXI allotment. In other words, under the statute, States that provide health insurance coverage to children as an expansion of their Medicaid programs may receive enhanced match for services provided to the Medicaid expansion population.

Under the authority of section 1902(a)(13)(A)(iv) of the Act, States are required to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs when developing rates for Medicaid inpatient hospital services. Medicaid disproportionate share hospital (DSH) expenditures are defined as payments made for hospital services rendered to Medicaid eligibles and the uninsured. Some of the expenditures may be identifiable as expenditures for services for a child in a CHIP-related Medicaid expansion program. Those identifiable payments may qualify for the enhanced FMAP.

Proposed § 433.11 sets forth provisions regarding the enhanced FMAP rate available for State expenditures related to services provided to children under an expansion to the State's current Medicaid program. Paragraph (a)(3) specifies that the enhanced FMAP rate determined in accordance with the proposed regulation at section 457.622 will be used to determine the Federal share of State expenditures for disproportionate share hospital expenditures as they relate to children eligible for health insurance coverage under an expansion to the State's current Medicaid program.

Any DSH payments that are calculated at the enhanced matching rate will be counted against the CHIP allotment, the Federal DSH allotments

as published in section 4721 of the BBA, and the disproportionate share hospitals amount of uncompensated care cost limits as required under section 1923(g) of the Act.

The State should work with the HCFA Regional Office to develop an appropriate methodology to allocate a portion of the DSH payments to the Medicaid expansion group so that these expenditures are appropriately claimed at the enhanced FMAP and counted against the State's title XXI allotment. Federal payments for such DSH expenditures will also be counted against the State's Medicaid DSH allotment.

We understand that questions have been raised concerning the interaction of title XXI allotments, Federal DSH payment allotments (as enacted in section 4721 of the BBA) and DSH payments for services rendered to 1905(u)(2) and 1905(u)(3) children in Medicaid. Specifically, there is concern about whether enhanced matching rates should apply to DSH payments. We believe a statutory change would be needed not to apply enhanced FMAP. However, since any such statutory changes would be completed following the publication of this proposed regulation, we have developed this proposed regulation text in accordance with current law.

*M. Vaccines for Children Program*

As discussed in the letter to State Health Officials of May 11, 1998, under the authority of section 1928(b)(2) of the Act, children covered under a CHIP program that is a Medicaid expansion are Federally vaccine-eligible under the Vaccines for Children (VFC) program. Children served by a separate State child health program are not Federally vaccine eligible because they are neither entitled to Medicaid nor uninsured, as required in section 1928(b)(2) of the Act. Under the authority of section 1928(b)(3), States may elect to obtain vaccine for children enrolled in a separate child health program at the Federal discount price (plus an amount to cover the costs of administrative overhead and distribution). States may want to use this authority given the existence of the VFC program and its potential to save money.

Under section 1928 of the Social Security Act and section 317 of the Public Health Service Act, the Centers for Disease Control and Prevention (CDC) contracts with vaccine manufacturers to purchase vaccines, usually at a substantial discount from retail prices. These vaccines are furnished to State health departments, as grantees of CDC, for distribution to providers that participate in the VFC program, and other providers authorized to administer vaccines under section 317. Because the immunization program of the State health department is the CDC grantee, and has sole authority to order and distribute vaccine purchased under the CDC discount contracts, a State that elects to obtain these vaccines for its separate child health program population must negotiate a memorandum of agreement between its separate child health program and the State immunization program, to order vaccines and distribute them to CHIP providers. As part of that agreement, the separate child health program must agree to reimburse the immunization program for the cost of each dose of vaccine, including a pro rata share of administrative overhead and distribution costs. Providers who receive vaccine must agree to comply with reporting and other requirements of the State immunization program, in order to assure that vaccine distributed is accounted for appropriately.

States electing to purchase vaccine at the Federal discount price must retain overall responsibility for the required health benefits coverage package, under the requirements of § 457.490 (a)(1), ''Methods of Administration.'' However, the State may subcontract for any and all other services, with the exception of vaccine products, provided under its separate child health program, including professional services required to immunize eligible children.

If HCFA establishes that the State has retained overall responsibility for the provision of services and if the State Immunization program has established one price per dose which includes all charges for vaccine, the cost of vaccines will be treated as part of the required health benefits coverage package and will not be subject to 10 percent cap on other expenditures of title XXI funds. Moreover, these costs are eligible for the enhanced match.

## III. Regulatory Impact Analysis

*A. Impact Statement*

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

This proposed rule does not establish the CHIP allotment amounts. However, it provides for the implementation and administration of the CHIP program, and as such, is an economically significant, major rule.

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Because participation in the CHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal government are made voluntarily. These regulations would implement narrowly defined statutory language and would not create an unfunded mandate on States, tribal or local governments.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

For purposes of the RFA, we prepare a regulatory flexibility analysis unless

we certify that a rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, non-profit organizations, and governmental agencies. Most hospitals and other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. Individuals and State agencies are not included in the definition of small entity. As discussed in detail below this proposed rule will have a beneficial impact on health care providers.

*B. Cost Benefit Analysis*

This analysis addresses a wide range of costs and benefits of this rule. Whenever possible, we express impact quantitatively. In cases where quantitative approaches are not feasible, we present our best examination of determinable costs, benefits, and associated issues. This proposed regulation would implement all programmatic provisions of the State Children's Health Insurance Program (CHIP) including provisions regarding State plan requirements, benefits, eligibility, and program integrity, which are specified in title XXI of the Act. This proposed regulation would have a beneficial impact in that it would allow States to expand the provision of health benefits coverage to uninsured, low-income children who previously had limited access to health care.

CHIP is the largest single expansion of health insurance coverage for children since the creation of Medicaid in 1965. CHIP was designed to reach children from working families with incomes too high to qualify for Medicaid, but too low to afford private health insurance. As discussed in detail below, this initiative set aside $24 billion over five years for States to provide new health coverage for millions of children. To date, plans prepared by all 50 States, 5 U.S. territories, and the District of Columbia have been approved. States expect to enroll an estimated 2.6 million children by September 2000. The implementation of CHIP has significantly reduced the number of uninsured children nationwide. Previously uninsured children now have access to a range of health care services including well baby and well child care, immunizations, and emergency services. In addition to the obvious benefit of providing access to health care coverage for millions of children, as discussed in detail below, CHIP will also have a beneficial impact on the private sector.

1. Disbursement of Federal Funds

Budget authority for title XXI is specified in section 2104(a) of the Act with additional funding authorized in Public Law 105–100. The total national amount of Federal funding available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of CHIP, is established as follows:

TOTAL AMOUNT OF ALLOTMENTS

| Fiscal year | Amount |
|---|---|
| 1998 | $4,295,000,000 |
| 1999 | 4,275,000,000 |
| 2000 | 4,275,000,000 |
| 2001 | 4,275,000,000 |
| 2002 | 3,150,000,000 |
| 2003 | 3,150,000,000 |
| 2004 | 3,150,000,000 |
| 2005 | 4,050,000,000 |
| 2006 | 4,050,000,000 |
| 2007 | 5,000,000,000 |

Under Public Law 105–277, an additional $32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999. In addition, we note that there was an additional allocation of $20 million in FY 1998, which increases the FY 1998 total allotment amount to $4.295 billion. Also, for each of the first five years, $60 million of the allotment must be used for the special diabetes programs. We note that the Federal spending levels for the CHIP program are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. Both direct program and administrative costs are covered by the allotments.

2. Impact on States

CHIP is a State-Federal program under which funds go directly to States, which have great flexibility in designing their programs. Specifically, within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. As such, it is difficult to quantify the economic impact on States. As stated above, the total Federal payments available to States are specified in the statute and are allocated according to a statutory formula based on the number of uninsured, low-income children for each State, and a geographic adjustment factor. For qualifying expenditures, States will receive an enhanced Federal matching rate equal to its current FMAP increased by 30 percent of the difference between its regular matching rate and 100 percent, except that the enhanced match cannot exceed 85 percent.

The following chart depicts estimated outlays for the CHIP program. These estimates differ from the allotments referred to above in that the allotments allow the money to be spent over a period of three years.

FISCAL YEAR OUTLAYS

[In $billions]

| | 1999 | 2000 | 2001 | 2002 | 2003 |
|---|---|---|---|---|---|
| Federal Share | 1.4 | 1.9 | 2.8 | 3.5 | 4.3 |
| State Share | 0.6 | 0.8 | 1.2 | 1.5 | 1.9 |
| Total | 2.0 | 2.7 | 4.0 | 5.0 | 6.2 |

**Note:** These estimates are based on State and Federal budget projections and have been included in the President's FY 2000 budget.

3. Impact on the Private Sector

We note that due to the flexibility that States have in designing and implementing their CHIP programs it is not possible to determine the impact on individual providers groups of providers, insurers, health plans, or employers. However, we anticipate that the CHIP program will benefit the private sector in a number of ways. The program may have a positive impact on a number of small entities given that CHIP funding will filter down to health care providers and health plans that cover the CHIP population. Health plans that provide insurance coverage under the CHIP program will benefit to the extent that children are generally a

lower-risk population. That is, children tend to use fewer high-cost health care services than older segments of the population. Thus, by providing health insurance coverage for preventive care such as well-baby and well-child care and immunizations, CHIP may benefit health insurers by reducing the need to provide more costly health care services for serious illnesses. Additionally, because CHIP provides health insurance coverage to children who were previously uninsured, health care providers will no longer have to absorb the cost of uncompensated care for these children. The private sector may also benefit from CHIP to the extent that children and families with health insurance coverage are more likely to use health care services. Thus, health care providers are likely to experience an increase in demand for their services. Small businesses that are unable to afford private health insurance for their employees will benefit to the extent that the employees, or their children qualify for CHIP.

4. Impact on Beneficiaries

The main goal of CHIP is to provide health insurance coverage for children in families that are not eligible for Medicaid, but do not earn enough to afford private health insurance. CHIP will allow a large number of children who were previously uninsured to have access to health insurance and the opportunity to receive health care services on a regular basis.

Subpart E of this proposed rule sets forth provisions regarding the costs that beneficiaries may incur (cost sharing) under CHIP. In accordance with the statute, we proposed provisions concerning general cost sharing protection for lower income children and American Indians/Alaska Natives, cost sharing for children from families with certain income levels, and cumulative cost-sharing maximums. Section 457.555 sets forth maximum allowable cost sharing charges on targeted low-income children in families with income from 101 to 150 percent of the FPL. This section specifies maximum copayment amounts that may be imposed under fee-for-service delivery systems and managed care organizations. Additionally, regarding cumulative cost sharing maximums, § 457.560 provides that cost sharing for children with family income above 150 percent of the Federal poverty level may not exceed 5 percent of total family income for the year. For children with family income at or below 150 percent of the Federal poverty level, cost sharing may not exceed 2.5 percent of total family income for the year.

We note that due to State flexibility in establishing cost-sharing amounts below the maximums and differing utilization patterns among beneficiaries, it is difficult to quantify the amount of cost sharing that families incur to participate in CHIP. However, in light of the number of children enrolled in CHIP, we believe that for most beneficiaries, the benefit of access to health insurance coverage outweighs the costs associated with participation in the program.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

## IV. Federalism

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism in developing regulations. Title XXI authorizes grants to States that initiate or expand health insurance programs for low-income, uninsured children. A Children's Health Insurance Program (CHIP) under title XXI is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. States have great flexibility in designing programs to best meet the needs of their beneficiaries. HCFA works closely with the States during the State plan and State plan amendment approval process to ensure that we reach a mutually agreeable decision.

Federal payments under title XXI to States are based on State expenditures under approved plans that could be effective on or after October 1, 1997. The short time frame between the enactment of the Balanced Budget Act (BBA) (August 5, 1997) and the availability of the funding for States required the Department to begin reviewing CHIP plans submitted by States and Territories at the same time as it was issuing guidance to States on how to operate the CHIP programs. The Department worked closely with States to disseminate as much information as possible, as quickly as possible, so States could begin to implement their new programs expeditiously.

In the course of the State plan and amendment approval process, we consulted with State and local officials to discuss all aspects of the State's proposed plan or amendment. We discussed with each State provisions and policy decisions that arose from its proposed plans and amendments. In this process, States put forward their policy concerns and proposed statutory interpretations.

The proposed programmatic regulation incorporates much of the guidance that already has been issued to States. As the proposed regulation builds upon previously released guidance, most of the regulation represents policies that have been in operation for some time and are a result of the consultation process that is required as part of the implementation of CHIP; specifically, the State plan approval process.

To be more specific, the Department began issuing guidance to States within one month of enactment of the BBA. We provided information on each State's allotment through two **Federal Register** notices published on September 12, 1997 (62 FR 48098) and February 8, 1999 (64 FR 6102). We developed a model application template to assist State's in applying for title XXI funds. We provided over 100 answers to frequently asked questions. We issued policy guidance through a series of 23 letters to State health officials. All of this information is currently available on our website located on the Internet at http://www.hcfa.gov. We have also provided technical assistance to all States in development of CHIP applications.

In the exhaustive approval process, we listened to States' concerns. This proposed regulation builds upon previously released guidance and therefore, most of the regulation represents policies that have been in operation for some time. States and Territories have used this guidance to design and implement their programs.

In developing the interpretative policies set forth in this proposed rule, we also listened to the concerns of States through processes other than the State plan process as well, by attending conferences and meeting with various groups representing State and public interests.

As we continue to implement the program, however, we have identified a number of areas in which we further elaborate on previous guidance or propose new policies that have not yet been made public. In an attempt to highlight the key issues, a brief summary follows:

*A. Subpart A—State Plan Requirements*

The regulation would clarify several conditions under which States must submit amendments to approved CHIP plans. For example, we propose that States submit a plan amendment when the funding source of the State share changes, prior to such change taking effect. The purpose of this proposed

requirement is to ensure that programs are operated using only permissible sources of funding. In addition, amendments to impose cost-sharing on beneficiaries, increase existing cost-sharing charges, or increase the cumulative cost sharing maximum will be considered the same as amendments proposing a restriction in benefits. Therefore, we propose to require for these amendments that States adhere to the statutory requirements relating to prior public notice and retroactive effective dates.

*B. Subpart C—Eligibility, Screening, Applications and Enrollment*

Title XXI prohibits the participation of children of public agency employees who are eligible to participate in a State health benefits plan. We interpret this statutory prohibition to be triggered only when the employer makes more than a nominal contribution available for the child's health benefits coverage. We propose to clarify that when only a nominal contribution is available, children would not be considered eligible for health benefits coverage under a State health benefits plan and could be eligible for coverage through CHIP.

*C. Subpart D—Coverage and Benefits*

The proposed regulation provides some flexibility for States in updating the benefit package. States using the benchmark benefit package option are not required to submit an amendment each time the benchmark package changes. States need only submit amendments when proposing to make a change to the benefit package for the separate child health program. At that time, the State must compare their benefit package to the most recent benchmark coverage.

The proposed regulation also clarifies policy regarding the conditions under which abortion services are permitted under title XXI and proposes that, when States contract with managed care entities for CHIP services, those contracts cannot include abortion services. To the extent that a managed care entity furnishes these services, the managed care entity must do so under a separate contractual arrangement.

*D. Subpart E—Beneficiary Financial Responsibilities*

The statute places a 5 percent cap on cost-sharing expenditures for families with incomes greater than 150 percent of the Federal Poverty Level (FPL) who are enrolled in separate child health programs. In an attempt to preserve State flexibility, the proposed regulation gives States the option to use either gross or net family income when calculating the cost-sharing cap.

In addition, the regulation proposes to place a comparable limit of 2.5 percent on cost-sharing for families with incomes below 150 percent of the poverty line, in order to ensure that those families with lower incomes will not be forced to pay the same amount of cost-sharing as those with higher incomes. And States would have the option to apply cost-sharing imposed on adults in CHIP family coverage plans toward the cumulative maximum cap.

The regulation proposes that States must have a process in place that will protect beneficiaries by ensuring due process before beneficiaries can be disenrolled from the program for failure to pay cost-sharing. This preamble suggests that States may look for a pattern of nonpayment, provide clear notice and opportunities for late payment, and wait at least one billing cycle before taking action to disenroll.

Finally, title XXI includes provisions to ensure enrollment and access to health care services for American Indian and Alaska Native (AI/AN) children. The regulation incorporates our interpretation that in light of the unique Federal relationship with tribal governments, cost-sharing requirements for individuals who are members of a Federally recognized tribe are not consistent with this statutory requirement.

*E. Subpart G—Strategic Planning, Reporting and Evaluation*

The proposed regulation includes provisions intended to ensure compliance with both the statute, the elements of the State's title XXI plan and the onsite review of State programs. In addition, monitoring will enable tracking of CHIP data submissions, which will ultimately help ensure enrollment in both the CHIP and Medicaid programs.

In addition, the regulation proposes that States have additional flexibility in setting procurement standards more broadly than Medicaid. States could choose to base payment rates on public and/or private rates for comparable services, and where appropriate, establish higher rates in order to ensure sufficient provider participation.

Finally, this proposed regulation includes various beneficiary protections consistent with the President's directive regarding the *Consumer Bill of Rights and Responsibilities.* Provisions are included throughout the proposed regulation to ensure that beneficiaries are given the opportunity to participate in and make informed medical decisions, to have access to needed services, and to be treated with dignity and respect.

*F. Subpart I—Program Integrity and Beneficiary Protections*

This subpart is intended to underscore the importance of preserving program integrity in the Children's Health Insurance Program. The regulation proposes that States must have fraud and abuse protections in place, but provides flexibility to States in developing program integrity protections for separate child health programs. States are encouraged to utilize systems already existing for Medicaid, but are not required to do so.

*F. Subpart J—Waivers*

The proposed regulation discusses the circumstances under which States may obtain a waiver in order to provide title XXI coverage to entire families. We propose that in order to qualify for such a waiver, the State must meet several requirements, including a requirement that the proposal be cost effective. The proposed regulation would give States added flexibility by permitting alternate methods States can use to meet the cost effectiveness test. States would be able to compare the cost of coverage for the family to any child-only health benefits package that is available for purchase, even if it is not included under the State plan.

## V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirement discussed below. The following sections

of this document contain information collection requirements:

*Section 457.50 State Plan*

In summary, § 457.50 requires a State to submit a child health plan to HCFA for approval. The child health plan is a comprehensive written statement submitted by the State describing the purpose, nature, and scope of its Child Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, title XIX (as appropriate), and the regulations in this chapter. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for Federal financial participation in the State program.

The burden associated with this requirement is the time and effort for a State to prepare and submit its child health plan to HCFA for approval. These collection requirements are currently approved by OMB under OMB# 0938–0707, with a current expiration date of 6/30/2000.

*Section 457.60 Amendments*

In summary, § 457.60 requires a State to submit to HCFA for approval an amendment to its approved State plan, whenever necessary, to reflect any changes in (1) Federal law, regulations, policy interpretations, or court decisions, (2) State law, organization, policy or operation of the program, or (3) the source of the State share of funding.

The burden associated with this requirement is the time and effort for a State to prepare and submit any necessary amendments to its State plan to HCFA for approval. Based upon HCFA's previous experiences with State plan amendments we estimate that on average, it will take a State 80 hours to complete and submit an amendment. We estimate that 10 States/territories will submit an amendment on an annual basis for a total burden of 800 hours.

*Section 457.70 Program Options*

In summary, § 457.70 requires a State that elects to obtain health benefits coverage through its Medicaid plan to submit an amendment to the State's Medicaid State plan as appropriate, demonstrating that it meets the requirements in subparts A, and G of part 457 and the applicable Medicaid regulations.

The burden associated with this requirement is the time and effort for a State to prepare and submit the necessary amendment to its Medicaid State plan to HCFA for approval. Based upon HCFA's previous experiences with State Plan amendments we estimate that on average, it will take a State 2 hours to complete and submit an amendment for HCFA approval. We estimate that 28 States/territories will submit an amendment for a total one-time burden of 56 hours.

*Section 457.350 Eligibility Screening*

In summary, § 457.350 requires a State that chooses to screen for Medicaid eligibility under the poverty level related groups described in 1902(l) of the Act, to provide written notification to the family if the child is found not to be Medicaid eligible.

The burden associated with this requirement is the time and effort for a State to prepare and provide written notification to the family if the child is found not to be Medicaid eligible. The average burden upon the State to prepare the notice is a one time burden estimated to be 10 hours and that it will take 3 minutes for the State to provide and the family to read the information. We estimate that on average, that each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

*Section 457.360 Facilitating Medicaid Enrollment*

In summary § 457.360(c) requires a State to provide full and complete information, in writing to the family (that meets the requirements of (c)(1) through (c)(2) of this section), to ensure that a decision by the family not to apply for Medicaid or not to complete the Medicaid application process represents an informed decision.

The burden associated with this requirement is the time and effort for a State to prepare and provide written notice to the family to ensure that a decision by the family not to apply for Medicaid or not to complete the Medicaid application process represents an informed decision. The average burden upon the State to disseminate a standard notice to the family is estimated to be 3 minutes. We estimate that on average, each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

*Section 457.361 Application for and Enrollment in CHIP*

In summary, § 457.361(b) requires a State to inform applicants, in writing and orally if appropriate, about the eligibility requirements and their rights and obligations under the program.

The burden associated with this requirement is the time and effort for a State to inform each applicant in writing and orally if appropriate, about the eligibility requirements and their rights and obligations under the program. We estimate the average burden upon the State to disseminate a standard notice to the family is estimated to be 3 minutes. We estimate that on average, each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

In summary, § 457.361(c) requires a State to send each applicant a written notice of the agency's decision on the application, and if eligibility is denied or terminated, the specific reason or reasons for the action and an explanation of the right to request a hearing within a reasonable time.

The burden associated with this requirement is the time and effort for a State to prepare and provide written notice to each applicant of the agency's decision on the application, and if eligibility is denied or terminated, the specific reason or reasons for the action and an explanation of the right to request a hearing within a reasonable time. We estimate that on average, it will take each State 3 minutes to prepare each notice and that each State will be required to provide 1 million notices on an annual basis for a total annual burden of 50,000 hours, per State. Therefore, the total estimated burden is calculated to be 2,700,000 hours on an annual basis.

*Section 457.431 Actuarial Report for Benchmark-Equivalent Coverage*

In summary, § 457.431 requires a State that wants to obtain approval for benchmark-equivalent benefits coverage described under § 457.430, to submit to HCFA an actuarial report that; (1) compares the actuarial value of coverage of the benchmark package to the State-designed benchmark-equivalent benefit package, (2) demonstrates through an actuarial analysis of the benchmark-equivalent package that coverage requirements under § 457.430 are met, and (3) meets the requirements of § 457.431(b).

The burden associated with this requirement is the time and effort for a State that wants to obtain approval for benchmark-equivalent benefits coverage described under § 457.430, to prepare and submit its actuarial report to HCFA for approval. We estimate that on

average, it will take a State 40 hours to prepare and submit a report for HCFA approval. We estimate that 6 States/territories will submit a plan for a total burden of 240 hours.

*Section 457.525 Public Schedule*

In summary, § 457.505 requires a State to make the public schedule available to: (1) CHIP beneficiaries (enrolled and non-enrolled) before the imposition of the charges, (2) CHIP applicants at the time of application, (3) all CHIP participating providers, (4) the general public.

The burden associated with this requirement is the time and effort for a State to prepare and make available its public schedule available to these four groups. We estimate that on average, it will take each State/Territory 120 minutes to prepare its public schedule and 3 minutes to disseminate no more than 20,000 copies of its schedule on an annual basis for a total annual burden of 1000 hours, per State/Territory. Therefore, the total estimated burden is calculated to be 54,000 hours on an annual basis.

*Section 457.740 State Expenditure and Statistical Reports*

In summary, § 457.740 requires a State to submit a report to the Secretary that contains quarterly program expenditures and statistical data, no later than 30 days after the end of each quarter of the federal fiscal year. The burden associated with this requirement is the time and effort for a State to prepare and submit its report to the Secretary. These collection requirements are currently approved by under OMB approval number OMB# 0938–0731, with a current expiration date of 1/31/2002.

In addition § 457.740 requires a State to submit an annual report, thirty days after the end of the Federal fiscal year, of an unduplicated count for the Federal fiscal year of children who are enrolled in the title XIX Medicaid program, and the separate child health and Medicaid-expansion programs, as appropriate, by age, service delivery, and income categories described in paragraphs (a) and (b) of this section.

The burden associated with this requirement is the time and effort for a State to prepare and submit its annual report to the Secretary. We estimate that on average, it will take a State 40 hours to complete and submit their report. We estimate that 54 States/territories will submit a plan for a total burden of 2160 hours.

*Section 457.750 Annual Report*

In summary, § 457.750 requires a State to submit a report to the Secretary by January 1 following the end of each preceding federal fiscal year, on the results of the State's assessment of operation of the State child health plan.

The burden associated with this requirement is the time and effort for a State to prepare and submit its annual report on the results of the State's assessment of operation of the State child health plan. We estimate that on average, it will take a State 40 hours to complete and submit their report. We estimate that 54 States/territories will submit a plan for a total burden of 2160 hours.

*Section 457.760 State Evaluations*

In summary, § 457.760 requires a State to submit by March 31, 2000, an evaluation to the Secretary that includes all of the elements referenced in paragraphs (a) through (g) of this section.

The one time burden associated with this requirement is the time and effort for a State to prepare and submit an evaluation to the Secretary that includes all of the elements referenced in paragraphs (a) though (g) of this section. We estimate that on average, it will take a State 40 hours to complete and submit their evaluation. We estimate that 54 States/territories will submit a plan for a total burden of 2,160 hours.

*Section 457.810 Premium Assistance for Employer-Sponsored Group Health Plans: Required Protections Against Substitution*

In summary, § 457.810(d) requires a State that uses title XXI funds to provide premium subsidies under employer-sponsored group health plans to collect information to evaluate the amount of substitution that occurs as a result of the subsidies and the effect of subsidies on access to coverage.

The burden associated with this requirement is the time and effort for a State to collect the necessary data to evaluate the amount of substitution that occurs as a result of the subsidies and the effect of subsidies on access to coverage. We estimate that on average, it will take a State 20 hours to collect the necessary data for their evaluation. We estimate that 54 States/territories will submit a plan for a total burden of 1,080 hours.

*Section 457.965 Documentation*

In summary, § 457.965 requires a State to include in each applicant's record facts to support the State's determination of the applicant's eligibility for CHIP. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA as defined in 5 CFR 13203(b)(3), because this requirement would be imposed in the absence of a Federal requirement.

*Section 457.985 Enrollee Rights To File Grievances and Appeals*

In summary, § 457.985(b) requires a State to establish and maintain written procedures for grievances and appeals that adhere to generally acceptable industry practices within the State and comply with State-specific grievance and appeal requirements currently in effect for commercially licensed health care related businesses. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(3), because this requirement would be imposed in the absence of a Federal requirement.

*Section 457.1005 Waiver for Cost-Effective Coverage Through a Community-Based Health Delivery System*

In summary, § 457.1005 requires a State requesting a waiver for cost-effective coverage through a community-based health delivery system, to submit documentation to HCFA that demonstrates that they meet the requirements of § 457.1005(b)(1) and (b)(2).

The burden associated with this requirement is the time and effort for a State that wants to obtain a waiver to prepare and submit the necessary documentation to HCFA that demonstrates that they meet the requirements of § 457.1005.

We estimate that on average, it will take a State 24 hours to prepare and submit a waiver request for HCFA approval. We estimate that 10 States/territories will submit a request for a total burden of 240 hours.

*Section 457.1015 Cost Effectiveness*

In summary, § 457.1015 requires a State to report to HCFA in its annual report the amount it spent on family coverage and the number of children it covered. While this requirement is subject to the PRA, the burden associate with this requirement is captured in § 457.750 (Annual report).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 457.50, 457.60, 457.70, 457.350, 457.360, 457.431, 457.525, 457.555, 457.740, 457.750, 457.760, 457.810, 457.965, 457.985, 457.1005, and

457.1015. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies directly to the following:

Health Care Financing Administration, Office of Information Services, Standards and Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–2006–P.

And,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Lori Schack, HCFA Medicaid Desk Officer.

## VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## List of Subjects

*42 CFR Part 431*

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

*42 CFR Part 433*

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

*42 CFR Part 435*

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

*42 CFR Part 457*

Administrative practice and procedure, Grant programs-health, Children's Health Insurance Program, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

### § 431.865 [Amended]

2. In § 431.865(b), the definition of ''erroneous payment'' is amended by adding the sentence, ''The term does not include payments made for care and services covered under the State plan and furnished to children during a presumptive eligibility period as described in § 435.1102 of this chapter.'' at the end of paragraph (3) of the definition.

## PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for part 433 is revised to read as follows:

**Authority:** Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. In § 433.10, the heading of paragraph (c) is republished and a new paragraph (c)(4) is added to read as follows:

### § 433.10 Rates of FFP for program services.

* * * * *

(c) *Special provisions.* * * *

(4) Under section 1905(b), the Federal share of State expenditures for services provided to children described in 433.11(a) is the enhanced FMAP rate determined in accordance with § 457.622(b) of this chapter, subject to the conditions explained in 433.11(b).

3. A new § 433.11 is added to read as follows:

### § 433.11 Enhanced FMAP rate for children.

(a) Subject to the conditions in paragraph (b) of this section, enhanced FMAP determined in accordance with § 457.622 of this chapter will be used to determine the Federal share of State expenditures for—

(1) Services provided to optional targeted low-income children described in § 435.229(b) of this chapter; and

(2) Services provided to children born before October 1, 1983 who would be described in section 1902(l)(1)(D) of the Act (poverty-level-related children's groups) if—

(i) They had been born on or after that date; and

(ii) They would not qualify for medical assistance under the State plan in effect on March 31, 1997.

(3) Disproportionate share hospital expenditures identified as payment for services provided to children described in paragraphs (a)(1) and (a)(2) of this section.

(b) Enhanced FMAP is not available if—

(1) A State adopts income and resource standards and methodologies for purposes of determining a child's eligibility under the Medicaid State plan that are more restrictive than those applied under the State plan in effect on June 1, 1997; or

(2) No funds are available in the State's title XXI allotment for the quarter enhanced FMAP is claimed, as that allotment is determined under part 457, subpart F of this chapter; or

(3) The State fails to maintain a valid method of identifying services provided on behalf of children listed in paragraph (a) of this section.

## PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

C. Part 435 is amended as set forth below:

1. The authority citation for part 435 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 435.229 is added to read as follows:

### § 435.229 Optional targeted low-income children.

(a) An optional targeted low-income child is a child who:

(1) Is a targeted low-income child as defined in § 457.310(a) of this chapter; and

(2) Would not be eligible for Medicaid under the policies of the State plan in effect on March 31, 1997.

(b) The State agency may provide Medicaid to:

(1) Individuals under age 19 who are optional targeted low-income children described in paragraph (a) of this section; or

(2) Reasonable categories of these individuals.

3. In § 435.910, paragraph (h) is added to read as follows:

### § 435.910 Use of social security number.

* * * * *

(h) *Exception.* (1) An applicant who, because of well established religious objections, refuses to obtain a Social Security Number (SSN) may be given a Medicaid identification number by the State. Such a number may be either an SSN obtained by the State on the applicant's behalf or another unique identifier.

(2) The term ''well established religious objections'' means that the applicant:

(i) Is a member of a recognized religious sect or division of the sect; and

(ii) Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

(3) An alternative number established by the State to identify such an individual shall be used to the same extent as an SSN is used by the State as described in paragraph (b)(3) of this section.

4. In § 435.1001 paragraph (a) is revised to read as follows:

**§ 435.1001 FFP for administration.**

(a) FFP is available in the necessary administrative costs the State incurs in—

(1) Determining and redetermining Medicaid eligibility and in providing Medicaid to eligible individuals; and

(2) Determining presumptive eligibility for children and providing services to presumptively eligible children.

* * * * *

5. Section 435.1002 is amended by adding a new paragraph (c) to read as follows:

**§ 435.1002 FFP for services.**

* * * * *

(c) FFP is available in expenditures for services covered under the plan that are furnished—

(1) To children who are determined by a qualified entity to be presumptively eligible;

(2) During a period of presumptive eligibility;

(3) By a provider that is eligible for payment under the plan; and

(4) Regardless of whether the children are determined eligible for regular Medicaid following the period of presumptive eligibility.

**§ 435.1007 [Amended]**

6. In paragraph (a), the second sentence is amended by adding ''and 1905(u)'' between ''(X)'', and ''of the Act;''.

7. A new subpart L is added to part 435 to read as follows:

## Subpart L—Option for Coverage of Special Groups

Sec.
435.1100 Scope.

**Presumptive Eligibility for Children**

435.1101 Definitions related to presumptive eligibility period for children.
435.1102 General Rules.

**§ 435.1100 Scope.**

This subpart prescribes the requirements for providing medical assistance to special groups who are not eligible for Medicaid as categorically or medically needy.

### Presumptive Eligibility for Children

**§ 435.1101 Definitions related to presumptive eligibility period for children.**

*Applicable income level* means the highest income eligibility standard established under the plan that is most likely to be used to establish the regular Medicaid eligibility of a child of the age involved.

*Application form* means at a minimum the application form used to apply for Medicaid under the poverty-level-related eligibility groups described in section 1902(l) of the Act.

*Period of presumptive eligibility* means a period that begins on the date on which a qualified entity determines that a child is presumptively eligible and ends with the earlier of—

(1) In the case of a child on whose behalf a Medicaid application has been filed, the day on which a decision is made on that application; or

(2) In the case of a child on whose behalf a Medicaid application has not been filed, the last day of the month following the month in which the determination of presumptive eligibility was made.

*Qualified entity* means an entity that is determined by the agency to be capable of making determinations of presumptive eligibility for children, and that—

(1) Furnishes health care items and services covered under the approved plan and is eligible to receive payments under the approved plan;

(2) Is authorized to determine the eligibility of a child to participate in a Head Start program under the Head Start Act;

(3) Is authorized to determine eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990; or

(4) Is authorized to determine eligibility of an infant or child to receive assistance under the special nutrition program for women, infants, and children (WIC) under section 17 of the Child Nutrition Act of 1966.

*Services* means all services covered under the plan including EPSDT (see part 440 of this chapter.)

**§ 435.1102 General rules.**

(a) The agency may provide services to children under age 19 during one or more periods of presumptive eligibility based on a determination of presumptive eligibility made by a qualified entity on the basis that the child's estimated gross family income, or at State option family income after application of simple disregards, does not exceed the applicable income level.

(b) If the agency elects to provide services to children during a period of presumptive eligibility, the agency must—

(1) Provide qualified entities with application forms for Medicaid and information on how to assist parents, guardians, and other persons in completing and filing such forms;

(2) Establish procedures to ensure that qualified entities—

(i) Notify the agency that a child is presumptively eligible within 5 working days after the date that the determination is made;

(ii) In writing at the time that a determination is made, inform the parent or custodian of a child determined to be presumptively eligible that if a Medicaid application is not filed by the last day of the following month, the presumptive eligibility will end on that last day and that if a Medicaid application is filed by the last day of the following month, the child's presumptive eligibility will end on the day that a decision is made on the Medicaid application; and

(iii) In writing at the time that a determination is made, inform the parent or custodian of a child determined not to be presumptively eligible of the reason for the determination and that he/she may file an application for Medicaid on the child's behalf;

(3) Provide all services covered under the plan, including EPSDT: and

(4) Make determinations of presumptive eligibility available Statewide to all children.

(c) The agency may establish reasonable methods of determining the number of periods of presumptive eligibility that will be authorized for a child in a given time frame.

D. Subchapter D is redesignated as subchapter F; and Parts 462, 466, 473, and 476 are redesignated as parts 475, 476, 478 and 480, respectively.

E. Subchapter E is redesignated as subchapter G.

F. A new subchapter D consisting of part 457 is added to read as follows:

**SUBCHAPTER D—CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)**

## PART 457—ALLOTMENTS AND GRANTS TO STATES


**Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies**

Sec.
457.1 Program description.
457.2 Basis and scope of subchapter D.
457.10 Definitions and use of terms.
457.30 Basis, scope, and applicability of subpart A.
457.40 State program administration.
457.50 State plan.
457.60 Amendments.
457.65 Duration of State plans and plan amendments.
457.70 Program options.
457.80 Current State child health insurance coverage and coordination.
457.90 Outreach.
457.110 Enrollment assistance and information requirements.
457.120 Public involvement in program development.
457.125 Provision of child health assistance to American Indian and Alaska Native children
457.130 Civil rights assurance.
457.135 Assurance of compliance with other provisions.
457.140 Budget.
457.150 HCFA review of State plan material.
457.160 Notice and timing of HCFA action on State plan material.
457.170 Withdrawal process.
457.190 Administrative and judicial review of action on State plan material.

**Subpart B—[Reserved]**

**Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment**

457.300 Basis, scope, and applicability.
457.301 Definitions and use of terms.
457.305 State plan provisions.
457.310 Targeted low-income child.
457.320 Other eligibility standards.
457.340 Application.
457.350 Eligibility screening.
457.360 Facilitating Medicaid enrollment.
457.361 Application for and enrollment in CHIP.
457.365 Grievances and appeals.

**Subpart D—Coverage and Benefits: General Provisions**

457.401 Basis, scope, and applicability.
457.402 Child health assistance and other definitions.
457.410 Health benefits coverage options.
457.420 Benchmark health benefits coverage.
457.430 Benchmark-equivalent health benefits coverage.
457.431 Actuarial report for benchmark-equivalent coverage.
457.440 Existing comprehensive State-based coverage.
457.450 Secretary-approved coverage.
457.470 Prohibited coverage.
457.475 Limitations on coverage: Abortions.
457.480 Preexisting condition exclusions and relation to other laws.
457.490 Delivery and utilization control systems.
457.495 Grievances and appeals.

**Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities**

457.500 Basis, scope, and applicability.
457.505 General State plan requirements.
457.510 Premiums, enrollment fees, or similar fees: State plan requirements.
457.515 Co-payments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.
457.520 Cost sharing for well-baby and well-child care.
457.525 Public schedule.
457.530 General cost sharing protection for lower income children.
457.535 Cost sharing protection to ensure enrollment of American Indians/Alaska Natives.
457.540 Cost sharing charges for children in families at or below 150 percent of the Federal poverty line (FPL).
457.545 Cost sharing for children in families above 150 percent of the FPL.
457.550 Restriction on the frequency of cost sharing charges on targeted low-income children in families at or below 150 percent of the FPL.
457.555 Maximum allowable cost sharing charges on targeted low-income children at or below 150 percent of the FPL.
457.560 Cumulative cost sharing maximum.
457.565 Grievances and appeals.
457.570 Disenrollment protections.

**Subpart F—[Reserved]**

**Subpart G—Strategic Planning, Reporting, and Evaluation**

457.700 Basis, scope, and applicability.
457.710 State plan requirements: Strategic objectives and performance goals.
457.720 State plan requirement: State assurance regarding data collection, records, and reports.
457.730 State plan requirement: State annual reports and evaluation.
457.735 State plan requirement: State assurance of the quality and appropriateness of care.
457.740 State expenditures and statistical reports.
457.750 Annual report.
457.760 State evaluations.

**Subpart H—Substitution of Coverage**

457.800 Basis, scope, and applicability.
457.805 State plan requirements: Private coverage substitution.
457.810 Premium assistance for employer-sponsored group health plans: Required protections against substitution.

**Subpart I—Program Integrity and Beneficiary Protections**

457.900 Basis, scope, and applicability.
457.902 Definitions.
457.910 State program administration.
457.915 Fraud detection and investigation.
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457.925 Preliminary investigation.
457.930 Full investigation, resolution, and reporting requirements.
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457.945 Certification for contracts and proposals.
457.950 Contract and payment requirements including certification of payment-related information.
457.955 Conditions necessary to contract as a managed care entity (MCE).
457.960 Reporting changes in eligibility and redetermining eligibility.
457.965 Documentation.
457.970 Eligibility and income verification.
457.975 Redetermination intervals in cases of suspected enrollment fraud.
457.980 Verification of enrollment and provider services received.
457.985 Enrollee rights to file grievances and appeals.
457.990 Privacy protections.
457.995 Consumer Bill of Rights and Responsibilities.

**Subpart J—Allowable Waivers: General Provisions**

457.1000 Basis, scope, and applicability.
457.1005 Waiver for cost-effective coverage through a community-based health delivery system.
457.1010 Waiver for purchase of family coverage.
457.1015 Cost-effectiveness.


**Authority:** Section 1102 of the Social Security Act (42 U.S.C. 1302).

## Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

### § 457.1 Program description.

Title XXI of the Social Security Act, enacted in 1997 by the Balanced Budget Act, authorizes Federal grants to States for provision of child health assistance to uninsured, low-income children. The program is jointly financed by the Federal and State governments and administered by the States. Within broad Federal rules, each State decides eligible groups, types and ranges of services, payment levels for benefit coverage, and administrative and operating procedures.

### § 457.2 Basis and scope of subchapter D.

(a) *Basis.* This subchapter implements title XXI of the Act, which authorizes Federal grants to States for the provision of child health assistance to uninsured, low-income children.

(b) *Scope.* The regulations in subchapter D set forth State plan requirements, standards, procedures, and conditions for obtaining Federal financial participation (FFP) to enable States to provide health benefit coverage to targeted low-income children, as defined in 457.310(b).

**§ 457.10 Definitions and use of terms.**

For purposes of this part the following definitions apply:

*American Indian/Alaska Native (AI/AN)* means—

(1) A member of a Federally recognized Indian tribe, band, or group or a descendant in the first or second degree of any such member;

(2) An Eskimo or Aleut or other Alaska Native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.;*

(3) A person who is considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) A person who is determined to be an Indian under regulations promulgated by the Secretary.

*Child* means an individual under the age of 19.

*Child health assistance* has the meaning assigned in § 457.402.

*Children's Health Insurance Program (CHIP)* means a program established and administered by a State, but jointly funded with the Federal government to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination of both.

*Combination program* means a program under which a State provides child health assistance through both a Medicaid expansion program and a separate child health program.

*Contractor* has the meaning assigned in § 457.902.

*Cost-effectiveness* has the meaning assigned in § 457.1015.

*Creditable health coverage* has the meaning given the term ''creditable coverage'' at 45 CFR 146.113.

*Emergency medical condition* has the meaning assigned at § 457.402.

*Emergency medical services* has the meaning assigned at § 457.402.

*Employment with a public agency* has the meaning assigned in § 457.301.

*Family income* means income as determined by the State for a family as defined by the State.

*Federal fiscal year* starts on the first day of October each year and ends on the last day of September.

*Fee-for-service entity* has the meaning assigned in § 457.902.

*Grievance* has the meaning assigned at § 457.902.

*Group health insurance coverage* has the meaning assigned at 45 CFR 144.103.

*Group health plan* has the meaning assigned at 45 CFR 144.103.

*Health benefits coverage* has the meaning assigned in § 457.402.

*Health maintenance organization (HMO) plan* has the meaning assigned in § 457.420.

*Legal obligation* has the meaning assigned in § 457.555.

*Low-income child* means a child whose family income is at or below 200 percent of the poverty line for the size family involved.

*Managed care entity (MCE)* has the meaning assigned in § 457.902.

*Medicaid applicable income level* means, with respect to a child, the effective income level (expressed as a percentage of the poverty line) that has been specified under the State plan under title XIX of the Act (including for these purposes, a section 1115 waiver authorized by the Secretary or under the authority of section 1902(r)(2)), as of March 31, 1997, for the child to be eligible for medical assistance under either section 1902(l)(2) or 1905(n)(2).

*Medicaid expansion program* means a program where a State receives Federal funding at the enhanced matching rate available for expanding eligibility to targeted low-income children.

*Post-stabilization services* has the meaning assigned in § 457.402.

*Poverty line/Federal poverty level* means the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

*Preexisting condition exclusion* has the meaning assigned at 45 CFR 144.103.

*Premium assistance for employer-sponsored group health plans* means State payment of part or all of premiums for group health plan or group health insurance coverage of an eligible child or children.

*Public agency* has the meaning assigned in § 457.301.

*Separate child health program* means a program under which a State receives Federal funding from its title XXI of the Act allotment under an approved plan that obtains child health assistance through obtaining coverage that meets the requirements of section 2103 of the Act.

*State* means all States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

*State health benefits plan* has the meaning assigned in § 457.301.

*State plan* means the approved or pending title XXI State child health plan.

*State program integrity unit* has the meaning assigned in § 457.902.

*Targeted low-income child* has the meaning assigned in § 457.310.

*Uncovered child* means a child who does not have creditable health coverage.

*Well-baby and well-child care services* means regular or preventive diagnostic and treatment services necessary to ensure the health of babies and children as defined by the State. For purposes of cost sharing, the term has the meaning assigned at § 457.520.

**§ 457.30 Basis, scope, and applicability of subpart A.**

(a) *Statutory basis.* This subpart is based on the following sections of the Act:

(1) Section 2101(a) of the Act specifies that the purpose of title XXI of the Act is to provide to States funds to enable them to initiate and expand child health assistance to uninsured low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children.

(2) Section 2101(b) requires that the State submit a State plan.

(3) Section 2102(a) sets forth requirements regarding the contents of the State plan.

(4) Section 2102(c) requires that the State plan include a description of the procedures to be used by the State to accomplish outreach and coordination with other health insurance programs.

(5) Section 2106 specifies the process for submission, approval, and amendment of State plans.

(6) Section 2107(c) requires that the State plan include a description of the process used to involve the public in the design and implementation of the plan.

(7) Section 2107(d) requires that the State plan include a description of the budget for the plan.

(8) Section 2107(e) of the Act, which provides that certain provisions of title XIX and title XI of the Act apply under title XXI of the Act in the same manner that they apply under title XIX.

(b) *Scope.* This subpart sets forth provisions governing the administration of a CHIP, the general requirements for a State plan, and a description of the process for review of a State plan or plan amendment.

(c) *Applicability.* This subpart applies to all States that request Federal financial participation to provide child health assistance under title XXI of the Act.

**§ 457.40 State program administration.**

(a) *Program operation.* The State must implement its program in accordance with the approved State plan, any approved State plan amendments, the requirements of title XXI and title XIX of the Act (as appropriate), and the

regulations in this chapter. HCFA monitors the operation of the approved State plan and plan amendments to ensure compliance with the requirements of title XXI, title XIX of the Act (as appropriate) and this chapter.

(b) *State authority to submit State plan.* A State plan or plan amendment must be signed by the State Governor, or signed by an individual who has been delegated authority by the Governor to submit it.

(c) *State program officials.* The State must identify, in the State plan or State plan amendment, the State officials who are responsible for program administration and financial oversight.

(d) *State legislative authority.* The State plan must include an assurance that the State will not claim expenditures for child health assistance prior to the time that the State has legislative authority to operate the State plan or plan amendment as approved by HCFA.

**§ 457.50 State plan.**

The State plan is a comprehensive written statement submitted by the State to HCFA for approval, which describes the purpose, nature, and scope of the State's CHIP and gives assurance that the program is administered in conformity with the specific requirements of title XXI, title XIX of the Act (as appropriate), and the regulations in this chapter. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

**§ 457.60 Amendments.**

(a) *Submittal of plan amendments.* A State may amend its approved State plan in whole or in part at any time through the submission of an amendment to HCFA. A State must amend its State plan whenever necessary to reflect—

(1) Changes in Federal law, regulations, policy interpretations, or court decisions;

(2) Changes in State law, organization, policy, or operation of the program; and

(3) Changes in the source of the State share of funding.

(b) *Budget amendment.* When the State plan amendment makes any modification to the approved budget, a State must include an amended budget that describes the State's planned expenditures for a three year period.

**§ 457.65 Duration of State plans and plan amendments.**

(a) *Effective date in general.* (1) A State plan or plan amendment takes effect on the day specified in the plan but no earlier than October 1, 1997. The effective date is no earlier than the date on which the State begins to incur costs to implement its State plan or plan amendment.

(2) A State plan amendment that takes effect prior to submission of the amendment to HCFA may remain in effect only until the end of the State fiscal year in which the State makes it effective, or, if later, the end of the 90-day period in which the State makes it effective, unless the State submits the amendment to HCFA for approval before the end of that State fiscal year or 90-day period.

(b) *Amendments relating to eligibility or benefits.* A State plan amendment that eliminates or restricts eligibility or benefits may not be in effect for longer than a 60-day period unless the amendment is submitted to HCFA before the end of that 60-day period. The amendment may not take effect unless—

(1) The State certifies that it has provided prior public notice of the proposed change in a form and manner provided under applicable State law; and

(2) The public notice was published before the requested effective date of change.

(c) *Amendments relating to cost sharing.* A State plan amendment that implements cost sharing charges, increases existing cost sharing charges, or increases the cumulative cost sharing maximum as set forth at § 457.555 is considered an amendment that restricts benefits and must meet the requirements in paragraph (b) of this section.

(d) *Amendments relating to source of State funding.* (1) A State must submit a plan amendment to HCFA before any change in the source of the State share of funding from the source reflected in the approved State plan can take effect.

(2) A State is not required to submit a plan amendment for changes in the type of non-health care related revenues used to generate general revenue.

(e) *Continued approval.* An approved State plan continues in effect unless—

(1) The State adopts a new plan by obtaining approval under § 457.60 of an amendment to the State plan; or

(2) The Secretary finds substantial noncompliance of the plan with the requirements of the statute or regulations.

**§ 457.70 Program options.**

(a) *Health benefits coverage options.* A State may elect to obtain health benefits coverage under its plan through—

(1) A Medicaid expansion program;

(2) A separate child health program; or

(3) A combination program.

(b) *State plan requirement.* A State plan must include a description of the State's chosen program option.

(c) *Medicaid expansion program requirements.* A State that elects to obtain health benefits coverage through its Medicaid plan must—

(1) Meet the requirements of the following subparts of this part—

(i) Subpart A;

(ii) Subpart B (if the State claims administrative costs under title XXI of the Act;

(iii) Subpart C (with respect to the definition of a targeted low-income child only);

(iv) Subpart F (with respect to determination of the allotment for purposes of the enhanced matching rate, determination of the enhanced matching rate, and payment of any claims for administrative costs under title XXI of the Act only);

(v) Subpart G;

(vi) Subpart H (if the State elects the eligibility group for optional targeted low-income children and elects to pay for employer-sponsored insurance); and

(vii) Subpart J (if the State claims administrative costs under title XXI of the Act and seeks a waiver of limitations on such claims based on a community based health delivery system).

(2) Submit an approvable amendment to the State's Medicaid State plan as appropriate.

(d) *Separate child health program requirements.* A State that elects to obtain health benefits coverage under its plan through a separate child health program must meet all the requirements of part 457.

(e) *Combination program requirements.* A State that elects to obtain health benefits coverage through both a separate child health program and a Medicaid expansion program must meet the requirements of paragraphs (c) and (d) of this section.

**§ 457.80 Current State child health insurance coverage and coordination.**

A State plan must include a description of—

(a) The extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children, by income level and other relevant factors, currently have creditable health coverage (as defined in § 457.10) and, if sufficient information is available, whether the creditable health coverage they have is under public health insurance programs or health insurance

programs that involve public-private partnerships;

(b) Current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships;

(c) Procedures the State uses to accomplish coordination of CHIP with other public and private health insurance programs, including procedures designed to increase the number of children with creditable health coverage and to ensure that only eligible targeted low-income children are covered under CHIP.

**§ 457.90 Outreach.**

(a) *Procedures required.* A State plan must include a description of procedures used to inform families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs of the availability of the programs, and to assist them in enrolling their children in one of the programs.

(b) *Examples.* Outreach strategies may include but are not limited to the following:

(1) Education and awareness campaigns, including targeted mailings and information distribution through various organizations.

(2) Enrollment simplification, such as simplified or joint application forms.

**§ 457.110 Enrollment assistance and information requirements.**

(a) *Information disclosure.* The State must make accurate, easily understood information available to families of targeted low-income children and provide assistance to these families in making informed health care decisions about their health plans, professionals, and facilities.

(b) *Required information.* The State must have a mechanism in place to ensure that the following information is made available to applicants and beneficiaries in a timely manner:

(1) Types of benefits, and amount, duration and scope of benefits available under the program.

(2) Names and locations of current participating providers.

**§ 457.120 Public involvement in program development.**

A State plan must include a description of the method the State uses to—

(a) Involve the public in both the design and initial implementation of the program; and

(b) Ensure ongoing public involvement once the State plan has been implemented.

**§ 457.125 Provision of child health assistance to American Indian and Alaska Native children.**

(a) *Enrollment.* A State must include a description of procedures used to ensure the provision of child health assistance to American Indian and Alaska Native children. HCFA requests that the State official responsible for CHIP consult with Federally recognized Tribes and other Indian tribes and organizations in the State on the development and implementation of these procedures.

(b) *Exemption from cost sharing.* HCFA will not approve a State plan that imposes cost sharing on American Indian and Alaska Native children.

**§ 457.130 Civil rights assurance.**

The State plan must include an assurance that the State will comply with all applicable civil rights requirements, including title VI of the Civil Rights Act of 1964, title II of the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, 45 CFR part 80, part 84, and part 91, and 28 CFR part 35.

**§ 457.135 Assurance of compliance with other provisions.**

The State plan must include an assurance that the State will comply under title XXI with the following provisions of titles XIX and XI of the Social Security Act:

(a) Section 1902(a)(4)(C) (relating to conflict of interest standards).

(b) Paragraphs (2), (16) and (17) of section 1903(i) (relating to limitations on payment).

(c) Section 1903(w) (relating to limitations on provider donations and taxes).

(d) Section 1132 (relating to periods within which claims must be filed).

**§ 457.140 Budget.**

The State plan, or plan amendment as required at § 457.60(b), must include a budget that describes the State's planned expenditures for a 3-year period. The budget must describe:

(a) Planned use of funds, including—

(1) Projected amount to be spent on health services;

(2) Projected amount to be spent on administrative costs, such as outreach, child health initiatives, and evaluation; and

(3) Assumptions on which the budget is based, including cost per child and expected enrollment.

(b) Projected source of non-Federal plan expenditures, including any requirements for cost-sharing by beneficiaries.

**§ 457.150 HCFA review of State plan material.**

(a) *Basis for action.* HCFA reviews each State plan and plan amendment to determine whether it meets or continues to meet the requirements for approval under relevant Federal statutes, regulations, and guidelines furnished by HCFA to assist in the interpretation of these regulations.

(b) *Action on complete plan.* HCFA approves or disapproves the State plan or plan amendment only in its entirety.

(c) *Authority.* The HCFA Administrator exercises delegated authority to review and then to approve or disapprove the State plan or plan amendment, or to determine that previously approved material no longer meets the requirements for approval. The Administrator does not make a final determination of disapproval without first consulting the Secretary.

(d) *Initial submission.* The Administrator designates an official to receive the initial submission of State plans.

(e) *Review process.* (1) The Administrator designates an individual to coordinate HCFA's review for each State that submits a State plan.

(2) HCFA notifies the State of the identity of the designated individual in the first correspondence relating to that plan, and at any time there is a change in the designated individual.

(3) In the temporary absence of the designated individual during regular business hours, an alternate individual will act in place of the designated individual.

**§ 457.160 Notice and timing of HCFA action on State plan material.**

(a) *Notice of final determination.* The Administrator provides written notification to the State of the approval or disapproval of a State plan or plan amendment.

(b) *Timing.* (1) A State plan or plan amendment will be considered approved unless HCFA, within 90 calendar days after receipt of the State plan or plan amendment in the HCFA central office, sends the State—

(i) Written notice of disapproval; or

(ii) Written notice of additional information it needs in order to make a final determination.

(2) A State plan or plan amendment is considered received when the

designated official or individual, as determined in § 457.150(d) and (e), receives an electronic, fax or paper copy of the complete material.

(3) If HCFA requests additional information, the 90-day review period for HCFA action on the State plan or plan amendment—

(i) Stops on the day HCFA sends a written request for additional information or the next business day if the request is sent on a Federal holiday or weekend; and

(ii) Resumes on the next calendar day after the HCFA designated individual receives an electronic, fax, or hard copy from the State of all the requested additional information, unless the information is received after 5 p.m. eastern time on a day prior to a non-business day or any time on a non-business day, in which case the review period resumes on the following business day.

(4) The 90-day review period cannot stop or end on a non-business day. If the 90th calendar day falls on a non-business day, HCFA will consider the 90th day to be the next business day.

(5) HCFA may send written notice of its need for additional information as many times as necessary to obtain the complete information necessary to review the State plan or plan amendment.

#### § 457.170 Withdrawal process.

A State may withdraw its State plan or plan amendment at any time during the review process by providing written notice to HCFA of the withdrawal.

#### § 457.190 Administrative and judicial review of action on State plan material.

(a) *Request for reconsideration.* Any State dissatisfied with the Administrator's action on State plan material under § 457.150 may, within 60 days after receipt of the notice of final determination provided under § 457.160(a), request that the Administrator reconsider whether the State plan or plan amendment conforms with the requirements for approval.

(b) *Notice of hearing.* Within 30 days after receipt of the request, the Administrator notifies the State of the time and place of a hearing to be held for the purpose of reconsideration.

(c) *Hearing procedures.* The hearing procedures set forth in part 430, subpart D of this chapter govern a hearing requested under this section.

(d) *Effect of hearing decision.* HCFA does not delay the denial of Federal funds, if required by the Administrator's original determination, pending a hearing decision. If the Administrator determines that his or her original decision was incorrect, HCFA pays the State a lump sum equal to any funds incorrectly denied.

(e) *Judicial review.* Judicial review of a final determination made under this subchapter is governed by § 430.38 of this chapter.

## Subpart B—[Reserved]

## Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

#### § 457.300 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements —

(1) Section 2102(b) of the Act, which relates to eligibility standards and methodologies;

(2) Section 2105(c)(6)(B) of the Act, which relates to no payment for expenditures for child health assistance provided to children eligible for coverage under other Federal health care programs other than programs operated or financed by the Indian Health Service; and

(3) Section 2110(b) of the Act, which provides a definition of targeted low-income child.

(b) *Scope.* This subpart sets forth the requirements relating to eligibility standards and to screening, application and enrollment procedures.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and apply to a Medicaid expansion program only with respect to the definition of a targeted low-income child.

#### § 457.301 Definitions and use of terms.

As used in this subpart—

*Employment with a public agency* includes employment with an entity under a contract with a public agency;

*Public agency* means a State, county, city or other type of municipal agency, including a public school district, transportation district, irrigation district, or any other type of public entity;

*State health benefits plan* means a plan that is offered or organized by the State government on behalf of State employees or other public agency employees within the State. The term does not include a separately run county, city, or other public agency plan or a plan that provides coverage only for a specific type of care, such as dental or vision care.

#### § 457.305 State plan provisions.

The State plan must include a description of standards consistent with § 457.310 and § 457.320 used to determine the eligibility of children for coverage under the State plan.

#### § 457.310 Targeted low-income child.

(a) *Definition.* A targeted low-income child is a child who meets the standards set forth in paragraph (b) of this section and other eligibility standards established by the State under § 457.320.

(b) *Standards.* A targeted low-income child must meet the following standards:

(1) *Financial need.* A child who resides in a State with a Medicaid applicable income level must have a family income at or below 200 percent of the Federal poverty line or family income that—

(i) Exceeds the Medicaid applicable income level but not by more than 50 percentage points (expressed as a percentage of the Federal poverty line); or

(ii) Does not exceed the Medicaid applicable income level calculated using June 1, 1997 instead of March 31, 1997.

(2) *No other coverage.* A targeted low-income child must not be—

(i) Found eligible for Medicaid (determined either through the Medicaid application process or the screening process described at § 457.350); or

(ii) Covered under a group health plan or under health insurance coverage, unless the health insurance coverage program has been in operation since before July 1, 1997, and is administered by a State that receives no Federal funds for the program's operation. A child would not be considered covered under a group health plan if the child did not have reasonable access to care under that plan.

(c) *Exclusions.* Notwithstanding paragraph (a) of this section, the following groups are excluded from the definition of targeted low-income children:

(1) *Children eligible for certain State health benefits coverage.* (i) A targeted low-income child may not be a member of a family eligible for health benefits coverage under a State health benefits plan in the State on the basis of a family member's employment with a public agency, even if the family declines to accept the coverage.

(ii) A child is considered eligible for health benefits coverage under a State health benefits plan if a more than nominal contribution to the cost of health benefits coverage under a State health benefits plan is available from the State or public agency with respect to the child. A contribution over $10

towards the cost of dependent coverage is considered more than nominal.

(iii) The contribution with respect to the child is calculated by deducting amounts only available to an adult employee from the total State or public agency contribution.

(2) *Residents of an institution.* A child must not be an inmate of a public institution or a patient in an institution for mental diseases as defined at § 435.1009 of this chapter, at the time of initial application or any redetermination of eligibility.

**§ 457.320 Other eligibility standards.**

(a) Except as provided in paragraph (b) of this section, the State plan may adopt eligibility standards for one or more groups of children related to—

(1) Geographic area(s) served by the plan;

(2) Age (not to exceed 18 years);

(3) Income;

(4) Resources;

(5) Spenddowns;

(6) Disposition of resources;

(7) Residency;

(8) Disability status;

(9) Access to or coverage under other health coverage; or

(10) Duration of eligibility (as long as eligibility is determined at least every 12 months).

(b) In establishing eligibility standards, a State may *not*—

(1) Cover children with higher family income without covering children with a lower family income within any defined group of covered targeted low-income children;

(2) Deny eligibility based on a preexisting medical condition;

(3) Restrict eligibility based on disability status;

(4) Require that any individual provide a social security number, including the social security number of the child or that of a family member whose income or resources might be used in making the child's eligibility determination;

(5) Exclude American Indian or Alaska Native children based on eligibility for, or access to, medical care funded by the Indian Health Service;

(6) Violate any other Federal laws or regulations pertaining to eligibility for CHIP, including laws that require exclusion of certain income or resources from all consideration and laws that require verification of certain items or statuses;

(7) Exclude individuals based on citizenship or nationality, to the extent that the children are U.S. citizens, U.S. nationals or qualified aliens (except to the extent that 8 U.S.C. 1613(a) precludes them from receiving Federal means-tested public benefits).

(c) In establishing eligibility for CHIP coverage, States must obtain proof of citizenship (including nationals of the U.S.) and verify qualified alien status in accordance with section 432 of PRWORA, as amended (8 U.S.C. 1642).

**§ 457.340 Application.**

(a) *Opportunity to apply.* The State must afford every individual the opportunity to apply for child health assistance without delay.

(b) *Application forms.* The application form used to apply for child health assistance may be—

(1) A joint application for both Medicaid and CHIP; or

(2) A separate application for CHIP only.

**§ 457.350 Eligibility screening.**

(a) *State plan requirement.* The State plan must include a description of the screening procedures that the State will use, at intake and any follow-up eligibility determination, including any periodic redetermination, to ensure that only targeted low-income children are furnished child health assistance under the plan.

(b) *Screening with joint application.* A State that uses a joint application for Medicaid and CHIP must use the screening procedures described in paragraphs (c) and (d) of this section for children who apply for CHIP.

(c) *Screening objectives.* Except as described in paragraph (e) of this section, a State must use screening procedures to identify, at minimum, any child who—

(1) Is potentially eligible for Medicaid under one of the poverty level related groups described in section 1902(l) of the Act; or

(2) If the State has not extended eligibility in the groups described in paragraph (c)(1) of this section to children of a particular age, is potentially eligible for Medicaid because the child meets the highest categorical income standards used under Medicaid to establish eligibility for non-disabled children of that age.

(d) *Eligibility test.* To identify the children in paragraph (c) of this section, at a minimum, States must either initially apply a gross income test described in paragraph (d)(1) of this section and then use an adjusted income test described in paragraph (d)(2) of this section for applicants whose State-defined income exceeds the initial test, or use only the adjusted income test for all applicants.

(1) *Initial gross income test.* Under this test, a State initially screens for Medicaid eligibility by comparing gross family income to the appropriate Medicaid income standard.

(2) *Adjusted income test.* Under this test, a State screens for Medicaid eligibility by comparing adjusted family income to the appropriate Medicaid income standard. The State must apply all Medicaid policies relating to income for the particular Medicaid eligibility group, including—

(i) Income standards;

(ii) Income exclusions and disregards; and

(iii) Methodologies for determining countable income and resources including State Medicaid policies and procedures for deeming of income.

(e) *Treatment of children found potentially eligible for Medicaid.* After applying the appropriate eligibility tests, the State must—

(1) Find ineligible for CHIP a child whose State-defined income or adjusted family income is below the applicable Medicaid income standard, or who is found potentially eligible for Medicaid under any other tests that the State has chosen to apply, unless a completed Medicaid application for that child is denied;

(2) Redetermine eligibility for a child found ineligible for CHIP through the screening process if—

(i) An application for Medicaid is completed for the child and the child is found ineligible for Medicaid; or

(ii) The child's circumstances change and another screening shows that the child is ineligible for Medicaid; and

(3) Provide that the child found ineligible for CHIP remains ineligible for CHIP unless the child's circumstances change even if the child refuses to apply for Medicaid or does not complete the Medicaid application process for any reason.

(f) *Treatment of child found potentially ineligible for Medicaid.* If the State uses a screening procedure other than a full determination of Medicaid eligibility under all possible groups, and the screening reveals that the child is ineligible for Medicaid, the State must provide the child's family the following in writing:

(1) A statement that, based on an initial review, the child does not appear eligible for Medicaid, but Medicaid eligibility can only be determined based on review of a full Medicaid application.

(2) Information about Medicaid benefits (if that information was not already furnished).

(3) Information about how and where to apply for Medicaid.

**§ 457.360 Facilitating Medicaid enrollment.**

(a) *State Plan requirement.* The State plan must include a description of reasonable procedures, including the

procedures described in paragraphs (b) and (c) of this section, to ensure that children found through the screening process described in § 457.350 to be eligible for Medicaid actually apply for and are enrolled in Medicaid.

(b) The State must establish procedures through which the State initiates the Medicaid enrollment process for children found through eligibility screening to be potentially Medicaid eligible consistent with the following requirements:

(1) States that use a separate Medicaid application must either—

(i) Provide Medicaid application assistance at the CHIP office to the extent permitted under Medicaid law and regulations;

(ii) Send information obtained through the screening process to the appropriate Medicaid office or to Medicaid staff, to begin the Medicaid application process; or

(iii) Use other reasonable procedures designed to ensure application and enrollment in Medicaid.

(2) States that use a joint Medicaid and CHIP application must send the application to the appropriate Medicaid office or to Medicaid staff to make the Medicaid eligibility determination.

(c) *Informed application decisions.* A State must ensure that a decision by a family not to apply for Medicaid or not to complete the Medicaid application process represents an informed decision by providing full and complete information, in writing, about—

(1) The State's Medicaid program, including the benefits covered and, restrictions on cost-sharing; and

(2) The effect on eligibility for CHIP of neither applying for Medicaid nor completing the Medicaid application process.

**§ 457.361 Application for and enrollment in CHIP.**

(a) *Application assistance.* A State must afford families a reasonable opportunity to complete the application process and must offer assistance to families in understanding and completing applications and in obtaining any required documentation.

(b) *Notice of rights and responsibilities.* A State must inform applicants, in writing and orally if appropriate, about the eligibility requirements, their obligations under the program, and their right to file grievances and appeals in accordance § 457.985.

(c) *Notice of decision concerning eligibility.* The State must send each applicant a written notice of the decision on the application and, if eligibility is denied or terminated, the specific reason or reasons for the action and an explanation of the right to request a hearing within a reasonable time.

(d) *Timely determinations of eligibility.* The State must establish time standards for determining eligibility and inform the applicant of those standards. These standards may not exceed forty-five calendar days.

(1) In applying the time standards, the State must count each calendar day from the day of application to the day the agency mails notice of its decision to the applicant.

(2) The agency must determine eligibility within the standards except in unusual circumstances, for example—

(i) When the agency cannot reach a decision because the applicant delays or fails to take a required action; or

(ii) When there is an administrative or other emergency beyond the agency's control.

(3) The agency must not use the time standards—

(i) As a waiting period before determining eligibility; or

(ii) As a reason for denying eligibility (because it has not determined eligibility within the time standards).

(e) *Effective date of eligibility.* The State must specify in its approved state plan a method for determining the effective date of CHIP eligibility, which can be determined based on the date of application or through any other reasonable method.

**§ 457.365 Grievances and appeals.**

The State must provide enrollees in separate child health programs with an opportunity to file grievances and appeals for denial, suspension or termination of eligibility in accordance with § 457.985.

## Subpart D—Coverage and Benefits: General Provisions

**§ 457.401 Basis, scope, and applicability.**

(a) *Statutory basis.* This subpart interprets and implements—

(1) Section 2102(a)(7) of the Act, which requires that States make assurances relating to certain types of care;

(2) Section 2103 of the Act, which outlines coverage requirements for children's health insurance;

(3) Section 2109 of the Act, which describes the relation of the CHIP program to other laws;

(4) Section 2110(a) of the Act, which describes child health assistance; and

(5) Section 2110(c) of the Act, which contains definitions applicable to this subpart.

(b) *Scope.* This subpart sets forth requirements for health benefits coverage and child health assistance under a separate child health plan.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and do not apply to a Medicaid expansion program.

**§ 457.402 Child health assistance and other definitions.**

(a) *Child health assistance.* For the purpose of this subpart, the term ''child health assistance'' means payment for part or all of the cost of health benefits coverage provided to targeted low-income children for:

(1) Inpatient hospital services.

(2) Outpatient hospital services.

(3) Physician services and surgical services.

(4) Clinic services (including health center services) and other ambulatory health care services.

(5) Prescription drugs and biologicals and the administration of these drugs and biologicals, only if these drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

(6) Over-the-counter medications.

(7) Laboratory and radiological services.

(8) Prenatal care and prepregnancy family planning services and supplies.

(9) Inpatient mental health services, other than services described in paragraph (a)(17) of this section but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.

(10) Outpatient mental health services, other than services described in paragraph (a)(18) of this section but including services furnished in a State-operated mental hospital and including community-based services.

(11) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices and adaptive devices).

(12) Disposable medical supplies.

(13) Home and community-based health care services and related supportive services (such as home health nursing services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members and minor modification to the home.)

(14) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice

nurse services, private duty nursing, pediatric nurse services and respiratory care services) in a home, school, or other setting.

(15) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(16) Dental services.

(17) Inpatient substance abuse treatment services and residential substance abuse treatment services.

(18) Outpatient substance abuse treatment services.

(19) Case management services.

(20) Care coordination services.

(21) Physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders.

(22) Hospice care.

(23) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

(i) Prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law;

(ii) Performed under the general supervision or at the direction of a physician; or

(iii) Furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(24) Premiums for private health care insurance coverage.

(25) Medical transportation.

(26) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

(27) Any other health care services or items specified by the Secretary and not excluded under this subchapter.

(b) *Emergency medical condition* means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(1) Serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of a woman or her unborn child;

(2) Serious impairment of bodily function; or

(3) Serious dysfunction of any bodily organ or part.

(c) *Emergency services* means covered inpatient or outpatient services that are—

(1) Furnished by any provider qualified to furnish emergency services without requirement for prior authorization; and

(2) Needed to evaluate or stabilize an emergency medical condition.

(d) *Post-stabilization services* means medically necessary non-emergency services furnished to an enrollee after he or she is stabilized related to the emergency medical condition.

(e) *Health benefits coverage* means an arrangement under which enrolled individuals are protected from some or all liability for the cost of specified health care services.

**§ 457.410 Health benefits coverage options.**

(a) *Types of health benefits coverage.* States may choose to provide any of the following four types of health benefits coverage:

(1) Benchmark coverage in accordance with § 457.420.

(2) Benchmark-equivalent coverage in accordance with § 457.430.

(3) Existing comprehensive State-based coverage in accordance with § 457.440.

(4) Secretary-approved coverage in accordance with § 457.450.

(b) *Required coverage.* Regardless of the type of health benefits coverage described under paragraph (a) of this section that the State chooses to obtain, the State must obtain coverage for—

(1) Well-baby and well-child care;

(2) Immunizations in accordance with the recommendations of the Advisory Committee on Immunization Practices (ACIP); and

(3) Emergency services as defined in § 457.402(c).

**§ 457.420 Benchmark health benefits coverage.**

Benchmark coverage is health benefits coverage that is substantially equal to the health benefits coverage in one of the following benefit packages:

(a) *Federal Employees Health Benefit Plan (FEHBP).* The standard Blue Cross/Blue Shield preferred provider option service benefit plan that is described in and offered to Federal employees, under 5 U.S.C. 8903(1).

(b) *State employee plan.* A health benefits plan that is offered and generally available to State employees in the State.

(c) *Health maintenance organization (HMO) plan.* The health insurance coverage plan that is offered through an HMO (as defined in section 2791(b)(3) of the Public Health Service Act) and has the largest insured commercial, non-Medicaid enrollment in the State.

**§ 457.430 Benchmark-equivalent health benefits coverage.**

(a) *Aggregate actuarial value.* Benchmark-equivalent coverage must have an aggregate actuarial value determined in accordance with § 457.431 that is at least actuarially equivalent to the coverage under one of the benchmark packages specified in § 457.420.

(b) *Required services.* Benchmark-equivalent health benefits coverage must include coverage for the following categories of services:

(1) Inpatient and outpatient hospital services.

(2) Physicians' surgical and medical services.

(3) Laboratory and x-ray services.

(4) Well-baby and well-child care, including age-appropriate immunizations provided in accordance with the recommendations of the ACIP.

(c) *Additional services.* (1) In addition to the categories of services in paragraph (b) of this section, benchmark-equivalent coverage may include coverage for any additional services specified in § 457.402.

(2) If the benchmark coverage package used by the State for purposes of comparison in establishing the aggregate actuarial value of the benchmark-equivalent coverage package includes coverage for prescription drugs, mental health services, vision services or hearing services, the actuarial value of the coverage for each of these categories of service in the benchmark-equivalent coverage package must be at least 75 percent of the value of the coverage for such a category or service in the benchmark plan used for comparison by the State.

(3) If the benchmark coverage package does not cover one of the categories of services in paragraph (c)(2) of this section, then the benchmark-equivalent coverage package may, but is not required to, include coverage for that category of service.

**§ 457.431 Actuarial report for benchmark-equivalent coverage.**

(a) To obtain approval for benchmark-equivalent health benefits coverage described under § 457.430, the State must submit to HCFA an actuarial report that contains an actuarial opinion that the health benefits coverage meets the actuarial requirements under § 457.430. The report must also specify the benchmark coverage used for comparison.

(b) The actuarial report must state that it was prepared—

(1) By an individual who is a member of the American Academy of Actuaries;

(2) Using generally accepted actuarial principles and methodologies of the American Academy of Actuaries;

(3) Using a standardized set of utilization and price factors;

(4) Using a standardized population that is representative of privately insured children of the age of those expected to be covered under the State plan;

(5) Applying the same principles and factors in comparing the value of different coverage (or categories of services);

(6) Without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

(7) Taking into account the ability of a State to reduce benefits by considering the increase in actuarial value of health benefits coverage offered under the State plan that results from the limitations on cost sharing under that coverage.

(c) The actuary who prepares the opinion must select and specify the standardized set and population to be used under paragraphs (b)(3) and (b)(4) of this section.

(d) The State must provide sufficient detail to explain the basis of the methodologies used to estimate the actuarial value or, if requested by HCFA, to replicate the State's result.

**§ 457.440 Existing comprehensive State-based coverage.**

(a) *General requirements.* Existing comprehensive State-based health benefits coverage must—

(1) Include coverage of a range of benefits;

(2) Be administered or overseen by the State and receive funds from the State;

(3) Be offered in the State of New York, Florida or Pennsylvania; and (4) Have been offered as of August 5, 1997.

(b) *Modifications.* A State may modify an existing comprehensive State-based coverage program described in paragraph (a) of this section if—

(1) The program continues to include a range of benefits; and

(2) The modification does not reduce the actuarial value of the coverage under the program below the lower of either—

(i) The actuarial value of the coverage under the program as of August 5, 1997; or

(ii) The actuarial value of a benchmark benefit package as described in § 457.430 evaluated at the time the modification is requested.

**§ 457.450 Secretary-approved coverage.**

A State may provide health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population of targeted low-income children covered under the program. Secretary-approved coverage, for which no actuarial analysis is required, may include—

(a) Coverage that is the same as the coverage provided under the Medicaid State plan;

(b) Comprehensive coverage offered by the State under a Medicaid demonstration project approved by the Secretary under section 1115 of the Act that either includes coverage for the full Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit or that the State has extended to the entire Medicaid population in the State;

(c) Coverage that includes benchmark coverage, as specified in § 457.420, plus any additional coverage; or

(d) Coverage, including coverage under an employer-sponsored group health plan purchased by the State, that the State demonstrates to be substantially equivalent to benchmark coverage, as specified in § 457.420, through use of a benefit-by-benefit comparison of the coverage demonstrating that each benefit meets or exceeds the corresponding benefit in the benchmark.

**§ 457.470 Prohibited coverage.**

A State is not required to provide health benefits coverage under the plan for an item or service for which payment is prohibited under title XXI of the Act even if any benchmark package includes coverage for that item or service.

**§ 457.475 Limitations on coverage: Abortions.**

(a) *General rule.* FFP under title XXI of the Act is not available in expenditures for an abortion, or in expenditures for the purchase of health benefits coverage that includes coverage of abortion services unless the abortion services meet the conditions specified in paragraphs (b)(1) and (b)(2) of this section.

(b) *Exceptions.* (1) *Life of mother.* FFP is available in expenditures for abortion services when a physician has found that the abortion is necessary to save the life of the mother.

(2) *Rape or incest.* FFP is available in expenditures for abortion services performed to terminate a pregnancy resulting from an act of rape or incest.

(c) *Partial Federal funding prohibited.* (1) FFP is not available to a State for any amount expended under the title XXI plan to assist in the purchase, in whole or in part, of health benefits coverage that includes coverage of abortions other than those specified in paragraph (b) of this section.

(2) If a State wishes to have managed care entities provide abortions in addition to those specified in paragraph (b) of this section, those abortions must be provided under a separate contract using non-Federal funds. A State may not set aside a portion of the capitated rate to be paid with State-only funds, or append riders, attachments or addenda to existing contracts to separate the additional abortion services from the other services covered by the contract.

(3) Nothing in this section affects the expenditure by a State, locality, or private person or entity of State, local, or private funds (other than those expended under the State plan) for any abortion services or for health benefits coverage that includes coverage of abortion services.

**§ 457.480 Preexisting condition exclusions and relation to other laws.**

(a) *Preexisting condition exclusions.* (1) Subject to paragraph (a)(2) of this section, the State child health insurance plan may not permit the imposition of any pre-existing condition exclusion for covered benefits under the plan.

(2) If the State obtains health benefits coverage through payment for, or a contract with, a group health plan or group health insurance coverage, the State may permit the imposition of a pre-existing condition exclusion but only to the extent that the exclusion is permitted under the applicable provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (ERISA) and title XXVII of the Public Health Service Act.

(b) *Relation of title XXI to other laws.* (1) *ERISA.* Nothing in this title affects or modifies section 514 of ERISA with respect to a group health plan as defined by section 2791(a)(1) of the Public Health Service Act.

(2) *Health Insurance Portability and Accountability Act (HIPAA).* Health benefits coverage provided under a State plan and coverage provided as a cost-effective alternative, as described in subpart J of this part, is creditable coverage for purposes of part 7 of subtitle B of title II ERISA, title XXVII of the Public Health Service Act, and subtitle K of the Internal Revenue Code of 1986.

(3) *Mental Health Parity Act (MHPA).* A State plan under this subpart must comply with the requirements of the MHPA of 1996 regarding parity in the application of annual and lifetime dollar limits to mental health benefits in accordance with 45 CFR 146.136.

(4) *Newborns and Mothers Health Protection Act (NMHPA).* A State plan under this subpart must comply with the requirements of the NMHPA of 1996

regarding requirements for minimum hospital stays for mothers and newborns in accordance with 45 CFR 146.130 and 148.170.

**§ 457.490 Delivery and utilization control systems.**

A State that elects to obtain health benefits coverage through a separate child health program must include in its State plan a description of the child health assistance provided under the plan for targeted low-income children, including a description of the proposed methods of delivery and utilization control systems. A State must—

(a) Describe the methods of delivery of child health assistance including the choice of financing and the methods for assuring delivery of the insurance products to the children, including any variations; and

(b) Describe utilization controls systems designed to ensure that children use only appropriate and medically necessary health care approved by the State or its subcontractor.

**§ 457.495 Grievances and appeals.**

States must provide enrollees in a separate child health program the right to file grievances or appeals for reduction or denial of services as specified in § 457.985.

## Subpart E—State Plan Requirements: Beneficiary Financial Responsibilities

**§ 457.500 Basis, scope, and applicability.**

(a) *Statutory basis.* This subpart implements section 2103(e) of the Act, which sets forth provisions regarding State plan requirements for cost sharing limitations and options.

(b) *Scope.* This subpart consists of provisions relating to the imposition under a separate child health program of cost sharing charges including enrollment fees, premiums, deductibles, coinsurance, copayments, and similar cost sharing charges.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and, with respect to the mandatory cost sharing waiver for AI/AN children only, a Medicaid expansion program.

**§ 457.505 General State plan requirements.**

The State plan must include a description of —

(a) The amount of premiums, deductibles, coinsurance, copayments, and other cost sharing imposed;

(b) The methods, including the public schedule, the State uses to inform beneficiaries, applicants, providers and the general public of the cost sharing charges, the cumulative cost sharing maximum, and any changes to these amounts; and

(c) When States purchase coverage through, or provide premium assistance for, employer sponsored group health plans—

(1) The procedures the State uses to ensure that beneficiaries are not charged copayments, coinsurance, deductibles or similar fees on well-baby and well-child care as defined in § 457.520. A procedure that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable procedure.

(2) The procedures to ensure that AI/AN children are not charged premiums, copayments, coinsurance, deductibles, or similar fees as required in § 457.535. A procedure that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable procedure.

(3) The procedures to ensure that beneficiaries are not charged cost sharing in excess of the cumulative cost sharing maximum specified in § 457.555. A procedure that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable procedure.

**§ 457.510 Premiums, enrollment fees, or similar fees: State plan requirements.**

When a State imposes premiums, enrollment fees, or similar fees on CHIP beneficiaries, the State plan must describe—

(a) The amount of the premium, enrollment fee or similar fee imposed on beneficiaries;

(b) The time period for which the charge is imposed;

(c) The group or groups that are subject to the premium, enrollment fees, or similar charges;

(d) The consequences for a beneficiary who does not pay a charge; and

(e) A methodology to ensure that total cost sharing liability for a family does not exceed the cumulative cost sharing maximum specified in § 457.560. A methodology that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable methodology.

**§ 457.515 Co-payments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.**

To impose copayments, coinsurance, deductibles or similar charges on beneficiaries, the State plan must describe—

(a) The service for which the charge may be imposed;

(b) The amount of the charge;

(c) The group or groups that may be subject to the cost sharing charge;

(d) The consequences for a beneficiary who does not pay a charge; and

(e) The methodology used to ensure that total cost sharing liability for a family does not exceed the cumulative cost sharing maximum specified in § 457.560. A methodology that primarily relies on a refund given by the State for overpayment by a beneficiary is not an acceptable methodology.

(f) An assurance that—

(1) Enrollees will not be held liable for additional costs, beyond the copayment amounts specified in the State plan, that are associated with emergency services provided at a facility that is not a participating provider in the enrollee's managed care network; and

(2) The State will not charge different copayment amounts for emergency services, based upon the location (in network or out of network) at which those services were provided.

**§ 457.520 Cost sharing for well-baby and well-child care.**

(a) The State plan may not impose copayments, deductibles, coinsurance or other cost sharing with respect to well-baby and well-child care services as defined by the State in either the managed care delivery setting or the fee-for-service delivery setting.

(b) For the purposes of this subpart, any of the following services covered under the State plan are well-baby and well-child care services:

(1) All healthy newborn inpatient physician visits, including routine screening whether provided on an inpatient or outpatient basis.

(2) Routine physical examinations.

(3) Laboratory tests.

(4) Immunizations and related office visits as recommended and updated in the American Academy of Pediatrics (AAP) ''Guidelines for Health Supervision III'' and described in ''Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents.''

(5) Routine preventive and diagnostic dental services (such as oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays) as described in the most recent guidelines issued by the American Academy of Pediatric Dentistry (AAPD).

**§ 457.525 Public schedule.**

(a) The State must make available to the groups in paragraph (b) of this section a public schedule that contains the following information:

(1) Current cost sharing charges.

(2) Beneficiary groups subject to the charges.

(3) Cumulative cost sharing maximums.

(4) The consequences for a beneficiary who does not pay a charge.

(b) The State must make the public schedule available to the following groups:

(1) CHIP beneficiaries, at the time of enrollment, and when cost sharing charges and cumulative cost sharing maximums are revised.

(2) CHIP applicants, at the time of application.

(3) All CHIP participating providers.

(4) The general public.

**§ 457.530 General cost sharing protection for lower income children.**

The State may vary premiums, deductibles, coinsurance, copayments or any other cost sharing based on family income only in a manner that does not favor children from families with higher income over children from families with lower income.

**§ 457.535 Cost sharing protection to ensure enrollment of American Indians/ Alaska Natives.**

States must exclude from premiums, deductibles, coinsurance, copayments or any other cost sharing charges those children who are American Indians and Alaska Natives, members of a Federally recognized tribe, and enrolled in a separate child health program.

**§ 457.540 Cost sharing charges for children in families at or below 150 percent of the Federal poverty line (FPL).**

The State may impose premiums, enrollment fees, deductibles, copayments, coinsurance, cost sharing and other similar charges for children whose family income is at or below 150 percent of the FPL as long as—

(a) Aggregate monthly enrollment fees, premiums, or similar charges imposed on a family are less than or equal to the maximum monthly charges described in § 447.52 of this chapter for a Medicaid eligible family of the same size and income;

(b) For children whose family income is at or below 100 percent of the FPL, any copayments, coinsurance, deductibles or similar charges are equal to or less than the amounts permitted under § 447.54 of this chapter;

(c) For children whose family income is 101 percent to 150 percent of the FPL, any copayments, coinsurance, deductibles or similar charges are equal to or less than the amounts permitted under § 457.555;

(d) The frequency of cost sharing charges is consistent with § 457.550; and

(e) Aggregate annual cost sharing of all types, with respect to all targeted low-income children in a family, does not exceed the maximum permitted under § 457.560(d).

**§ 457.545 Cost sharing for children in families above 150 percent of the FPL.**

The State may impose premiums, enrollment fees, copayments, deductibles, coinsurance, cost sharing and similar charges on children in families above 150 percent of the FPL, as long as aggregate annual cost sharing, of all types, with respect to all targeted low-income children in a family, does not exceed the maximum permitted under § 457.555(c).

**§ 457.550 Restriction on the frequency of cost sharing charges on targeted low-income children in families at or below 150 percent of the FPL.**

(a) The State plan may not impose more than one type of cost sharing charge (deductible, copayment, or coinsurance) on a service.

(b) The State plan may not impose more than one copayment for multiple services furnished during one office visit.

(c) For targeted low-income children whose family income is from 101 to 150 percent of the FPL, a standard copayment amount for any service may be determined by applying the maximum copayment amounts specified in paragraphs (b) and (c) of this section to the State's average or typical payment for that service.

**§ 457.555 Maximum allowable cost sharing charges on targeted low-income children in families with income from 101 to 150 percent of the FPL.**

(a) *Non-institutional services.* For targeted low-income children whose family income is from 101 to 150 percent of the FPL, the State plan must provide that for non-institutional services—

(1) Any copayment or similar charge the State imposes under a fee-for-service delivery system does not exceed the following amounts:

| Payment for the service | Maximum amount chargeable to beneficiary |
|---|---|
| $15.00 or less | $1.00 |
| $15.01 to $40 | 2.00 |
| $40.01 to $80 | 3.00 |
| $80.01 or more | 5.00 |

(2) Any copayment that the State imposes under a managed care organization may not exceed $5.00 per visit;

(3) Any coinsurance rate the State imposes may not exceed 5 percent of the payment the State directly or through contract makes for the service; and

(4) Any deductible the State imposes may not exceed $3.00 per month, per family for each period of CHIP eligibility.

(b) *Institutional services.* For targeted low-income children whose family income is from 101 to 150 percent of the FPL, the maximum deductible, coinsurance or copayment charge for each institutional admission may not exceed 50 percent of the payment the State makes directly or through contract for the first day of care in the institution.

(c) *Nonemergency use of the emergency room.* For targeted low-income children whose family income is from 101 to 150 percent of the FPL, the State may charge up to twice the charge for non-institutional services, up to a maximum amount of $10.00, for services furnished in a hospital emergency room if those services do not result from an emergency medical condition.

(d) *Emergency room services provided outside of the enrollee's managed care network.* States must assure that enrollees will not be held liable for additional costs associated with emergency services provided at a facility that is not a participating provider in the enrollee's managed care network beyond the specified co-payment amount.

**§ 457.560 Cumulative cost sharing maximum.**

(a) *Legal obligation* means liability to pay amounts a provider actually charges and any other amounts for which payment may be required under applicable State law for covered services to eligible children, even if payment is never actually made.

(b) *General rules.* (1) The State plan may set cumulative cost sharing maximum levels lower than the maximum levels specified in paragraphs (c) and (d) of this section, but may not set maximum levels in excess of the specified levels.

(2) A State must count cost sharing amounts that the family has a legal obligation to pay in computing whether a family has met the cumulative cost sharing maximum.

(c) *Children with family incomes above 150 percent of the FPL.* For targeted low-income children with family income above 150 percent of the FPL, the State plan may not impose premiums, enrollment fees, copayments, coinsurance, deductibles, or similar cost sharing charges that, in the aggregate, exceed 5 percent of total family income for a year (or 12 month eligibility period).

(d) *Children with family incomes at or below 150 percent of the FPL.* For targeted low-income children with family income at or below 150 percent of the FPL, the plan may not impose premiums, deductibles, copayments, coinsurance, enrollment fees, or similar cost sharing charges that, in the aggregate, exceed 2.5 percent of total family income for the year.

**§ 457.565 Grievances and appeals.**

The State must provide enrollees in a separate child health program the right to file grievances and appeals as specified in § 457.985 for disenrollment from the program due to failure to pay cost sharing.

**§ 457.570 Disenrollment protections.**

The State must establish a process that gives beneficiaries reasonable notice of and an opportunity to pay past due premiums, copayments, coinsurance, deductibles or similar fees prior to disenrollment.

## Subpart F—[Reserved]

## Subpart G—Strategic Planning, Reporting, and Evaluation

**§ 457.700 Basis, scope, and applicability.**

(a) *Statutory basis.* This subpart implements—

(1) Sections 2102(a)(7)(A) and (B) of the Act, which relate to assurances of quality and appropriateness of care, and access to covered services;

(2) Sections 2107(a), (b) and (d) of the Act, which set forth requirements for strategic planning, reports, and program budgets; and

(3) Section 2108 of the Act, which sets forth provisions regarding annual reports and evaluation.

(b) *Scope.* This subpart sets forth requirements for strategic planning, monitoring, reporting and evaluation under title XXI of the Act.

(c) *Applicability.* The requirements of this subpart apply to separate child health programs and Medicaid expansion programs.

**§ 457.710 State plan requirements: Strategic objectives and performance goals.**

(a) *Plan description.* A State plan must include a description of—

(1) The strategic objectives as described in paragraph (b) of this section;

(2) The performance goals as described in paragraph (c) of this section; and

(3) The performance measurements, as described in paragraph (d) of this section, that the State has established for providing child health assistance to targeted low-income children under the plan and otherwise for maximizing health benefits coverage for other low-income children and children generally in the State.

(b) *Strategic objectives.* The State plan must identify specific strategic objectives relating to increasing the extent of creditable health coverage among targeted low-income children and other low-income children.

(c) *Performance goals.* The State plan must specify one or more performance goals for each strategic objective identified.

(d) *Performance measurements.* The State plan must describe how performance under the plan is—

(1) Measured through objective, independently verifiable means; and

(2) Compared against performance goals.

**§ 457.720 State plan requirement: State assurance regarding data collection, records, and reports.**

A State plan must include an assurance that the State collects data, maintains records, and furnishes reports to the Secretary, at the times and in the standardized format the Secretary may require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under title XXI of the Act.

**§ 457.730 State plan requirement: State annual reports and evaluation.**

A State plan must include a description of the State's strategy for the submission of the annual reports required under § 457.750, and the evaluation required by § 457.760.

**§ 457.735 State plan requirement: State assurance of the quality and appropriateness of care.**

(a) A State plan must include a description of the methods that a State uses for assuring the quality and appropriateness of care provided under the plan, particularly with respect to—

(1) Well-baby care, well-child care, well-adolescent care and childhood and adolescent immunizations; and

(2) Access to covered services, including covered emergency services and covered post-stabilization services as defined at § 457.402.

(b) States must assure appropriate and timely procedures to monitor and treat enrollees with complex and serious medical conditions, including access to specialists.

**§ 457.740 State expenditures and statistical reports.**

(a) *Required quarterly reports.* A State must submit a report to HCFA that contains quarterly program expenditures and statistical data no later than 30 days after the end of each quarter of the Federal fiscal year. Territories are excepted from the definition of ''State'' for the purposes of quarterly reporting. A State must collect required data beginning on the date of implementation of the approved State plan. The quarterly reports must include data on—

(1) Program expenditures; and

(2) The number of children under 19 years of age who are enrolled in the title XIX Medicaid program, the separate child health program, and in the Medicaid-expansion program, as appropriate, by the following categories:

(i) Age (under 1 year of age, 1 through 5 years of age, 6 through 12 years of age, and 13 through 18 years of age).

(ii) Service delivery system (managed care, fee-for-service, and primary care case management).

(iii) Family income as a percentage of the Federal poverty level as described in paragraph (b) of this section.

(b) *Reportable family income categories.* (1) A State that does not impose cost sharing or a State that only imposes cost-sharing based on a fixed percentage of income must report by two family income categories:

(i) At or below 150 percent of FPL.

(ii) Over 150 percent of FPL.

(2) A State that imposes cost sharing at one or more poverty levels must report by poverty level categories that match the poverty level categories used for purposes of cost sharing in the separate child health program and in the Medicaid-expansion program.

(c) *Required unduplicated counts.* Thirty days after the end of the Federal fiscal year, the State must submit an unduplicated count for the Federal fiscal year of children who are enrolled in the Medicaid program, the separate child health program, and the Medicaid-expansion program, as appropriate, by age, service delivery, and poverty level categories described in paragraphs (a) and (b) of this section.

**§ 457.750 Annual report.**

(a) *Report required for each Federal fiscal year.* A State must report to HCFA by January 1 following the end of each Federal fiscal year, on the results of the State's assessment of the operation of the State plan.

(b) *Contents of annual report.* In the annual report required under paragraph (a) of this section, a State must—

(1) Describe the State's progress in reducing the number of uncovered, low-income children and in meeting other strategic objectives and performance goals identified in the State plan;

(2) Report on the effectiveness of the State's policies for discouraging the

substitution of public coverage for private coverage;

(3) Identify successes and barriers in State plan design and implementation, and the approaches the State is considering to overcome these barriers;

(4) Describe the State's progress in addressing any specific issues (such as outreach) that the State plan agreed to periodically monitor and assess;

(5) Provide an updated budget for the current Federal fiscal year with details on the planned use of funds and any changes in the sources of the non-Federal share of State plan expenditures; and

(6) Identify the total State expenditures for family coverage and total number of children and adults covered by family coverage during the preceding Federal fiscal year.

(c) *Methodology for estimate of number of uninsured, low-income children.* (1) To report on the progress made in reducing the number of uncovered, low-income children as required in paragraph (b) of this section, a State must choose a methodology to establish an initial baseline estimate of the number of low-income children who are uninsured in the State and to provide an annual estimate of changes in this number at two poverty levels, 200 percent FPL and at the current upper eligibility level of the State's program. A State may base the estimate on data from—

(i) The March supplement to the Current Population Survey (CPS);

(ii) A State-specific survey;

(iii) A statistically adjusted CPS; or

(iv) Another appropriate source.

(2) A State must submit a description of the methodology used to develop the initial baseline estimate and the rationale for its use unless the State bases the estimate on data from the March supplement to the CPS.

**§ 457.760 State evaluations.**

By March 31, 2000, a State that has an approved State plan must submit to HCFA a report on the operation of its Medicaid-expansion program, separate child health program, or combination program. The report must provide an evaluation of the State plan that includes the following:

(a) An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage.

(b) A report on progress made in meeting other strategic objectives and performance goals identified by the State plan.

(c) A description and analysis of the effectiveness of elements of the State plan, including—

(1) The characteristics of the children and families assisted under the State plan, including age of the children, family income, and the assisted children's access to coverage or coverage by other health insurance prior to the State plan and after eligibility for coverage under the State plan ends;

(2) The quality of health coverage provided, including the results or the plans to assess the results of any monitoring or other methods used to assure quality and appropriateness of care;

(3) The amount and level of assistance (including payment of part or all of any premiums, copayments, or enrollment fees) provided by the State;

(4) The service area of the State program;

(5) The time limits for coverage of a child under the program;

(6) The extent of substitution of public coverage for private coverage and the State's effectiveness in designing policies that discourage substitution.

(7) The State's choice of health benefits coverage, including the types of benefits provided and the scope and range of these benefits, and other methods used for providing child health assistance; and

(8) The sources of non-Federal funding used in the program.

(d) A State that subsidizes children's coverage through employer-sponsored group health plans must provide an assessment of the effectiveness of its substitution prevention strategies.

(e) An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.

(f) A review and assessment of State activities to coordinate the program with other public and private programs providing health care and health care financing, including Medicaid and maternal and child health services.

(g) An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.

(h) A description of any plans the State has for improving the availability of health insurance and health care for children.

(i) Recommendations for improving the program.

## Subpart H—Substitution of Coverage

**§ 457.800 Basis, scope, and applicability.**

(a) *Statutory basis.* This subpart interprets and implements section 2102(b)(3)(C) of the Act, which provides that the State plan must include a description of procedures the State uses to ensure that insurance provided under the State plan does not substitute for coverage under group health plans.

(b) *Scope.* This subpart sets forth State plan requirements relating to substitution of coverage in general and specific requirements relating to substitution of coverage under employer-sponsored group health plans.

(c) *Applicability.* The requirements of this subpart apply to separate child health programs.

**§ 457.805 State plan requirements: Private coverage substitution.**

The State plan must include a description of reasonable procedures to ensure that coverage provided under the plan does not substitute for coverage under group health plans as defined at § 457.10.

**§ 457.810 Premium assistance for employer-sponsored group health plans: Required protections against substitution.**

If a State obtains health benefits coverage through employer-sponsored group health plans, the State must provide the protections against substitution of CHIP coverage for private coverage specified in this section. States must describe these provisions in their State plan, annual reports, and State evaluations.

(a) *Minimum period without employer-sponsored group health coverage.* (1) As a condition of eligibility for CHIP payment for employer-sponsored group health coverage, a child must not have had employer-sponsored group health coverage for a period of at least 6 months and not more than 12 months prior to application for CHIP.

(2) States may permit exceptions to the minimum period without employer-sponsored group health coverage if a child's coverage during the minimum period was involuntarily terminated by an employer.

(3) A newborn is not required to have a period without insurance as a condition of eligibility for CHIP payment for employer-sponsored group health coverage.

(b) *Employer contribution.* As a condition of eligibility for CHIP payment for employer-sponsored group health coverage—

(1) The employee who is eligible for the coverage must apply for the full premium contribution available from the employer; and

(2) The employer must make a substantial contribution to the cost of family coverage equal to—

(i) 60 percent of the total cost; or

(ii) A lower amount if the State can show that the average contribution in the State is lower than 60 percent.

(c) *Cost effectiveness.* The State's payment for coverage for a child under an employer-sponsored group health plan must not be greater than the cost of other CHIP coverage.

(d) *State evaluation.* The State must evaluate the amount of substitution that occurs as a result of payments for employer sponsored group health plans and the effect of those payments on access to coverage.

## Subpart I—Program Integrity and Beneficiary Protections

### § 457.900 Basis, scope and applicability.

(a) *Statutory basis.* This subpart interprets and implements—

(1) Section 2101(a) of the Act, which provides that the purpose of title XXI of the Act is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner; and

(2) Section 2107(e) of the Act, which provides that certain title XIX and title XI provisions, including the following, apply to States under title XXI in the same manner as they apply to a State under title XIX:

(i) Section 1902(a)(4)(C) of the Act, relating to conflict of interest standards.

(ii) Paragraphs (2), (16), and (17), of section 1903(i) of the Act, relating to limitations on payment.

(iii) Section 1903(w) of the Act, relating to limitations on provider taxes and donations.

(iv) Section 1124 of the Act, relating to disclosure of ownership and related information.

(v) Section 1126 of the Act, relating to disclosure of information about certain convicted individuals.

(vi) Section 1128 of the Act, relating to exclusions.

(vii) Section 1128A of the Act, relating to civil monetary penalties.

(viii) Section 1128B(d) of the Act, relating to criminal penalties for certain additional charges.

(ix) Section 1132 of the Act, relating to periods within which claims must be filed.

(b) *Scope.* This subpart sets forth requirements, options, and standards for program integrity assurances that must be included in the approved State plan.

(c) *Applicability.* This subpart only applies to States that implement separate child health programs. States that implement Medicaid expansion programs are subject to the program integrity rules and requirements specified under title XIX of the Act.

### § 457.902 Definitions.

As used in this subpart—

*Contractor* means any individual or entity that enters into a contract, or a subcontract to provide, arrange, or pay for services under title XXI of the Act. This definition includes, but is not limited to, managed care organizations, prepaid health plans, primary care case managers, and fee-for-service providers and insurers.

*Fee-for-service entity* means any entity that furnishes services, under the program on a fee-for-service basis, including health insurance services.

*Grievance* means a written communication, submitted by or on behalf of an enrollee in a child health program, expressing dissatisfaction with any aspect of a State, a managed care or fee-for-service entity, or a provider's operations, activities or behavior that pertains to—

(1) The availability, delivery, or quality of health care services, including utilization review decisions that are adverse to the enrollee;

(2) Payment, treatment, or reimbursement of claims for health care services; or

(3) Issues unresolved through the complaint process established in accordance with § 457.985(e).

*Managed care entity (MCE)* means an entity that enters into a contract to provide services in a managed care delivery system, including but not limited to managed care organizations, prepaid health plans, and primary care case managers.

*State program integrity unit* means a part of an organization designated by the State (at its option) to conduct program integrity activities for separate child health programs.

### § 457.910 State program administration.

The State's child health program must include—

(a) Methods of administration that the Secretary finds necessary for the proper and efficient operation of the separate child health program; and

(b) Safeguards necessary to ensure that—

(1) Eligibility will be determined appropriately in accordance with subpart C of this part; and

(2) Services will be provided in a manner consistent with administrative simplification and with the provisions of subpart D of this part.

### § 457.915 Fraud detection and investigation.

(a) *State program requirements.* The State must establish procedures for ensuring program integrity and detecting fraudulent or abusive activity. These procedures must include the following:

(1) Methods and criteria for identifying suspected fraud and abuse cases.

(2) Methods for investigating fraud and abuse cases that—

(i) Do not infringe on legal rights of persons involved; and

(ii) Afford due process of law.

(b) *State program integrity unit.* The State may establish an administrative agency responsible for monitoring and maintaining the integrity of the separate child health program (hereafter referred to as the ''State program integrity unit''),

(c) *Program coordination.* The State must develop and implement procedures for referring suspected fraud and abuse cases to the State program integrity unit and to law enforcement officials. Law enforcement officials include, but are not limited to the—

(1) U.S. Department of Health and Human Services Office of Inspector General (OIG);

(2) U.S. Attorney's Office, Department of Justice (DOJ);

(3) Federal Bureau of Investigation (FBI); and

(4) State Attorney General's office.

### § 457.920 Accessible means to report fraud and abuse.

The State agency must establish and provide access to a mechanism for communication between the State and the public about potentially fraudulent and abusive practices by and among contractors, beneficiaries, and other entities. This communication mechanism may include a toll-free telephone number.

### § 457.925 Preliminary investigation.

If the State agency receives a complaint of fraud or abuse from any source or identifies any questionable practices, the State agency must conduct a preliminary investigation or take otherwise appropriate action to determine whether there is sufficient basis to warrant a full investigation.

### § 457.930 Full investigation, resolution, and reporting requirements.

The State must establish and implement effective procedures for investigating and resolving suspected and apparent instances of fraud and abuse. Once the State determines that a full investigation is warranted, the State must implement procedures including, but not limited to the following:

(a) Cooperate with and refer potential fraud and abuse cases to the State program integrity unit, if such a unit exists, when requested to do so by that unit.

(b) Conduct a full investigation; or

(c) Refer the fraud and abuse case to appropriate law enforcement officials.

**§ 457.935 Sanctions and related penalties.**

(a) A State may not make payments for any item or service furnished, ordered, or prescribed under a separate child health program to any contractor who has been excluded from participating in the Medicare and Medicaid programs.

(b) The following provisions and their corresponding regulations apply to a State under title XXI of the Act, in the same manner as these provisions and regulations apply to a State under title XIX:

(1) Part 455, subpart B of this chapter.

(2) Section 1124 of the Act pertaining to disclosure of ownership and related information.

(3) Section 1126 of the Act pertaining to disclosure by institutions, organizations, and agencies of owners and certain other individuals who have been convicted of certain offenses.

(4) Section 1128 of the Act pertaining to exclusions.

(5) Section 1128A of the Act pertaining to civil monetary penalties.

(6) Section 1128B of the Act pertaining to criminal penalties for acts involving Federal health care programs.

(7) Section 1128E of the Act pertaining to the reporting of final adverse actions on liability findings made against health care providers, suppliers, and practitioners under the health care fraud and abuse data collection program.

**§ 457.940 Procurement standards.**

(a) A State must submit to HCFA a written assurance that title XXI services will be provided in an effective and efficient manner. The State must submit the assurance—

(1) With the initial State plan; or

(2) For States with approved plans, with the first request to amend the approved plan.

(b) A State must provide child health assistance in an effective and efficient manner by—

(1) Providing for free and open competition, to the maximum extent possible, in the bidding of all procurement contracts for coverage or other services in accordance with the procurement requirements of 45 CFR 74.43; or

(2) Basing title XXI payment rates on public and/or private payment rates for comparable services.

(c) A State may establish higher rates than permitted under paragraph (a) of this section if such rates are necessary to ensure sufficient provider participation or to enroll providers who demonstrate exceptional efficiency or quality in the provision of services.

(d) All contracts under this part must include provisions that define a sound and complete procurement contract, as required by 45 CFR part 74.

(e) The State must provide to HCFA, if requested, a description of the manner in which rates were developed in accordance with the requirements of paragraphs (a) or (b) of this section. HCFA may request this description either when a State—

(1) Determines its rates initially;

(2) Updates its rates; or

(3) Changes its reimbursement methodology.

**§ 457.945 Certification for contracts and proposals.**

Entities that contract with the State under a separate child health program must certify the accuracy, completeness, and truthfulness of information in contracts and proposals, including information on subcontractors, and other related documents as specified by the State.

**§ 457.950 Contract and payment requirements including certification of payment-related information.**

(a) *Managed care entity.* A State that makes payments to a managed care entity under a separate child health program, based on data submitted, must ensure that its contract requires the managed care entity to provide, under penalty of perjury —

(1) Enrollment information and other information required by the State;

(2) An attestation to the accuracy, completeness, and truthfulness of claims and payment data, upon penalty of perjury;

(3) Access for the State to enrollee health claims data and payment data, as determined by the State in conformance with the appropriate privacy protections in the State; and

(4) A guarantee that managed care entities will not avoid costs for services covered in its contract by referring beneficiaries to publicly supported health care resources.

(b) *Fee-for-service entities.* A State that makes payments to fee-for-service entities under a separate child health program must—

(1) Establish procedures to ensure and attest that information on claim forms is truthful, accurate, and complete; and

(2) Require, as a condition of participation, that fee-for-service entities provide the State with access to enrollee health claims data and claims payment data as determined necessary by the State.

**§ 457.955 Conditions necessary to contract as a managed care entity (MCE).**

(a) The State must assure that any entity seeking to contract as an MCE under a separate child health program has administrative and management arrangements or procedures designed to safeguard against fraud and abuse.

(b) Unless otherwise provided for by State law, the State must ensure the arrangements or procedures required in paragraph (a) of this section —

(1) Enforce MCE compliance with all applicable Federal and State standards; and

(2) Include a mechanism for the MCE to report to the State, and to HCFA and/or the Office of Inspector General (OIG) information on violations of law by subcontractors or enrollees of an MCE and other individuals.

(c) With respect to enrollees, the reporting requirement in paragraph (b) of this section applies only to information on violations of law that pertain to enrollment in the plan, or the provision of, or payment for, health services.

(d) The State may inspect, evaluate, and audit MCEs at any time, as necessary, in instances where the State determines that there is a reasonable possibility of fraudulent and abusive activity.

**§ 457.960 Reporting changes in eligibility and redetermining eligibility.**

If the State requires reporting of changes in circumstances that may affect their eligibility for child health assistance, the State must:

(a) Establish procedures to ensure that beneficiaries make timely and accurate reports of any changes; and

(b) Promptly redetermine eligibility when the State has information about these changes.

**§ 457.965 Documentation.**

The State must include in each applicant's record facts to support the State's determination of the applicant's eligibility for CHIP.

**§ 457.970 Eligibility and income verification.**

(a) The State must establish procedures to ensure —

(1) The integrity of the eligibility determination process; and

(2) Compliance with verification and documentation requirements applicable to separate child health programs under other Federal laws and regulations.

(b) A State may use its discretion in establishing reasonable income and eligibility verification mechanisms.

(c) The State may choose to use the income and eligibility verification system requirements set forth in section 1137 of title XI of the Act at §§ 435.940 through 435.953 of this chapter.

(d) The State may terminate the eligibility of an applicant or beneficiary for ''good cause''.

(1) For purposes of this section, ''good cause'' exists if any information or other action makes the beneficiary fail to meet the requirements of income and eligibility verification or documentation as reasonably determined by the State.

(2) Beneficiaries terminated for good cause must be given notice of the termination decision that sets forth the reasons for termination and provides a reasonable opportunity to appeal the termination decision as specified in § 457.985.

**§ 457.975 Redetermination intervals in cases of suspected enrollment fraud.**

If a State suspects enrollment fraud, the State may, at its own discretion, perform eligibility redetermination at any frequency interval that is considered by the State to be in the best interest of the program.

**§ 457.980 Verification of enrollment and provider services received.**

(a) The State must establish methodologies to verify whether beneficiaries have received services for which providers are billed.

(b) The State must establish and maintain systems to identify, report, and verify those enrolled children that meet requirements of section 2105(a) of the Act, where enhanced Federal medical assistance percentage computations apply.

**§ 457.985 Enrollee rights to file grievances and appeals.**

(a) The State and its participating providers must give applicants and enrollees written notice of their right to file grievances and appeals in cases where the State or its contractors take actions to:

(1) Deny, suspend or terminate eligibility;

(2) Disenroll for failure to pay cost-sharing; or

(3) Reduce or deny services provided for in the benefit package.

(b) The State must establish and maintain written procedures for addressing grievances and appeal requests, including processes for internal review by the contractor and external review by an independent entity or the State agency, that comply with State-specific grievance and appeal requirements currently in effect for health insurance issuers (as defined in section 2791(b) of the Public Health Service Act) in the State. Such procedures must include a guarantee that resolution of grievances and appeal requests will be completed within a reasonable amount of time.

(c) The State may elect in its State plan to use the rules, systems, and procedures used in the Medicaid program such as—

(1) Part 431, subpart E of this chapter regarding fair hearings for Medicaid applicants and recipients; and

(2) Medicaid appeal procedures for Medicaid managed care entities.

(d) The State and its contractors must have in place a meaningful process for reviewing and resolving complaints that are submitted outside of the grievance and appeals procedures as part of the quality assurance process.

(e) The State must guarantee in all contracts for coverage and services, beneficiary access to information related to actions which could be subject to grievance or appeal in accordance with:

(1) Section 422.206 of this chapter, which prohibits interference with health care professionals' advice to enrollees; and

(2) Sections 422.208 and 422.210(a) and (b) of this chapter, related to limitations on physician incentives, or compensation arrangements that have the effect of reducing or limiting services, and information disclosure requirements respectively.

**§ 457.990 Privacy protections.**

(a) The State plan must assure that the program will be operated in compliance with the provisions of part 431, subpart F of this chapter related to safeguarding information on Medicaid applicants and recipients.

(b) The State plan must assure the protection of information and data pertaining to beneficiaries by providing that all contracts will include guarantees that—

(1) Original medical records are released only in accordance with Federal or State law, or court orders or subpoenas;

(2) Information from or copies of medical records are released only to authorized individuals;

(3) Medical records and other information are accessed only by authorized individuals;

(4) Confidentiality and privacy of minors is protected in accordance with applicable Federal and State law;

(5) Enrollees will have timely access to their records and to information that pertains to them;

(6) Beneficiary information is safeguarded in accordance with all Federal and State law relating to confidentiality and disclosure of mental health records, medical records, and other related information about the beneficiary; and

(7) Any electronic transmission of data to HCFA must comply with HCFA's policies and requirements regarding privacy and confidentiality of data transmissions. Data transmissions between providers, health plans and the State are also subject to these requirements.

(c) The State plan is subject to any Federal information disclosure safeguards as well as requirements mandated by the State including the use of the Internet to transmit CHIP data between the State and its providers.

(d) The State must assure that the program will be operated in compliance with all applicable State and Federal requirements to protect the confidentiality of information transmitted by electronic means, including the Internet.

**§ 457.995 Overview of beneficiary rights.**

In order to ensure that coverage and services are effectively and efficiently furnished to eligible beneficiaries, the following beneficiary protections are addressed in this part:

(a) *Information.* States are required to provide information to families of targeted low-income children regarding:

(1) Types of benefits, the amount, duration and scope of those benefits, and names and locations of current participating providers (§ 457.110(b));

(2) Either individually or through public notice, changes related to cost sharing or any other restrictions of eligibility or benefits (§§ 457.525 and 457.65);

(3) Enrollment assistance to potentially eligible children and their families (§ 457.360(d)) and information about beneficiary rights and obligations under the program (§ 457.360(e)); and

(4) Information must be accurate and easily understood and provide assistance to families in making informed health care decisions.

(b) *Choice of providers and plans.* States must provide enrollees assistance in making health care decisions and must assure appropriate and timely procedures to monitor and treat enrollees with complex and serious medical conditions including access to specialists in accordance with §§ 457.110 and 457.735(c) respectively.

(c) *Access to emergency services.* (1) States are required to provide an assurance of the quality and appropriateness of care, including access to covered services, including emergency services and covered post-stabilization services, as defined in § 457.402 and in accordance with § 457.735 respectively.

(2) States must assure that enrollees will not be held liable for additional costs, beyond the copayment amounts specified in the State plan, that are associated with emergency services provided by a facility that is not a

participating provider in the enrollee's managed care network (§ 457.515(f)).

(d) *Participation in treatment decisions.* Enrollees have the right to participate in their own care and to receive information on health plans, professionals, and facilities (§ 457.110 and § 457.985(e)). States must prohibit gag rules and establish principles for disclosure of physician financial arrangements that could affect treatment decisions (§ 457.985(e)).

(e) *Respect and nondiscrimination.* States must assure that families of targeted low-income children are treated with respect and nondiscrimination in accordance with applicable civil rights assurances and requirements found at § 457.130.

(f) *Confidentiality of health information.* States must ensure the confidentiality of a beneficiary's health information and provide beneficiaries access to medical records only in accordance with applicable Federal and State laws (§ 457.990).

(g) *Grievances and appeals.* (1) States and their participating contractors must ensure the family's right to file grievances and appeals by notifying beneficiaries of this right, and by having written procedures in place to afford applicants and enrollees the right to file grievances in cases where action is taken to—

(i) Deny, suspend or terminate eligibility in accordance with § 457.365;

(ii) Reduce or deny benefits provided for in the plan in accordance with § 457.495; or

(iii) Disenroll for failure to pay cost-sharing in accordance with § 457.560.

(2) Procedures for grievances, complaints and appeals must be conducted and resolved in a timely manner that is consistent with the standard health insurance practices in the State in accordance with § 457.985.

## Subpart J—Allowable Waivers: General Provisions

### § 457.1000 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements —

(1) Section 2105(c)(2)(B) of the Act, which sets forth the requirements for a waiver to permit a State to exceed the 10 percent cost limit on expenditures other than benefit package expenditures; and

(2) Section 2105(c)(3) of the Act, which permits a waiver for the purchase of family coverage.

(b) *Scope.* This subpart sets forth requirements for obtaining a waiver under title XXI of the Act.

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program and to a Medicaid expansion program only to the extent that the State claims administrative costs under title XXI and seeks a waiver of limitations such claims in light of a community-based health delivery system.

### § 457.1005 Waiver for cost-effective coverage through a community-based health delivery system.

(a) *Availability of waiver.* The Secretary may waive the requirements of § 457.618 regarding the 10 percent limit on expenditures not used for child health assistance in the form of health benefits coverage meeting the requirements of § 457.410, in order to provide child health assistance to targeted low-income children under the State plan through a cost-effective, community-based health care delivery system, such as through contracts with health centers receiving funds under section 330 of the Public Health Service Act or with hospitals such as those that receive disproportionate share payment adjustments under section 1886(c)(5)(F) or section 1923 of the Act.

(b) *Requirements for obtaining a waiver.* To obtain a waiver for cost effective coverage through a community-based health delivery system, a State must demonstrate that —

(1) The coverage meets the coverage requirements of section 2103 of the Act and subpart D of this part; and

(2) The cost of such coverage, on an average per child basis, does not exceed the cost of coverage under the State plan.

(c) *Two-year approval period.* An approved waiver remains in effect for 2 years. A State may reapply for approval 3 months before the end of the 2-year period.

(d) *Application of cost savings.* If the cost of coverage of a child under a community-based health delivery system is equal to or less than the cost of coverage of a child under the State plan, the State may use the difference in the cost of coverage for each child enrolled in a community-based health delivery system for—

(1) Other child health assistance, health services initiatives, and outreach; or

(2) Any reasonable costs necessary to administer the State's program.

### § 457.1010 Waiver for purchase of family coverage.

A State may purchase family coverage under a group health plan or health insurance coverage that includes coverage for targeted low-income children if the State establishes that—

(a) Purchase of family coverage is cost effective under the standards described in § 457.1015;

(b) The State does not purchase the coverage if it would otherwise substitute for health insurance coverage that would be provided to targeted, low-income children but for the purchase of family coverage; and

(c) The coverage for the child otherwise meets the requirements of this part.

### § 457.1015 Cost-effectiveness.

(a) *Definition.* For purposes of this subpart, ''cost-effective'' means that the cost paid under the plan of purchasing family coverage under a group health plan or health insurance coverage that includes coverage for targeted low-income children is equal to or less than the State's cost of obtaining coverage under the plan only for the eligible targeted low-income children involved.

(b) *Cost comparisons.* A State may demonstrate cost-effectiveness by comparing the cost of coverage for the family that meets the requirements of § 457.1010 to the cost of coverage only for the targeted low-income children under—

(1) The health benefits packages offered by the State under the State plan for which the child is eligible; or

(2) Any child-only health benefits package available for purchase in the State that meets the requirements of § 457.410, even if the State does not offer it under the State plan.

(c) *Individual or aggregate basis.* (1) The State may base its demonstration of the cost-effectiveness of family coverage on an assessment of cost-effectiveness of family coverage for individual families, done on a case-by-case basis, or on the cost of family coverage in the aggregate.

(2) The State must assess cost-effectiveness in its initial request for a waiver and then annually. For any State that chooses the aggregate cost method, if an annual assessment of the cost-effectiveness of family coverage in the aggregate reveals that it is not cost-effective, the State must assess cost-effectiveness on a case-by-case basis.

(d) *Reports on family coverage.* A State with a waiver under this section must include in its annual report pursuant to subpart G of this part the cost of family coverage purchased under the waiver, and the number of children and adults covered under family coverage pursuant to the waiver.

## PART 457—ALLOTMENTS AND GRANTS TO STATES

G. Part 457 is amended as follows:

1. The authority citation for part 457 continues to read as follows:

**Authority:** Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 457.204(d)(2), as proposed at 64 FR 10428, March 4, 1999, is revised to read as follows:

**§ 457.204 Withholding of payment for failure to comply with Federal requirements.**

* * * * *

(d) * * *

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification. Corrective action is action to ensure that the plan is, and will be, administered consistent with applicable law and regulations, to ameliorate past deficiencies in plan administration, or to ensure that beneficiaries will be treated equitably.

* * * * *

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 16, 1999.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: September 23, 1999.

**Donna E. Shalala,**

*Secretary.*

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# Part III

# Department of Transportation

## Federal Railroad Administration

**49 CFR Part 240**

**Qualification and Certification of Locomotive Engineers; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 240**

**[FRA Docket No. RSOR–9, Notice 12]**

**RIN 2130–AA74**

## Qualification and Certification of Locomotive Engineers

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FRA is making miscellaneous amendments to its requirements for the qualification and certification of locomotive engineers. These amendments are largely based on recommendations made by an advisory committee comprising rail industry and labor representatives; in reaching these consensus recommendations, the advisory committee examined data, discussed the successes and failures of the rule since its inception, and debated how to improve the regulations. In particular, this final rule will: Clarify the decertification process; clarify when certified locomotive engineers are required to operate service vehicles; and address the concern that some designated supervisors of locomotive engineers are insufficiently qualified to properly supervise, train, or test locomotive engineers.

**DATES:** (1) *Effective Date:* This regulation is effective January 7, 2000.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than 60 days after publication in the **Federal Register**.

**ADDRESSES:** Petitions for reconsideration of this rule should be submitted to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW, Mail Stop 10, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** John Conklin, Operating Practices Specialist, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street SW, Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6318); Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW, RCC–11, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6049); or Mark H. McKeon, Regional Administrator, 55 Broadway, Cambridge, MA 02142 (telephone: 617–494–2243).

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Background

Section 4 of the Rail Safety Improvement Act of 1988 (''RSIA''), Pub. L. 100–342, 102 Stat. 624 (June 22, 1988), later amended and recodified by Pub. L. 103–272, 108 Stat. 874 (July 5, 1994), requires that FRA issue regulations to establish a program for certifying or licensing locomotive operators. This statutory requirement was adopted in the wake of an Amtrak/Conrail accident at Chase, Maryland that resulted in 16 deaths and was caused by errors made by the Conrail locomotive engineer. Congress thus determined the existence of a safety need for regulations concerning the qualifications of engineers. In addition to the general need for regulations, Congress required that certain subject areas be addressed within those regulations. Now codified at 49 U.S.C. § 20135, the amended statute was reprinted in the preamble to the NPRM.

### II. Regulatory Background

One year and a half after the passage of the RSIA, FRA published an NPRM which proposed a certification program for locomotive operators. 54 FR 50890 (Dec. 11, 1989). FRA noted in the preamble to the final rule that some of the comments received in response to this NPRM suggested ''significant misunderstanding of the proposal.'' 56 FR 28228, 28229 (June 19, 1991). These misunderstandings and the appropriateness of the approach were addressed thoroughly in the final rule's preamble. 56 FR 28228, 28229–30 (June 19, 1991).

The final rule establishing minimum qualification standards for locomotive engineers is a certification program, not a licensing program. In summary, the rule requires railroads to have a formal process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. The rule requires that railroads: (1) Make a series of four determinations about a person's competency; (2) devise and adhere to an FRA-approved training program for locomotive engineers; and (3) employ standard methods for identifying qualified locomotive engineers and monitoring their performance. At the time of publication, FRA noted that the agency ''is adopting this regulation to minimize the potentially grave risks posed when unqualified people operate trains.'' 56 FR 28228 (June 19, 1991).

In 1993, less than two years after the publication of the final rule, an interim final rule was promulgated ''in response to petitions for reconsideration and requests for clarification.'' 58 FR 18982 (Apr. 9, 1993). Some of the issues addressed in this rule included: (1) The application of the rule to service vehicles which could potentially function as a locomotive or train; (2) the application of the rule to certain minimal, incidental and joint operations; (3) the application of the rule to events involving operational misconduct by a locomotive engineer; (4) the application of the rule to current railroad practices for storing data electronically; (5) the application of the rule to events involving testing and evaluation of a locomotive engineer's knowledge or skills; (6) the application of the procedural provisions of the rule to events involving denial, suspension and revocation of certification; and (7) technical changes to correct minor errors in the rule text. FRA did not provide additional notice and request for public comment prior to making the amendments contained in this interim final rule. ''FRA concluded that such notice and comment were impractical, unnecessary and contrary to the public interest since FRA is, for the most part, only making minor technical changes in response to requests for reconsideration of issues that were previously the subject of detailed notice and extensive comment in the development of the initial final rule in this proceeding.'' 58 FR 18982, 19002 (Apr. 9, 1993). In addition, FRA stated that delay in the effective implementation of this interim rule could result in the diversion of significant resources by all persons and entities affected by this rule. Meanwhile, this interim final rule guaranteed a full opportunity to comment on the amendments.

In 1995, after approximately four years and four months had passed since the initial final rule, FRA issued a second interim final rule. This second interim final rule contained minor modifications that clarified existing procedural rules applicable to the administrative hearing process; a series of changes made to provide for omitted procedures; and changes to correct typographical errors and minor ambiguities that had been detected since the rule's issuance. 60 FR 53133 (Oct. 12, 1995). Since the Administrative Procedure Act, specifically 5 U.S.C. 553(b)(3), provides that no notice and comment period is required when an agency modifies rules of procedure and practice, FRA issued this regulation without provision of such a period of comment prior to its adoption. 60 FR 53133, 53135 (Oct. 12, 1995). However, FRA did provide for a 30 day comment period subsequent to the publication of this interim final rule and stated that any comments received would be considered to the extent practicable.

## III. The Railroad Safety Advisory Committee

In 1994, FRA established its first formal regulatory negotiation committee to address roadway worker safety. This committee successfully reached consensus conclusions and recommended an NPRM to the Administrator, persuading FRA that a more consensual approach to rulemaking would likely yield more effective, and more widely accepted, rules. Additionally, President Clinton's March 1995 Presidential Memorandum titled ''Regulatory Reinvention Initiative'' directed agencies to expand their efforts to promote consensual rulemaking. In 1996, therefore, FRA decided to move to a collaborative process by creating a Railroad Safety Advisory Committee (RSAC, or the Committee) pursuant to the Federal Advisory Committee Act (Public Law 92–463).

RSAC was established to provide recommendations and advice to the Administrator on development of FRA's railroad safety regulatory program, including issuance of new regulations, review and revision of existing regulations, and identification of non-regulatory alternatives for improvement of railroad safety. RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico. The Administrator's representative (the Associate Administrator for Safety or that person's delegate) is the Chairperson of the Committee.

## IV. The Qualification and Certification of Locomotive Engineers Working Group

At a two day RSAC meeting that began on October 31, 1996, the Committee agreed to take on the task of proposing miscellaneous revisions to the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). *See* 61 FR 54698 (Oct. 21, 1996). The Committee members delegated responsibility for creating a proposal to a working group consisting of the members' representatives. The Qualification and Certification of Locomotive Engineers Working Group (Working Group or Group) met for seven week-long meetings prior to submitting the Working Group's proposal to the Committee.

On May 14, 1998, the Committee recommended that the FRA Administrator publish the Working Group's consensually reached effort as a proposed rule. During RSAC's meeting, the Committee suggested that the proposal contained some suggested amendments that may be further improved by being subject to more debate. In order to permit an informed debate, FRA committed itself to providing RSAC with an opportunity to assist FRA in considering comments received in response to the NPRM which all parties anticipated that FRA would issue. Relying heavily on RSAC's recommendations for change, on September 22, 1998, FRA published the NPRM which forms the basis for this final rule. 63 FR 50626 (Sept. 22, 1998). As promised, FRA provided RSAC with an opportunity to assist FRA in examining the comments and convened a meeting of the existing Working Group for that purpose. During a meeting of the Working Group held on December 8–9, 1998, information and views were received on every issue raised in the comments. Detailed minutes for that meeting are contained in the docket. The Working Group provided consensus recommendations for agency response on some issues raised by the comments and those recommendations were sent to RSAC for further review. On January 28, 1999, RSAC adopted the Working Group's recommendations and requested that FRA adopt them.

The recommendations provided by RSAC and a summary of the Working Group discussions are provided below in conjunction with the discussion of the individual issues presented by this rulemaking. Virtually all of the changes proposed by FRA are being adopted in this final rule; thus, the preamble and section-by-section analysis for the 1998 NPRM contain useful background information concerning the changes being made which is not being repeated here. FRA's analysis in this final rule focuses on the comments received in response to the 1998 NPRM and explains why FRA made certain changes to the rule.

Considering the temporary nature of the two interim final rules and the thorough review of the regulation provided for in this rulemaking process, FRA readopts the two previously issued interim final rules, suitably modified, as this final rule. Thus, the amendments promulgated here would govern any conflicts with the previously published interim final rules upon the effective date of this final rule. FRA is grateful to the members of RSAC and the Working Group for their efforts, information and recommendations. The detailed information and recommendations made have proved useful in FRA's deliberations on the best ways to improve the rule and FRA has given great weight to RSAC's recommendations for this final rule.

The section-by-section analysis discusses all of the amendments to this part.

## V. Major Issues

*Background*

FRA received eight written comments in response to the NPRM. Although an opportunity to present oral comments was offered, the request that was made for a public hearing was subsequently withdrawn. Thus, FRA is only responding to written comments. Some comments requested clarification, some suggested alternative language to improve upon a concept raised by the proposal, and others requested reconsideration of previously suggested proposals. Of these issues, FRA considers eight to be major topics and a discussion of each of these major topics follows.

*A. Application of the Rule to Certain Service Vehicles*

One commenter (the United Transportation Union, or ''UTU'') maintains that the 1988 statute that required FRA to issue the engineer certification rule did not authorize FRA to permit operation of certain roadway maintenance vehicles by persons other than certified locomotive engineers. UTU's November 18, 1998 comments state: ''In short, certified engineers must be at the controls of any motorized equipment that operates as a locomotive.'' UTU concludes that ''the language relating to dual purpose vehicles must be removed.'' UTU notes that, although it was part of the working group that reached consensus on the proposed rule, the relevant statutory language ''was not reviewed in detail by the group.'' UTU goes on to say that all language in the proposed section 240.104 that allows exceptions to certification should be removed.

The statutory provision that required FRA to issue its engineer certification rule was section 4 of the Rail Safety Improvement Act of 1988 (''RSIA''), Pub. L. No. 100–342. As currently codified at 49 U.S.C. 20135(a), that provision states, in relevant part: ''The Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive.'' FRA believes that Congress intended the agency to have some discretion in determining which employees are operators of locomotives as well as which vehicles

are being used as locomotives under which circumstances.

Since the rule's issuance in 1991, there has been extensive debate over whether certain service vehicles should be considered locomotives for the purposes of this rule, and in 1993 FRA promised to provide an opportunity to fully examine this issue in a future proceeding. 58 FR 18982, 18983 (Apr. 9, 1993). The nature of railroading requires that equipment used to construct, maintain, and repair track, signals, and roadway structures be able to move on rails, as there are many locations on railroads that are accessible only by rail. Moreover, the nature of the construction, maintenance, and repair work requires that this equipment be able to be moved independently from normal train movements, both to and from work sites and within extensive work sites. To serve this purpose, some of the maintenance equipment is capable of moving other maintenance equipment without the need for a traditional locomotive. FRA does not believe that Congress intended to require that operators of this maintenance equipment be certified as locomotive engineers, as this equipment is not generally considered to be a locomotive, and movement of this equipment was not in any way within the range of concerns that prompted the 1988 legislation on locomotive engineer certification.

However, some of the vehicles used in maintenance service have sufficient power and appropriate coupling mechanisms to enable them to move railroad rolling stock. Manufacturers of service vehicles indicate that the industry is requesting equipment that can perform a specific maintenance task and haul an increasing number of cars. As these vehicles improve, some railroads may decide to take advantage of the vehicles' ability to haul cars—even to the exclusion of their maintenance function. Without a regulatory mechanism to address these dual purpose vehicles, FRA is concerned that some railroads might seek to use the dual purpose vehicle as a functioning locomotive to avoid the expense of having a certified locomotive engineer at the controls, which would pose an unacceptable safety risk.

The amendments being adopted in this final rule will resolve the issue of when certain types of on-track equipment, which are not traditional locomotives but share some common characteristics with a traditional locomotive, are required to be operated by certified locomotive engineers. The final rule uses the term ''roadway maintenance equipment'' to refer generally to equipment used in maintenance of track, signals, and structures. The rule provides that one type of maintenance equipment (''specialized roadway maintenance equipment'') need not be operated by a certified locomotive engineer. The reason for excluding such vehicles is that they do not have the capability to move railroad rolling stock and thus cannot be used as a substitute for a traditional locomotive. Dual purpose vehicles describes service vehicles that may, at times, function as roadway maintenance vehicles and can be used as a substitute for a traditional locomotive as a result of their capability to move railroad rolling stock. The rule will require a certified locomotive engineer at the controls of a dual purpose vehicle unless certain specified criteria are met. See § 240.104(b). In essence, those criteria mean that a certified engineer must operate the equipment when it is being used as a locomotive in service unrelated to roadway maintenance work and also when, even in the context of maintenance work, there is no employee available who is trained to operate the vehicle. In general, railroads will be able to allow the operation of dual purpose vehicles by people who are not certified locomotive engineers when the vehicle is being used in roadway maintenance service, including traveling to and from the work site; the operator has been trained on how to operate the equipment safely in accordance with FRA's rules on the protection of roadway workers (49 CFR part 214); and the equipment is moved under railroad operating rules designed for the protection of such equipment from train movements. Given the definitions in the rule, if specialized roadway maintenance equipment is somehow used for moving railroad rolling stock, it will be treated as a dual purpose vehicle for purposes of determining whether a certified locomotive engineer is necessary for its operation.

When roadway maintenance equipment is used at a work site where roadway workers are present, FRA's rules on Roadway Worker Protection provide standards for protecting the workers from such equipment and trains and for protecting the equipment from train movements. *See , e.g.,* 49 CFR § 214.319 (explaining the requirements of working limits, generally). A review of relevant accident and injury history indicates that the greatest danger inherent in the movement of this equipment is that it may strike a roadway worker, and FRA's roadway worker protection rule is specifically designed to substantially reduce that risk. In RSAC's fact finding efforts, none of the RSAC's members or commenters provided information, nor did FRA have any information, showing that when dual purpose vehicles are being used for maintenance purposes they are involved in accidents or incidents that could be prevented by requiring that such vehicles be operated by certified locomotive engineers. Although operators of roadway maintenance equipment will generally not be required to be certified locomotive engineers, these operators must be trained and qualified on how to safely operate that equipment. *See* 49 CFR § 214.355. Moreover, when roadway maintenance equipment travels to and from a work site, there are existing operating rules that protect such movements from train movements. *See, e.g.,* Northeast Operating Rules Advisory Committee (NORAC) 800 series rules; General Code of Operating Rules (GCOR)—Maintenance of Way Operating Rules section, 6.0 series rules; CSX's On Track Worker Manual, Rule 704 (effective Jan. 1, 1999); Illinois Central Railroad System's On Track Safety Rules, 500 series rules (effective Mar. 10, 1998); and Norfolk Southern Corporation's Operations Division, Bulletin No. 8 regarding Rule 808 (July 22, 1996). Thus, in addition to the fact that this equipment is not traditionally considered to be a locomotive of the type that Congress had in mind when requiring FRA to issue its certification rule, there are existing FRA and railroad rules that ensure that those who operate such equipment in maintenance service will operate these machines safely.

One area of concern identified by the RSAC working group was the use and maintenance of air brakes on roadway maintenance equipment. Much of the concern arose from a fatal accident involving a burro crane hauling cars from a work site on November 5, 1996, which did not have brake pipe hoses connected between the locomotive crane and the three freight cars being hauled. The group drafted a recommendation intended to resolve that concern. Based on that recommendation, FRA proposed that one of the conditions for a non-certified locomotive engineer to operate a dual purpose vehicle that will be hauling cars would be that ''not less than 85% of the total cars designed for air brakes shall have operative air brakes.'' RSAC's purpose and FRA's intent was to make sure that when a dual purpose vehicle is hauling cars to or from a work site the air brakes on the consist can stop the

movement within the normal stopping distance for that equipment.

FRA specifically solicited comments to learn how others perceived the ''85% rule'' found in proposed § 240.104(b)(4). The comments indicated that this proposed provision was generating some confusion. One commenter wanted to know whether this paragraph excused the railroad from compliance with the power brake requirements of 49 CFR part 232, despite FRA's statement in the NPRM that it did not. The same commenter requested an explanation of the necessary inspection and testing of the consist's braking system to determine compliance with the 85% operable brake requirement; this question was echoed by other Working Group members who believed computing 85% or greater operative air brakes would likely cause some confusion for those trying to comply.

Upon further reflection, FRA is deleting this proposed brake requirement from the rule. The issue of whether the railroad must use, maintain, and inspect power brakes on dual purpose vehicles is not related to the qualifications of the vehicle's operator and should be resolved in the same way whether or not the operator is a certified locomotive engineer. The proposed provision implied that, if the railroad used a locomotive engineer to operate dual purpose equipment, the brake rules would not apply to the movement. FRA's position is that the movement of railroad equipment to and from a work site is governed by the power brake rules of 49 CFR part 232. Even though the dual purpose vehicle hauling the equipment may not be a traditional locomotive, to the extent the vehicle and the equipment it is hauling are equipped with power brakes, they must comply with the relevant standards. It would not be appropriate to include this policy on the applicability of an equipment rule in the text of a rule on locomotive operator qualifications. However, railroads should understand that FRA will enforce the power brake rules in accordance with the policy stated in this preamble.

One commenter also asked several interpretative questions. For instance, FRA was asked whether proposed § 240.104 allows MOW equipment to be used to move loads of slag, for the purpose of dragging slag, or to move empty hoppers, for the purpose of cleaning up debris with a track cleaner, from the yard to the work site without the use of a certified locomotive engineer. FRA notes that ''slag'' is a term interchangeably used for ballast, and that spreading ballast and picking up debris along the track are both MOW duties. FRA would categorize a vehicle performing such duties as a dual purpose vehicle because it is being used to move railroad rolling stock. It is possible that a certified locomotive engineer will not be required if all of the conditions in paragraph (a)(2) have been satisfied.

In conjunction with the last question discussed, the commenter also asks whether the rule lends itself to an inherent limit on the distance traveled, or the type of track traversed, before a railroad is required to utilize a certified engineer for this type of movement. FRA's answer to this question is that § 240.104 does not place any such limits with regard to the distance or type of track over which a person who is not a certified engineer may operate dual purpose equipment. The limitations in that section are based on the type of service being performed (maintenance of way, or something else), the person's qualifications to operate the equipment in that service, and application of the railroad's rules for protection of such equipment in such service.

One commenter recommended that Class III Switching and Terminal Carriers be excluded from the requirement that ''dual purpose vehicles'' must be operated by a certified locomotive engineer in those situations where the ''vehicle'' is being used to move disabled equipment for clearing and repair of track. FRA does not agree with the commenter that this exclusion is necessary or would promote safety. Wrecking operations to move damaged equipment are not maintenance movements, which are the only movements of dual purpose vehicles FRA intended to permit without the use of a certified engineer. Since the safety risks associated with these operations do not diminish with railroad size, it would not promote safety to exclude certification requirements on small railroads and yet require it on the bigger roads.

Finally, FRA notes that one commenter may have been confused as to the proposed application of the rule due to some confusing language in the section-by-section analysis to describe the new definitions ''dual purpose vehicle'' and ''specialized roadway maintenance equipment,'' and the previous definition of ''locomotive.'' Thanks to the Working Group, the confusing language was brought to FRA's attention and alternative proposals were discussed. Although not an RSAC recommendation, a new proposed definition of ''locomotive'' has been provided to make clear that specialized maintenance equipment and dual purpose vehicles operating in accordance with § 240.104(a)(2) are not locomotives. FRA has also added definitions of ''roadway maintenance equipment'' and ''railroad rolling stock'' in order to further clarify the revisions. Also, the section-by-section analysis of § 240.7, below, provides improved analysis of the terms ''dual purpose vehicle'' and ''specialized roadway maintenance'' equipment. FRA expects that these modifications will lead to a better understanding of the rule for all those persons who need to comply with it.

*B. Qualifications for Designated Supervisors of Locomotive Engineers*

The role of the Designated Supervisor of Locomotive Engineers (DSLE) is critical to the safety success of this rule and was discussed as a major issue in the NPRM. This role is twofold. One, the DSLE makes the final determination that a locomotive engineer is qualified to safely operate a train. Two, after a person is certified, a DSLE is responsible for qualifying engineers on the physical characteristics of any additional territories over which the engineer will need to operate. Both of these issues were addressed in the public comments received and RSAC has made some additional recommendations for modifying the rule based on the comments FRA received.

FRA noted in the NPRM its concern over whether a specified amount of operational experience should be a prerequisite for qualifying DSLEs. The cause of this concern has been the finding that some railroads have been seeking to establish systems in their certification programs that do not assure that supervisors will be experienced individuals. Moreover, since implementation of the original rule, FRA has investigated several instances in which there is some evidence that railroads designated persons to be supervisors who have had only the most minimal amount of operational experience.

The proposed modifications to § 240.105(b)(4) reflect RSAC's recommendation and FRA's concern that not all supervisors have been found to be familiar with the physical characteristics of the territories in which they work. Given this universal concern, this final rule will require those persons who are DSLEs to be qualified on the physical characteristics of the portion of the railroad over which they are supervising. As specifically addressed in § 240.105(a), railroads will be required to address how they intend to implement the qualification of their DSLEs on physical characteristics and

include those procedures in their certification programs. Thus, a railroad will not be in compliance with the requirements of § 240.105 if it were to merely state in its program that it intends to comply with this section or restates the requirements of this section in its program. Instead, a railroad will be required to detail specific training requirements for DSLEs on physical characteristics.

A benefit of this rule will be that a DSLE who changes territories, including a situation where the new territory presents more demanding train handling challenges than the previous assignment, will receive training on the physical characteristics of the new territory. This new requirement goes further than the current requirement in § 240.127(b) that requires certified locomotive engineers to have ''the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform;'' presumably, it will occasionally be necessary for DSLEs to require additional training in train handling skills to satisfy the § 240.127(b) requirement. Since it is presumed that a DSLE in a territory would be permitted to perform train handling service in that territory, as well as be prepared to offer remedial advice for noted deficiencies in the skill level of other locomotive engineers, a DSLE must receive skills training that is commensurate with performing such duties in equally or more difficult terrain. As a result of the new requirement, DSLEs will now be required to have knowledge of the physical characteristics of the territory in which they supervise in addition to the continuing requirement of having the requisite skills commensurate with the difficulty of the terrain.

In the preamble and section-by-section analysis of the NPRM for this final rule, FRA noted that RSAC recommended a modification to § 240.127(c)(2) in order to permit a DSLE, whose skill level is commensurate with the difficulty of a territory, to be able to assess a person's performance skills over that territory even if the DSLE is not qualified on the physical characteristics of that territory. One RSAC member commented that FRA should revisit this issue, especially in the context of whether the proposed exception in § 240.127(c)(2) promotes safety. In reviewing the comments and upon further consideration, RSAC recommended the exception be retained and also recommended extending the exception to a related section of the rule.

The Working Group's discussion of their previously recommended exception for § 240.127(c)(2) reinforced RSAC's consensus that the exception would be a safe practice that is cost effective and practical; FRA agrees with this assessment. Consequently, some of the Working Group's members promoted the practicality of the concept for this exception of the triennial performance monitoring pursuant to § 240.127 and suggested transferring this benefit to the annual monitoring pursuant to § 240.129. FRA had been working under the mistaken impression that the Working Group's members had purposely recommended that FRA treat these two monitoring examinations differently. FRA had believed that the level of sophistication was different for the two tests and so proposed changing only one of the testing provisions. In response to RSAC's new understanding, they recommended adding the exemption to § 240.129 for the same reasons the exemption was created for § 240.127; likewise, FRA has agreed to promulgate this recommendation based on the agency's assessment that this is a safe practice that is cost effective.

FRA concurs with certain additional recommendations from RSAC that propose to clarify that the amendment to § 240.105(b)(4), requiring DSLEs to be qualified on the physical characteristics of the portion of the railroad on which they are performing their DSLE duties, will not be made in vain. One of these recommendations is that a DSLE should not be allowed to make the determination of whether a person is qualified to be a locomotive engineer, at the completion of a training program pursuant to § 240.213, unless that DSLE is qualified on the physical characteristics of the railroad or its pertinent segments over which the person will be permitted to perform; accordingly, FRA amended § 240.213(b)(3). In addition, RSAC recommended that a qualified DSLE should be required whenever a locomotive engineer is to be qualified on a new territory. Although RSAC's recommendation to address this concern was to add a paragraph (c) to § 240.213, FRA amended a different section which it believes will have the same effect. That is, an amendment to § 240.123(b) is being made to explicitly require that when a railroad provides for the continuing education of a certified locomotive engineer, that railroad must ensure that each engineer maintains the necessary knowledge, skill and ability concerning familiarity with physical characteristics ''as determined by a qualified designated supervisor of locomotive engineers.'' Thus, this modification is not that engineers must be qualified on physical characteristics (since that is already a requirement) but that the person making this determination for the railroad must be a qualified DSLE.

*C. Improving the Dispute Resolution Procedures*

As FRA stated in the NPRM, many procedural issues concerning the initial regulation were addressed by issuing a second Interim Final Rule. 60 FR 53133 (Oct. 12, 1995). FRA brought the procedural issues to RSAC's attention in order to determine whether additional procedures could be clarified or changed that would improve the dispute resolution process located in Subpart E of this part. In addressing this issue prior to the publication of the NPRM, the Working Group formed a Task Force consisting of some interested Group members who were asked to explore different options. After exploring the alternatives, the Working Group accepted the Task Force recommendations that the current system is the best choice, assuming that the petitions to the LERB and the requests for administrative proceedings are handled promptly.

One commenter expressed opinions regarding four issues that would amount to substantial modifications to the certificate revocation procedures if accepted. During the Working Group meeting to review the comments, it was noted that the opinions raised by this commenter relate to matters that were previously discussed by the Working Group and that no recommendations for changes responsive to these suggestions emerged after these previous lengthy discussions. These previous discussions were based on (1) an FRA issues paper that outlined the pros and cons of alternative procedures, (2) two comments received in response to the 1995 Interim Final Rule, and (3) proposals made by Working Group members. A summary of the previous RSAC deliberations is located in the NPRM. After further consideration, RSAC recommended that the final rule retain the same language with respect to the issues raised by this commenter. These issues were identified as I. B. through E. in FRA's outline of the comments.

This commenter contends that, if the standard of review for issues of fact at the FRA administrative hearing is preponderance of the evidence (§ 240.409(q)), then the railroad hearing (proposed § 240.307(i)) and the Locomotive Engineer Review Board

(LERB) review should also use this standard instead of the substantial evidence standard of review. FRA disagrees with this suggestion for several legal reasons. One, the commenter is mistaken that the railroad hearing must employ the substantial evidence standard of review. The current rule does not contain a standard of proof for the railroad hearing, the proposed rule did not contain such a standard, and FRA has not added such a standard to the new rule. Although silent on the standard of proof, FRA specifically requires that the railroad determine, on the record of the hearing, whether the person no longer meets the qualification requirements of this part and state explicitly the basis for the conclusion reached. § 240.307(b)(4). FRA wants to ensure that the railroad hearings are fair, and allow for consolidation with applicable collective bargaining agreements, without the rigidity of instituting a standard of proof. Two, it is necessary for the LERB to apply the substantial evidence standard of review because it is not a fact finding body that hears new evidence, but is instead relying on an existing record. Three, as the process moves along to the FRA Hearing Officer stage, the procedures are designed to permit a full evidentiary hearing. The preponderance standard is appropriate at that stage because the FRA Hearing Officer will be finding facts on a *de novo* basis. Thus, the commenter's suggestion is not acceptable because it seems to confuse the difference between a standard of proof with a standard for review.

A second opinion raised by this commenter is that it should be mandatory that the written decision prepared by a railroad's presiding officer, pursuant to § 240.307, include more detailed information than that the charge was proven. This opinion appears to be a commentary on the fact that some written decisions merely state that the locomotive engineer was found to have violated one of the operational misconduct events without summarizing the evidence upon which the decision was based. In deference to this commenter, FRA notes that judicial opinions usually contain such an analysis of the evidence and some revocation decisions are detailed in the manner preferred by this commenter. Meanwhile, FRA has decided not to require more detail in decisions because the record upon which the decision is based should speak for itself. Since railroad presiding officers are not required to be attorneys, additional costs could be associated with requiring more detailed decisions as drafting such decisions could be categorized as legal work. Those who do not believe that a railroad has met its burden of proof and desire an articulated summary of the evidence can petition FRA for a review of the record.

A third opinion raised by this commenter is that the current dispute resolution procedures that allow for a railroad hearing (§ 240.307) and a petition to the Locomotive Engineer Review Board for a decision are in noncompliance with the RSIA and thus in order to afford due process FRA must conduct all on-the-property railroad hearings. FRA believes it is in compliance with the statute, and in fact provides far more opportunity for a hearing than the statute requires. There is substantial case law interpreting what is proper administrative due process and FRA believes it has followed the law properly. Although not required by statute, FRA provides the opportunity for a full evidentiary hearing in front of a presiding officer pursuant to § 240.409 for any person who has been denied certification, denied recertification, or has had his or her certification revoked and has timely availed himself or herself of earlier administrative remedies. The section of the RSIA cited by the commenter as authority for his position requires an administrative hearing only if a person's certification is detrimentally effected because of information found in the person's motor vehicle driving record. See 49 U.S.C. 20135(d) (cross referencing subsection (b)(4) of the same section). The required hearing must comply with 49 U.S.C. 20103(e), which calls for just an informal hearing. FRA's rule goes far beyond the statutory minimum: under the rule, a person is entitled to a hearing regardless of the basis for the denial or revocation, and the hearing FRA provides to those not satisfied by the informal process of the LERB is a formal, trial-type hearing. Moreover, FRA does not intend to voluntarily act as the hearing officer in every on the property certification hearing since FRA does not have the resources to absorb the substantial costs involved with such a modification of the dispute resolution process.

A fourth opinion raised by this commenter was that a railroad's presiding officer is the only individual who can fairly issue a decision for the § 240.307 hearing and that the proposal to allow any railroad official to issue the opinion other than the investigating officer is unfair. FRA solicited comments on this issue in the NPRM. When the original final rule was promulgated in 1991, FRA's thought was that railroad presiding officers would make the decisions and that these presiding officers were the people best situated to do so. FRA has since learned from experience and from RSAC members that having the railroad presiding officers make the decisions poses problems raised by historical concerns in the existing disciplinary review chain; i.e., railroads objected to limiting decision-makers to presiding officers because in some cases it would require additional burdens and costs not associated with holding a combined collective bargaining agreement hearing with the Part 240 revocation proceeding currently allowed for pursuant to § 240.307(d). The main issue concerns whether it is fair for the decision-maker to be someone who has not had the opportunity to evaluate the credibility of witnesses in the case by receiving their testimony first hand. Although FRA recommends that railroads set up their hearing proceedings to allow for the presiding officer to make the revocation decision or for the decision-maker to consult with the presiding officer on issues of credibility, FRA believes a fair decision can be made on the record alone as long as the decision-maker is free of other conflicts of interest that could interfere with rendering a fair decision. FRA's overall concerns of fairness are satisfied because the rule's changes continue to clarify the importance of the separate duties between the investigating officer and the decision-maker. See § 240.307(b)(2), (c)(2), (c)(10), and (e).

Another commenter expressed an opinion that violations that have occurred prior to promulgation of the final rule should be treated under the new revocation periods. FRA has previously considered the fairness of this issue and both the proposed and final § 240.117(g)(4) conforms with this commenter's opinion. That is, the rule will apply the new, shorter periods of ineligibility retroactively to most incidents that have occurred prior to the effective date of this rule. The rule will not retroactively apply the new, shorter revocation periods if the event involves a violation of § 240.117(e)(6) or the most recent decertifiable event occurred within 60 months of a prior violation of § 240.117(e)(6).

Similarly, FRA has received inquiries regarding whether it is ever possible to run multiple revocation periods concurrently. This question can arise when multiple incidents of operational misconduct are found during a single tour of duty or within a short period of time prior to a railroad's receipt of reliable information forming the basis for a certificate suspension pursuant to

§ 240.307(b)(1). Although revocation periods were designed to run consecutively, not concurrently, two related issues deserve mention. First, this issue usually involves questions concerning the meaning of § 240.117(f), which reads: ''If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.'' The question of whether multiple contraventions of a railroad's rules or practices should be treated as a single incident is a factual one which requires consideration of whether the contraventions were sufficiently separated by time, distance or circumstance that to treat them as multiple violations would be logical. Generally, violations that occur simultaneously are part of a single incident. The prudent railroad will address time, distance and circumstance in making its revocation decision and will document the reasoning of that decision in the relevant records kept in accordance with the Part 240 program. Second, railroads have some discretion to reduce the concurrently running periods of ineligibility given that certain conditions are met pursuant to § 240.117(h). Understanding of these two additional issues can often soften the blow of facing concurrently running revocation periods if warranted.

The only other comment concerning certificate revocation procedures was a minor issue that was addressed in the section-by-section analysis concerning § 240.307(c)(10).

*D. Revisiting the Standards for Hearing and Vision*

Since FRA did not modify the standards for hearing and visual acuity since publishing the final rule in 1991, FRA suggested in the NPRM that sufficient time has passed to evaluate the effectiveness of this rule and determine whether any modifications are necessary. FRA received virtually no comments in response to its proposal despite the fact that substantial modifications were proposed. Only one commenter offered views on this important issue and since both of those views involve minor suggested changes to the proposed rule they have been addressed in the section-by-section analysis regarding § 240.121(e) and Appendix F.

*E. Reviewing the Requirements for Consideration of Unsafe Conduct as a Motor Vehicle Operator*

In the NPRM, FRA noted this topic as a major issue and discussed that since the Working Group reluctantly determined that elimination of the review of motor vehicle driving data was outside the Working Group's authority, the Working Group focused on identifying problems with the current system and whether the regulation could be modified to resolve any of those problems. For instance, some railroad Working Group members set goals of achieving (1) ''one stop shopping'' for both the National Driver Register (NDR) and State motor vehicle data, (2) simplified request procedures, and (3) accurate data. As noted in the NPRM's preamble, the RSAC members' recognized their limited authority and thus formal recommendations were not made. Instead, FRA has offered to assist interested parties in discussing and resolving these NDR matters with the National Highway Traffic Safety Administration.

As noted in the preamble to the NPRM, the RSAC's members identified a few modifications that FRA agreed will ease regulatory burdens without any detrimental effect on safety. Regulatory burdens are eased by substantially lengthening the period of time required for individuals to provide railroad employers with prior safety conduct as motor vehicle operators pursuant to § 240.111(a). Individual rights are strengthened by limiting when a railroad can require a person to submit motor vehicle operator data pursuant to § 240.111(h). Please note that proposed paragraph (h) was eliminated due to its redundancy with paragraph (a); accordingly, proposed paragraph (i) has been moved to new paragraph (h).

The only commenter on this topic raised an issue not directly addressed in the NPRM. The commenter's concern is being addressed in this final rule and it is discussed at length in the section-by-section analysis to § 240.5.

*F. Addressing Safety Assurance and Compliance*

One of the principles of the current rule is that locomotive engineers should comply with certain basic railroad rules and practices for the safe operation of trains or risk having their certification revoked. The rule provides for persons who hold certificates to be held accountable for their improper conduct. The reason for holding people accountable for operational misconduct serves one of the principal objectives of this regulation; that is, by revoking the certificates of locomotive engineers who fail to abide by safe rules and practices, the implementation of the rule is instrumental in reducing the potential for future train accidents.

In FRA's Issues Paper, FRA recommended that RSAC consider the following five general issues: (1) The degree of discretion accorded railroads in responding to individual incidents; (2) the criteria for the types of operational misconduct events that can trigger revocation of a certificate; (3) the severity of the consequences for engaging in operational misconduct; (4) the significance to be attached to decertification for violations that occur during operational tests required pursuant to § 240.303; and (5) the effectiveness of FRA's direct control over operational misconduct. Two commenters raised concerns with the proposed rule.

One commenter questioned whether the rule should address how a railroad should treat an individual's defenses of defective equipment, improper notification of tonnage or lading, lack of training, or failure by the employer to provide proper equipment in making suspension and revocation decisions. The commenter was concerned that railroads might suspend and revoke an individual's certificate on the mistaken belief that they cannot take into account these defenses if a violation of operational misconduct has occurred.

Although FRA articulated in the NPRM that the rule already provides railroads with the authority to consider these defenses, FRA noted that it supported RSAC's recommendation to clarify this concern. That is why the proposed § 240.307(i) stated that a railroad shall not revoke a person's certificate when there is an intervening cause or the violation was of a minimal nature with no direct or potential effect on rail safety. This issue was also addressed in the NPRM's proposed § 240.307(j) which creates safeguards for the application of paragraph (i).

For purposes of this final rule, FRA has decided to retain the defense of an intervening cause; however, rather than prohibit the railroad from taking revocation action for all events determined to be of a minimal nature with no direct or potential effect on rail safety, FRA has decided to permit all railroads to use their discretion to determine whether revocation is desirable in such instances. The reason for this modification is that determining an intervening cause is significantly more objective than determining what types of violations are both (1) of a minimal nature and (2) have no direct or potential effect on rail safety. Given that the intervening cause defense addresses this comment fully, FRA does not recognize a need to make further modifications in response to this comment.

One commenter suggested that there should be experimental ''amnesty

programs'' for self reporting of apparent violations by locomotive engineers who honorably come forward to admit an operational misconduct event. Although this comment was reviewed by the Working Group, the proponent of this comment withdrew it from RSAC's consideration before a recommendation could be made. FRA has considered this suggestion and notes that this concept is essentially experimental which would make the waiver route a better vehicle for addressing this matter than this rulemaking. Enforcement problems could be anticipated with such a program and thus FRA is wary about drafting regulations that allow all railroads to utilize amnesty programs. For those parties interested in applying for a waiver, it should be noted that waiver requests which have been jointly submitted by interested parties tend to get expedited resolution.

One commenter suggested that the rule should require different revocation periods based on the severity of the violation. For example, the commenter offered that a locomotive engineer who gets by a stop signal by a few feet in the yard should be subject to a shorter revocation period than the engineer who blasts by a stop signal on main track. FRA believes that it would be immensely difficult to establish a fair system that assesses different revocation periods based on the severity of the violation. Meanwhile, the rule will provide a railroad with the discretion to choose not to revoke a person's certificate when the violation is of a minimal nature with no direct or potential effect on rail safety. See § 240.307(i)(2). An explanation on the application of this new paragraph is provided in the section-by-section analysis.

One commenter was concerned with whether the proposed rule adequately addressed that training may sometimes be more useful than revocation. Because FRA believes that training may be useful in some circumstances, FRA proposed modifying § 240.117(h) to expand the use of training in exchange for a reduction in the revocation period. However, given the proposed rule's modifications to eliminate revocations for defensible and minimal violations, FRA believes that the remaining revocable offenses should be of such greater magnitude that training alone would be considered too light a consequence. FRA has retained § 240.117(h) as proposed and thus has concluded that the rule adequately addresses the usefulness of substituting training for a reduction in some revocation periods.

In reviewing the effectiveness of FRA's current control over operational misconduct, the rule prohibits certain operational conduct which is specified in § 240.305. That section makes it unlawful to (1) operate a train at excessive speed, (2) fail to halt a train at a signal requiring a stop before passing it, and (3) operate a train on main track without authority. The effect of this section is that it enables FRA to initiate civil penalty or disqualification actions when such events occur and are deemed appropriate. Since changes to § 240.117(e) have been made, some parallel modifications are necessary under § 240.305. The NPRM proposed these parallel modifications and they have been adopted in this rule with one exception. That exception is a parallel modification to §§ 240.117 and 240.305.

In response to the proposal, one commenter questioned whether the decertification of supervisors would discourage supervisors from riding trains and evaluating locomotive engineers during actual operations. This commenter also requested guidance if the final rule were to define and document a need for decertification of supervisors. FRA and the other RSAC members believe this commenter's concerns are misplaced since the modified approach does not serve to single out DSLEs but instead makes them accountable for their actions in the same manner as non-supervisory locomotive engineers. This commenter was also concerned that a DSLE does not have the same due process rights as other certified locomotive engineers. Although the NPRM only addressed DSLEs, FRA has encountered several situations in which a designated supervisor of locomotive engineers, a certified locomotive engineer pilot or an instructor engineer has neglected his or her responsibilities and permitted an engineer at the controls to violate a specified prohibition. Usually, FRA finds out about those situations that cause accidents or result in the decertification of the engineer at the controls.

After further consideration of the comment, RSAC recommended that a change is necessary and that a designated supervisor of locomotive engineers, a certified locomotive engineer pilot or an instructor engineer's conduct does not have to be willful to be prohibited. In this way, all locomotive engineers, no matter what role they are performing that requires certification, will know that they will be held to the same high standard of care. This clarification will be found in §§ 240.117(c)(1), (c)(2), and 240.305(a)(6). While FRA maintains that the rule currently contains this authority without making revisions, the rule changes will put certified locomotive engineer supervisors, pilots, and instructors on more blunt notice that their inappropriate supervisory acts or omissions will trigger revocation and FRA enforcement authority. The revisions also will put railroads on better notice that they need to consider the actions of their DSLEs, locomotive engineer pilots and instructor engineers when alleged violations of Part 240 occur. This issue is further discussed in the section-by-section analysis. Some RSAC members and FRA also thought it would be helpful to point out that supervisory employees who are subject to revocation proceedings and who do not have a collective bargaining agreement are still entitled to the hearing procedures found in § 240.307(c) and Subpart E—Dispute Resolution Procedures.

After reviewing the comments, RSAC recommended a modification that would clarify that a certified engineer who is called to work in the capacity of a train crew member other than that of a locomotive engineer, and who does not perform engineer duties, should not have his or her certification revoked for a violation that occurs during that tour of duty. Since this recommendation coincides with FRA's current interpretation of the rule, FRA will add new paragraph § 240.117(c)(3). A more detailed discussion of this new paragraph can be found in the section-by-section analysis.

*G. Lengthening the Certification Period From 3 to 5 Years on Class III Railroads*

This issue was raised in the RSAC process prior to publication of the NPRM but no consensus was achieved for making a recommendation to FRA. In the NPRM, FRA did not propose a change although this issue was identified as one of the Working Group's topics. Only one RSAC member supported this modification prior to publication of the NPRM and that same RSAC organization is the only commenter to support its proposal post NPRM publication. This commenter requests that FRA reconsider whether a model program could be jointly developed by FRA and the industry to allay any safety concerns raised by lengthening the certification period for this subset of locomotive engineers.

The commenter urges that such a change would be either safety neutral or a safety positive change since the history of Class III program administration under the current rule is very positive. This commenter argues that Class III railroads have been

supportive when FRA has wanted modifications to the model Class III Part 240 program. In addition, the commenter argues that all Class III railroads would benefit even though only some would be involved with the development of a new Class III program. The basis for this assertion is the commenter's reminder that it developed the model Class III Part 240 program and it has shared that effort industry-wide.

This commenter stated that it is ready to adjust its model program to accommodate a longer certification cycle by increasing testing and training. In addition, the commenter and RSAC member noted at the last Working Group meeting that because of their members' commitment to safety, many of the Class III railroads are already exceeding the requirements of the rule and the model program they helped develop. Furthermore, this commenter believes that any concern over the longer interval for medical degradation is covered by the self-reporting aspects of the NPRM. The commenter noted that the NDR and medical checks were really all that would be changed by this approach and that there are significant costs that these railroads have difficulty passing on to the shippers while still remaining profitable.

Despite the appeal of this proposal to reduce the burdens imposed by the rule on Class III railroads, FRA remains concerned about the negative safety impact that would flow from such a broad modification to the rule. The proposal seems over-inclusive since the safety concerns on some Class III railroads are much greater than others; for example, some Class III railroads conduct operations on the same lines over which Amtrak conducts high speed operations. Similarly, the proposal could be considered under-inclusive since some Class I and Class II railroads could argue that their operations pose no greater safety threat than many Class III railroads. Thus, FRA believes that the proposal is flawed since it could arbitrarily allow railroads of a certain size to gain a benefit rather than considering safety issues that define the type of operation.

FRA fails to see that the costs associated with retaining the 3 year interval were very significant when compared to the risks. For example, the proposal devalues the benefit of maintaining a uniform interval throughout the industry. Also, the proposal increases the likelihood of a safety loss if the medical examinations are required less frequently. In addition to the dubious equity of the proposal and its possible safety degradation, FRA is concerned about how this 5 year approach would be handled by a major railroad that might need to certify a small railroad's engineers for operations on the major railroad. For all these reasons, RSAC failed to achieve consensus recommendations and FRA has decided not to change the rule to allow Class III railroads to certify their locomotive engineers every 5 years.

*H. Preemption*

One commenter requested that FRA clarify whether and to what extent Part 240 applies to the qualifications for train conductors. The State of Wisconsin's Office of the Commissioner of Railroads made this request because its comment states that Wisconsin appellate courts have held that Part 240 preempts state laws that govern the qualifications of conductors. Since FRA had committed to bringing all comments before the Working Group, RSAC reviewed the comment but was unable to achieve a consensus recommendation.

FRA believes that this request for legal guidance is based on the current rule and not the NPRM since the commenter cited a court case that occurred back in 1996. The question asked is narrow and pertains to a specific set of Wisconsin state regulations and the Wisconsin courts' decisions on particular facts. Thus, FRA is responding to this commenter directly rather than publishing a response here. A copy of FRA's response letter will be placed in the docket.

**Section-by-Section Analysis**

*Subpart A—General*

Section 240.1—Purpose and Scope

FRA will make minor changes to paragraph (b) so that the regulatory language used by FRA in all of its rules will become more standardized. A few words have been substituted for others in the second sentence, but FRA will not substantively change the purpose and scope of this part by virtue of these changes. FRA did not receive any comments on the proposed changes and the final rule text is identical to the proposed version.

Section 240.3—Application and Responsibility for Compliance

The amendments to this section are identical to the proposed version and employ what is essentially standardized regulatory language which FRA plans to use in all of its rules. FRA does not believe that these revisions substantively change the purpose and scope of this part. FRA explained the purpose of these amendments in the NPRM and FRA did not receive any comments in response to the NPRM version.

Paragraphs (a) and (b) contain the same approach as the current rule but with some slight rewording. As under the current provision, the new provision would mean that railroads whose entire operations are conducted on track that is outside of the general system of transportation are not covered by this part. Most tourist railroads, for example, involve no general system operations and, accordingly, would not be subject to this part. Therefore, FRA continues to intend that this rule shall not be applicable to ''tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system.'' 54 FR 50890, 50893, 50915 (Dec. 11, 1989); *see also* 56 FR 28228, 28240 (June 19, 1991). The word ''installation'' is intended to convey a meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for purposes of receiving or offering its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Paragraph (c) will be added so that the rule will more clearly identify that any person or contractor that performs a function covered by this part will be held responsible for compliance. This is not a substantive change since contractors and others are currently responsible for compliance with this part as specified in § 240.11.

Section 240.5— Preemptive Effect and Construction

FRA will amend paragraph (a) so that the regulatory language used by FRA in all of its rules will become more standardized. This change explains the rule's preemptive effect. This amendment will reflect FRA's effort to address recent case law developed on the subject of preemption. One comment was received regarding the issue of preemption and that issue has been addressed in the preamble.

FRA will amend paragraph (b) so that the regulatory language used by FRA in all of its rules will become more standardized. The only change is to

remove the word ''any.'' This minor edit would not be a substantive revision.

FRA will amend paragraph (e) of this section by adding the words ''or prohibit.'' The purpose of this modification is to clarify that the rule does not prevent ''flowback.'' The term flowback has been used in the industry to describe a situation where an employee who is no longer qualified or able to work in his or her current position, can return to a previously held position or craft. An example of flowback occurs when a person who holds the position of a conductor subsequently qualifies for the position of locomotive engineer, and at some later point in time the person finds it necessary or preferable to revert back to a conductor position. The reasons for reverting back to the previous craft may derive from personal choice or a less voluntary nature; e.g., downsizing, certificate ineligibility or revocation.

Many collective bargaining agreements address the issue of flowback. FRA does not intend to create or prohibit the right to flowback, nor does FRA intend to state a position on whether flowback is desirable. In fact, the exact opposite is true. In consideration of an RSAC recommendation, FRA has agreed to this clarification of the original intent of paragraph (e) so that it is understood by the industry that employees who are offered the opportunity to flowback or have contractual flowback rights may do so; likewise, employees who are not offered the opportunity to flowback or do not have such contractual rights are not eligible or entitled to such employment as a consequence flowing from this federal regulation.

FRA received a comment that the rule should be modified to prohibit railroads from taking any disciplinary actions during the period while awaiting state action. The comment as raised focused on discipline and not ineligibility to hold a certificate; FRA's authority to regulate a railroad's right to discipline its own employees has not been challenged by this rule. In fact, § 240.5(d) states that FRA does not intend to preempt or otherwise alter the authority of a railroad to initiate disciplinary sanctions against its employees by issuance of these regulations.

Based on discussions of this comment, RSAC recommended adding a new paragraph to this section. Although not proposed in the NPRM, FRA agrees upon reflection that by adding a new paragraph (f), the rule will clarify employee rights in a manner similar to the way in which it is clarifying railroad authority. The intent of the new language is to explicitly preserve any remedy already available to the person and not to create any new entitlements. FRA expects that employees will benefit from this new paragraph by referring to it should a railroad use this regulation as an inappropriate explanation for ignoring an employee's rights or remedies. A railroad must consider whether any procedural rights or remedies available to the employee would be inconsistent with this part.

Section 240.7—Definitions

The final rule adds definitions for eight terms and revises the definitions of another three terms. One of five modifications in the rule that differs from what FRA proposed in the NPRM is a revision to the term *locomotive.* That definition is amended by deleting the phrase ''other than hi-rail or specialized maintenance equipment'' and replacing it with ''other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2) of this part.'' In making this modification, FRA is excluding from the definition of ''locomotive'' those vehicles that the agency has determined, based on RSAC's recommendation, can be safely operated without a certified locomotive engineer. This means that a dual purpose vehicle will require a certified locomotive engineer whenever the exception as described in § 240.104(a)(2) cannot be met. FRA decided that the previously described modification would be better than one commenter's recommendation that the definition of locomotive be amended to include the phrase ''but including a dual purpose vehicle as defined above which is functioning as a locomotive;'' FRA believes this comment was intended to have the same effect in practice as FRA's modification, but is now redundant given the new definitions of ''locomotive,'' ''specialized roadway maintenance equipment,'' and ''dual purpose vehicle.''

Likewise, commenters expressed confusion as to the applicability of the rule to certain service vehicles and the confusion appeared to be tied to the section-by-section analysis for the definitions of *dual purpose vehicle* and *specialized roadway maintenance equipment.* In order to prevent additional confusion, FRA has modified the two definitions in question and offers the following descriptions to substitute for the apparently confusing analysis in the proposed rule. FRA wishes to alert interested parties that these service vehicle definitions are also addressed in the preamble and provide further clarification.

The definition for *dual purpose vehicle* describes a piece of on-track equipment that may function as roadway maintenance equipment and is capable of moving railroad rolling stock which enables it to substitute for a traditional locomotive. When a dual purpose vehicle is operated in conjunction with roadway maintenance, pursuant to limited circumstances identified in § 240.104(a)(2), a certified locomotive engineer is not required. Therefore, when using dual purpose vehicles, careful attention to whether the exception applies is necessary to determine whether a certified locomotive engineer is necessary.

A definition for *specialized roadway maintenance equipment* is added to define a type of machine that is used exclusively for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems and is not capable of moving railroad rolling stock. Meanwhile, if roadway maintenance equipment is used for moving railroad rolling stock, it will be treated as a dual purpose vehicle, not specialized roadway maintenance equipment. Specialized roadway maintenance equipment does not have the capability to move railroad rolling stock and, therefore, the alteration of such a vehicle that enables it to move railroad rolling stock will require that the vehicle be treated as a dual purpose vehicle.

The addition of a definition for *roadway maintenance equipment* is a fourth modification to the definitions section that differs from the proposed rule. It defines this on-track equipment as ''powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.'' The term roadway maintenance equipment has been incorporated into the definitions of dual purpose vehicle and specialized roadway maintenance equipment. FRA believes this definition is necessary to clarify that within the set of vehicles meeting the definition of roadway maintenance equipment there are two subsets: (1) Vehicles capable of moving railroad rolling stock, *i.e.,* dual purpose vehicles, and (2) vehicles that do not have such capability, *i.e.,* specialized roadway maintenance equipment.

The addition of a definition for *railroad rolling stock* is a fifth modification to the definitions section that differs from the proposed rule. This

definition was added so that the phrase ''which can function as either a locomotive'' would no longer be necessary. The functioning as a locomotive phrase could be construed as ambiguous and subject to multiple interpretations. By substituting that phrase with having ''the capability to move railroad rolling stock'' in the definitions of dual purpose vehicle and specialized roadway maintenance equipment, FRA intends to be unambiguous. The definition for railroad rolling stock refers to precise definitions found elsewhere in this chapter.

Of the remaining five added definitions and two revised definitions, all are added or modified as proposed. The term *Administrator* will be revised to standardize the FRA Administrator's authority in line with FRA's other regulations. The effect of this change will be to take away the Deputy Administrator's authority to act for the Administrator without being delegated such authority by the Administrator. The Deputy Administrator will also lose the authority to delegate, unless otherwise provided for by the Administrator. The current rule uses the word *qualified* without defining it and this rule expands the use of that term, so a definition is supplied.

The agency has previously neglected to define *FRA* as the Federal Railroad Administration, although that abbreviation has been used in the rule. FRA also will define *person* rather than rely on a definition that currently appears in parenthetic remarks within § 240.11.

Although FRA has previously defined the term *filing,* as in filing a petition, or any other document, with the FRA Docket Clerk, the rule has not defined what constitutes service on other parties. The added definition references the Rules 5 and 6 of the Federal Rules of Civil Procedure (FRCP) as amended. The intent is to apply the FRCP rules in effect at the time a proceeding under this rule occurs, rather than to perpetuate those FRCP rules that are in effect when this regulation becomes final. By defining the term *service,* the expectation is that the rule will clarify the obligations of the parties and improve procedural efficiency.

Section 240.9—Waivers

Minor amendments are being made to this section so that the regulatory language used by FRA in all of its rules will become more standardized. These amendments to paragraphs (a) and (c) are identical to what FRA proposed. The changes to paragraph (a) reflect FRA's current intent; that is, a person should not request a waiver of one of the rule's provisions unless the person is subject to a requirement of this rule and the waiver request is directed at the requirement which the person wishes he or she did not have to abide by. Paragraph (c) will standardize language with other FRA rules which clarify the Administrator's authority to grant waivers subject to any conditions the Administrator deems necessary.

Section 240.11—Consequences for Noncompliance

FRA is rewording this section slightly. No comments addressing this section were received and the final rule is identical to the proposed version. One change will respond to the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Public Law 104–134, April 26, 1996 which requires agencies to adjust for inflation the maximum civil monetary penalties within the agencies jurisdiction. The resulting $11,000 and $22,000 maximum penalties are determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Paragraphs (a), (b) and (c) will eliminate a parenthetic definition of person since FRA will define *person* in § 240.7. The citation to a statute in paragraph (c) is also a revision.

*Subpart B—Component Elements of the Certification Process*

Section 240.103—Approval of Design of Individual Railroad Programs by FRA

FRA will update this section to address railroads commencing operations in the future. There is a need to do so since the numbered paragraphs under paragraph (a) set forth a schedule of dates that have long since passed and any railroad that was conducting operations in 1991 and 1992 should have already filed a written program pursuant to this section. No comments were received and the final rule is identical to the proposed version.

Section 240.104—Criteria for Determining Whether Movement of Roadway Maintenance Equipment or a Dual Purpose Vehicle Requires a Certified Locomotive Engineer

FRA will add this new section to address the issue of what types of service vehicles should be operated by certified locomotive engineers. The title of the section has been revised from the NPRM to clarify that it applies only when roadway maintenance equipment or a dual purpose vehicle is to be operated and does not refer to operating traditional locomotives. Since this was an issue of great interest to many members of the industry represented in the RSAC process, FRA has addressed this issue in detail in the preamble and requests that those people interested in this topic reference the preamble text. The preamble and section-by-section analysis regarding the definitions of ''dual purpose vehicle,'' ''locomotive'' and ''specialized roadway maintenance equipment'' have been revised to clarify some language that commenters found confusing in the NPRM. In addition, the new section has been renumbered differently than the proposal.

Some minor changes to paragraph (a)(2)(ii), which was proposed paragraph (b)(2), were made for clarification. For example, the proposed rule did not state that the ''rules'' under which the railroad would be moving a dual purpose vehicle would be ''railroad operating rules.'' FRA eliminated the reference to ''exclusive track occupancy'' because, upon further examination, this reference to a term used in part 214 of this chapter applies to the protection of roadway workers within work limits and not to the protection of service vehicle movements. The paragraph was also reorganized for improved clarity.

In addition, proposed paragraph (b)(4), has been deleted. FRA concluded that this reference to power brake requirements was unnecessary, and has made clear in the preamble that it believes those rules apply to movements of maintenance equipment to and from the work site to the extent the equipment is equipped with power brakes.

Section 240.105—Criteria for Selection of Designated Supervisors of Locomotive Engineers

The amendments to this section contained in this final rule are identical to those in the proposed version. This section contains one of the more important modifications to the rule and related issues are addressed in the preamble. No comments were received with regard to the proposal for changes to this section.

The changes to paragraph (b)(4) will create two new requirements. One requirement is that those persons who are DSLEs must be qualified on the physical characteristics of the portion of the railroad on which they are supervising. A second requirement is that a railroad's program must address how it intends to implement the physical characteristics qualification of

its DSLEs. As it did in the NPRM, FRA recommends that DSLEs acquire some operational experience over the territories they supervise because it is arguably the best method for learning how to operate over a territory.

The addition of paragraph (c) is an effort to clarify how small railroads, particularly those just commencing operations who find themselves without a qualified and certified DSLE, can designate and train such individuals without reliance on outside sources. 56 FR 28228, 28241–42 (June 19, 1991)(stating that a DSLE could be a contractor rather than an employee of the railroad). The need to create a DSLE can occur under a variety of scenarios including when: (1) new railroads have never certified a locomotive engineer or a DSLE; (2) railroads may have had one or a few DSLEs at one time but no longer employ any qualified individuals; and (3) a railroad wishes to utilize contractor engineers. For those railroads that do not have DSLEs, the addition of paragraph (c) will enable them to consider an additional option for creation of their first DSLE. This section is designed to address the problems that arise from a railroad being unable to certify any person as a locomotive engineer, let alone a DSLE, since the railroad lacks even one DSLE who could conduct the required training and testing of § 240.203(a)(4)(for initial certification or recertification) or § 240.225(a)(5)(for certifying based on the reliance of the qualification determinations made by other railroads). Meanwhile, even if paragraph (c) is utilized, a railroad must comply with the other provisions of either §§ 240.203 or 240.225. Because this paragraph has not changed since the proposed rule and no comments were received with regard to this section, the lengthy explanation provided in the section-by-section analysis in the proposed rule has not been repeated here.

Section 240.111—Individual's Duty To Furnish Data on Prior Safety Conduct as Motor Vehicle Operator

The amendments to this section contained in this final rule are identical to those in the proposed version except that proposed paragraph (h) was eliminated due to its redundancy with paragraph (a); accordingly, proposed paragraph (i) has been moved to new paragraph (h). No comments concerning the proposed modifications of this section were received and, thus, the NPRM should be consulted for a more detailed explanation of the impact of these amendments. The lengthening of the time limit interval in paragraphs (a) from 180 days to 366 days should prove helpful both to small railroads and large ones. RSAC's Working Group members could demonstrate clear examples of the administrative difficulties being encountered in attempting to meet the shorter period and thus FRA believes there is a sufficient basis for a regulatory change.

No comments were received concerning proposed paragraph (i) which is now new paragraph (h). This paragraph will require certified locomotive engineers to notify the employing railroad of motor vehicle incidents described in § 240.115(b)(1) and (2) within 48 hours of the conviction or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license. In addition, this new paragraph will create an obligation for certified locomotive engineers to report to their employing railroad any type of temporary or permanent denial to hold a motor vehicle driver's license when the person has been found by a state to have either refused an alcohol or drug test, or to be under the influence or impaired when operating a motor vehicle. This paragraph will also require that, for purposes of locomotive engineer certification, a railroad cannot require a person to submit motor vehicle operator data earlier than specified in the paragraph. The reasoning behind this rule involves several intertwined objectives which are more fully explained in the NPRM.

Section 240.113—Individual's Duty To Furnish Data on Prior Safety Conduct as an Employee of a Different Railroad

The amendments to this section contained in this final rule are identical to those contained in the proposed version. As proposed, paragraph (a) is being modified by increasing the number of days an individual has to furnish data on prior safety conduct as an employee of a different railroad. The period is being changed from 180 days to 366 days so that the administrative difficulties of compliance would be lessened. FRA does not believe that railroad safety will be diminished by lengthening the period of time that a person has to request and furnish this data. No comments were received regarding this proposed section.

Section 240.117—Criteria for Consideration of Operating Rules Compliance Data

FRA proposed substantial amendments to this cornerstone of the regulation and provided a detailed analysis of the changes in the NPRM. Several comments were received in response to the proposed rule. In response to the comments, one proposed paragraph is being modified in this final rule and another paragraph has been added entirely. The issues upon which comments were received are addressed below and have also been addressed in the preamble under ''Addressing Safety Assurance and Compliance.''

First, paragraph (c)(2) is being added so that it makes clear the duties of both certified locomotive engineer pilots and instructor engineers, not just designated supervisors of locomotive engineers as was proposed. The explanation of paragraph (c)(2) concerning designated supervisors of locomotive engineers is still accurate and analogies can be made in the rule's application to when certified locomotive engineer pilots and instructor engineers are to be accountable to the extent that railroads must revoke certification. However, one commenter was concerned that FRA's NPRM appeared to be singling out DSLEs for special treatment. Although that comment is not accurate, RSAC recommended that FRA clarify the intent of the provision in the final rule. FRA agrees with RSAC's recommendation that clarification is warranted since some designated supervisors of locomotive engineers, as well as locomotive engineer pilots and instructor engineers may not understand that they are responsible for their conduct, and thus subject to decertification, when they are performing a function that requires them to be qualified and certified locomotive engineers.

Paragraph (c)(3) is being added to clarify the duty of a person who is a certified locomotive engineer but is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer. For example, a person who is called to be the crew's conductor and who does not perform any of the duties of locomotive engineer during that tour of duty cannot have his or her certification revoked for a violation of § 240.117(e)(1) through (5). As the new paragraph will make clear, this exemption only applies when a person is performing non-locomotive engineer duty. Thus, the exemption will not apply if such a person is performing the duties of a locomotive engineer and causes the violation to occur. Meanwhile, note that the exemption does not apply for violations of § 240.117(e)(6) so that engineers working in other capacities who violate certain alcohol and drug rules will have certification revoked for the appropriate period pursuant to §§ 240.117 and 240.119. FRA believes this paragraph

explains the status quo and that it would be helpful to have rule text since that should help resolve such disputes for railroads over whether a revocation action is necessary. Consequently, FRA expects that a benefit of this new paragraph will be a reduction in the number of railroad hearings and petitions to FRA for review pursuant to § 240.307 and Subpart E—Dispute Resolution Procedures.

Paragraph (d) has been modified slightly from the proposal to clarify that the shortened time frame for considering operating rule compliance only applies to conduct described in ''paragraphs (e)(1) through (e)(5)'' of this section and not paragraph (e)(6). This modification is necessary to clarify that when alcohol and drug violations are at issue, the window in which prior operating rule misconduct will be evaluated will be dictated by § 240.119 and not limited to the 36 month period prescribed in this paragraph. The rule will continue to require that certification reviews consider alcohol and drug misconduct that occurred within a period of 60 consecutive months prior to the review pursuant to § 240.119(c).

FRA noted in the proposed rule that paragraph (e)(3) would likely need amending prior to becoming a final rule since two other regulatory proceedings might result in new rules which could supersede this reference. Although only one of these two regulatory proceedings has resulted in the issuance of a final rule, *i.e.*, Passenger Equipment Safety Standards published at 64 FR 25540 (May 12, 1999), FRA has modified this rule to account for the Passenger Equipment final rule and whatever changes, if any, are ever made to part 232. See 63 FR 48294 (Sept. 9, 1998) (proposing changes to part 232). These modifications will continue to hold certified locomotive engineers responsible for complying with procedures for the safe use of train or engine brakes, regardless of whether the train is a freight train or a passenger train, when these same engineers are responsible for inspecting or testing the brake system, or ensuring that the required tests and inspections have been performed.

The rest of the changes to this section did not receive any comments and, thus, the detailed explanation of their impact in the NPRM has not been repeated here.

Section 240.121—Criteria for Vision and Hearing Acuity Data

FRA will amend this section mainly to prevent potential accidents due to a locomotive engineer's medical condition that could compromise or adversely affect safe operations. The amendments to paragraphs (b) and (c)(3) are identical to the proposal. Meanwhile, amendments to paragraph (e) address one of the two comments received on the issue of acuity; the other issue is being addressed in Appendix F.

A comment requested clarification for when a railroad must provide additional testing pursuant to paragraph (e). RSAC's recommendation to address the commenter's concern has led to a revision. Paragraph (e) differs from the proposed version due to the addition of a sentence that states that ''[i]n accordance with the guidance prescribed in Appendix F, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely.'' This recommended revision benefits both implementing railroads and candidates for certification or recertification without having any adverse effect on safety and thus has received FRA's endorsement.

For ease of reference, the following statement is reprinted from Appendix F and should provide sufficient guidance for implementing this new sentence. ''The intent of § 240.121(e) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely operate a locomotive or train. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.''

FRA has made two modifications to paragraph (f) that should improve the clarity and enforcement of the rule. One of these modifications substitutes the proposed phrase ''it is the obligation of each certified locomotive engineer to'' with the final language that ''each certified locomotive engineer shall;'' although the required notification is not altered by changing this language, the proposed language is less desirable since some engineers might consider an ''obligation'' to be optional or voluntary when it is intended to be mandatory. The final language clarifies that this notification is mandatory.

A second modification to paragraph (f) addresses the issue of how soon after learning of the deterioration of his or her best correctable vision or hearing must the certified locomotive engineer notify the railroad of the deterioration. The proposed rule failed to address this issue which could lead to delayed notification and enforcement difficulties. FRA is concerned with safe train operations, not whether a person can notify a railroad within a set time frame. Thus, FRA will require this notification ''prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.'' Certified locomotive engineers should note that willful noncompliance with this new requirement may result in the assessment of a civil penalty or other appropriate enforcement action.

Section 240.123—Criteria for Initial and Continuing Education

The revision of paragraph (b) and the addition of paragraphs (d), (d)(1), and (d)(2) of this section are identical to the proposed revisions; these amendments will help resolve numerous inquiries FRA has received regarding how engineers can become familiar with the physical characteristics of a territory on new railroads being created, or on portions of a railroad being reopened after years of non-use. These paragraphs seek to clarify the status quo. The benefits of this approach include a better use of agency resources by not having to address this issue repeatedly on a case-by-case basis, a system that is fairer to all parties because it treats all railroads uniformly, and a process that is neither overly burdensome nor a compromise of safety. No comments were received in response to this issue.

Section 240.127—Criteria for Examining Skill Performance

This section contains one of the changes discussed in the preamble under the major issues section titled ''Qualifications for Designated Supervisors of Locomotive Engineers'' and is in response to a comment filed by an RSAC member. The sole modification to this section contained in this notice is identical to the modification contemplated in the proposed rule. This modification addresses a conflict between criteria that must be met to qualify as a DSLE and the concept endorsed by RSAC that

a DSLE can determine an engineer's train handling abilities without being familiar with the territory over which the engineer is operating. The commenter argued that DSLEs should be qualified on the physical characteristics of territory over which they are administering a skill performance test because that would increase safety. After further consideration, this RSAC member and commenter agreed with the previous consensus recommendation that this exception would not have a detrimental effect on safety. As suggested by RSAC, FRA believes this modification would conserve railroad resources by not creating an additional demand for training supervisors and without creating a detrimental effect on safety.

Section 240.129—Criteria for Monitoring Operational Performance of Certified Engineers

FRA did not propose a specific change to this section in the NPRM but is modifying the rule in order to resolve a conflict between the criteria that must be met to qualify a DSLE and the concept endorsed by RSAC that a DSLE can determine an engineer's train handling abilities without being familiar with the territory over which the engineer is operating. The same comment that was discussed in the section-by-section analysis regarding § 240.127 applies to this section and FRA's position is similarly situated. The commenter argued that DSLEs should be qualified on the physical characteristics of territory over which they are monitoring operational performance because that would increase safety. After further consideration, this RSAC member and commenter agreed with the previous consensus recommendation that this exception would not have a detrimental effect on safety. As suggested by RSAC, FRA believes this modification would conserve railroad resources by not creating an additional demand for training supervisors and without creating a detrimental effect on safety.

*Subpart C—Implementation of the Certification Process*

Section 240.213—Procedures for Making the Determination on Completion of Training Program

FRA did not propose a specific change to this section in the NPRM but is modifying the rule to ensure that a fully qualified DSLE, i.e., a person who meets all of the requirements of § 240.105, will be making the determination that a person completing a locomotive engineer training program has the requisite physical characteristics familiarity. As addressed in the preamble under the major issues section titled ''Qualifications for Designated Supervisors of Locomotive Engineers,'' FRA received one comment that advocated requiring that a supervisor of locomotive engineers be qualified on the physical characteristics of the territory over which the supervisor conducts the skill performance test. Although this is a different issue than the one raised in the comment, Working Group discussions on this issue led to RSAC's recommendation that FRA add a new paragraph (c) to § 240.213. RSAC's recommendation requested that FRA address that a DSLE be qualified on the physical characteristics of a territory over which a locomotive engineer is being qualified on at the completion of a training program pursuant to § 240.213. In addition, RSAC recommended that § 240.213 be amended to reflect that a qualified DSLE should be required whenever a locomotive engineer is to be qualified for the first time on a territory.

FRA believes that modification of paragraph (b)(3) makes greater sense than RSAC's recommendation of adding a new paragraph because paragraph (b) already requires written documentation that certain determinations will be met. The current language of § 240.213 also takes into account the first time a locomotive engineer is qualified on a territory and therefore addressing it again would be redundant. Paragraph (b)(3) was modified by requiring that when a railroad provides for the continuing education of a certified locomotive engineer, that railroad must ensure that each engineer maintains the necessary knowledge, skill and ability concerning familiarity with physical characteristics ''as determined by a qualified designated supervisor of locomotive engineers.'' Thus, the modification is not that engineers must be qualified on physical characteristics (since that is already a requirement) but that the person making this determination for the railroad must be a qualified DSLE. FRA believes that this change promotes safety.

Section 240.217—Time Limitations for Making Determinations

All of the modifications being made to this section involve changes to time limits and are identical to the proposed modifications. The RSAC members requested these changes, and FRA will make the modifications, because administrative difficulties will be eased by not having to meet the shorter and inconsistent periods. FRA does not believe that these time extensions will make the data so old that they will no longer be indicative of the person's ability to safely operate a locomotive or train. When the rule was originally published, time limits were established which seemed reasonable and prudent. The rule contained numerous time limits of varying length, which has led to confusion by those governed by the rule. Since publication of the rule, experience by the regulated community has shown the potential for simplification and consistency without sacrificing safety. No comments were received regarding this section and thus FRA believes there are benefits of extending these time limitations without any risk to safety.

Section 240.223—Criteria for the Certificate

The amendment that will be made by this final rule to paragraph (a)(1) is identical to the proposal and will require that each certificate identify either the railroad or ''parent company'' that is issuing it. No comments were received with regard to this section. This change will reduce the burden on small railroads. For these companies, complying with the current requirement of identifying each railroad has become a major logistical problem. It is arguable that a holding company managing multiple short line railroads is the equivalent of a major railroad operating over its many divisions; thus, it is fair to treat them similarly. However, the individuals must still qualify under the program of each short line railroad for which they are certified to operate and each of those railroads must maintain appropriate records as required by this part.

Section 240.225—Reliance on Qualification Determinations Made by Other Railroads

No comments were received with regard to this section and the modifications of this section are identical to the proposed version; thus, the analysis provided for in the NPRM is merely summarized here. New paragraph (a) addresses the perception that the larger railroads often administer a more rigorous training program than the smaller railroads due to the nature of their operations; that is, small railroads typically have more straightforward operations which are geographically compact and not as topographically diverse as the larger railroads. The modification requires a railroad's certification program to address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously

certified engineers who have had their certification expire. In both these instances, FRA is providing a railroad with the opportunity to shorten the on-the-job training that might be required if a person is treated as having no operational experience. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. By articulating both the problem and mandating a safe solution, it is FRA's position that this modification will save resources.

Section 240.229—Requirements for Joint Operations Territory

No comments were received with regard to this section and the modifications of this section are identical to the proposed version; thus, the analysis provided for in the NPRM is merely summarized here. By amending paragraph (c), FRA has adopted RSAC's recommendation to realign the burden for determining which party is responsible for allowing an unqualified person to operate in joint operations. These changes are based on the experiences of the Working Group's members who expressed the universal opinion that an inordinate amount of the liability currently rests with the controlling railroad. The realignment would lead to a sharing of the burden among a controlling railroad, a guest railroad and a guest railroad's locomotive engineer. The parties' responsibilities are found respectively in paragraphs (c)(1) through (3). FRA's thought is that the changes will be fair to the parties involved since each party will be responsible for making determinations based on information that should be within that party's control.

Section 240.231—Requirements for Locomotive Engineers Unfamiliar With Physical Characteristics in Other Than Joint Operations

No comments were received with regard to this section and the addition of these final rule provisions are identical to those of the proposed version; thus, the lengthy analysis provided in the NPRM is merely summarized here. Railroads have a history of using conductors and other craft employees as pilots and this usage of non-certified locomotive engineers as pilots conflicts with FRA's position on what the current rule allows. FRA recognizes that there is a great need for clarification concerning which employees may serve as pilots since there has been great misunderstanding and misapplication of the rule in this regard.

FRA's changes to the rule reflect RSAC's recommendation that recognizes the complexity of the problem. The concept behind easing the engineer pilots only requirement relies on the Working Group members' experiences; that is, engineers who have been previously qualified on a territory would need less guidance and expertise to refamiliarize themselves with the physical characteristics of that territory as would those engineers who work under certain conditions that make a person's lack of familiarity a reduced safety concern. Simply requiring locomotive engineer pilots in all situations, or in no situations, is neither practical nor desirable. Hence, while supervisors of locomotive engineers may need to consult the rule more frequently in order to ensure compliance, the rule will ensure a higher degree of safety when an engineer operates in unfamiliar territory. Because the modification will ensure that physical characteristics are addressed in a more structured manner, this modification should promote safety better than the confusion caused by the original rule's lack of a statement.

*Subpart D—Administration of the Certification Program*

Section 240.305—Prohibited Conduct

FRA received one comment that led RSAC and FRA to reevaluate this section. The commenter was concerned that FRA's NPRM appeared to be singling out DSLEs for special treatment that would serve as a disincentive for people to want to be DSLEs. FRA believes that the opposite is true; by clarifying a DSLEs responsibilities, the regulation will more clearly notify the public that DSLEs will be subject to revocation of their certification in the same way as every other type of locomotive engineer. In fact, RSAC's post-NPRM recommendation was to expand the clarification so that locomotive engineer pilots and instructor engineers would understand that they too are subject to decertification based on their conduct when performing a locomotive engineer function. Thus, for the same reasons that FRA will change § 240.117(c)(2), paragraph (a)(6) will be modified from the proposal. This amendment certainly puts certified locomotive engineers who are also supervisors, pilots and instructors on notice that they cannot actively or passively acquiesce to misconduct events caused by certified engineers they are observing, piloting or instructing.

Besides the above mentioned change, several paragraphs to § 240.305(a) will be added and changed so that the prohibited conduct list is equivalent to the list of misconduct events in § 240.117(e), which require the railroad to initiate revocation action. This section is needed so that FRA may initiate enforcement action. For example, FRA may want to initiate enforcement action in the event that a railroad fails to initiate revocation action or a person is not a certified locomotive engineer under this part.

Furthermore, FRA has made conforming changes to paragraph (a)(3) as necessary considering the Passenger Equipment Safety Standards final rule that was published at 49 CFR Part 238. See 64 FR 25540 (May 12,1999). Paragraph (a)(3) was also modified to account for whatever changes, if any, are ever made to part 232. See 63 FR 48294 (Sept. 9, 1998) (proposing changes to part 232).

Section 240.307—Revocation of Certification

FRA is amending several paragraphs in this section. In response to the NPRM, two commenters offered opinions that suggested alternative changes to what FRA proposed. Those changes have been addressed fully in the preamble to this rule in the section ''Improving the Dispute Resolution Procedures'' and will not be addressed here unless the comment prompted FRA to make a rule change.

In adopting this final rule, FRA is making four modifications to this section which differ from the NPRM; otherwise, the analysis in the NPRM satisfactorily describes the basis for the amendments to this section. One of the four modifications from the NPRM involves the problem that throughout § 240.307 the regulation refers to an individual whose function is the ''charging official.'' In helping to formulate the NPRM recommendations, several of the Working Group's members noted that the railroad industry does not generally use this term and that a better description of the individual the regulation is referring to would be ''investigating officer.'' FRA agreed with what later became RSAC's recommendation and intended to change the term ''charging official'' to ''investigating officer'' throughout the document when referring to the railroad official who performs the prosecutorial role. Despite FRA's intent, the agency unintentionally failed to modify paragraph (c)(2) accordingly; that mistake is now being corrected.

In order to address two other modifications that differ from the proposal, it is helpful to reiterate the basis for one of the proposed modifications that remain in the final rule. Paragraph (c) requires that a railroad shall provide a hearing consistent with procedures specified in paragraph (c) unless a hearing is held pursuant to a collective bargaining agreement as specified in paragraph (d), a hearing is waived according to paragraph (f), or, prior to a hearing, the railroad makes certain determinations specified in paragraphs (i) and (j) which excuse the alleged misconduct. Paragraph (c)(10) requires that the presiding officer prepare a written decision, which on its face seems like a straightforward requirement. However, some petitioners have argued that procedural error has occurred when written decisions have been signed by a railroad official other than the presiding officer, e.g., a presiding officer's supervisor. The issue appears to be whether the presiding officer must also be the decision-maker or whether the presiding officer can merely take the passive role of presiding over the proceedings only. There is also a separate issue of whether a railroad official who is someone other than the presiding officer may have a conflict of interest that should disqualify that railroad official from signing the written decision; i.e., there may be the appearance of impropriety if the non-presiding railroad official has ex-parte communications with the charging official (or investigating officer). FRA urges railroad officials to avoid the appearance of impropriety and to conduct their on-the-property hearings in an objectively fair manner.

The agency's intentions were articulated in the preamble to the 1993 interim final rule. FRA stated that ''FRA's design for Subpart D was structured to ensure that such decisions would come only after the certified locomotive engineer had been afforded an opportunity for an investigatory hearing at which the hearing officer would determine whether there was sufficient evidence to establish that the engineer's conduct warranted revocation of his or her certification.'' 58 FR 18982, 18999 (Apr. 9, 1993). FRA also discussed in this 1993 preamble how the revocation process pursuant to this part should be integrated with the collective bargaining process. FRA stated that if the collective bargaining process is used ''the hearing officer will be limited to reaching findings based on the record of the hearing'' and not other factors as may be allowed by a bargaining agreement; the rule was written to ''guard against hearing officers who might be tempted to make decisions based on data not fully examined at the hearing.'' 58 FR 18982, 19000 (Apr. 9, 1993). Hence, it appears that the agency did not even contemplate that someone other than the presiding officer might make the revocation decision.

In contrast to the agency's initial position, several of the Working Group's members said that their organizations have set up this process to allow someone other than the presiding officer to make the revocation decision. This other person is always a railroad official who reviews the record made at the railroad hearing. Although this is not what the agency expected when it drafted the original final rule in 1991, FRA and the LERB have found this practice acceptable as long as the relevant railroad official has not been the charging official (or investigating officer). The reasoning behind this acceptance is that fairness of the hearing and the decision is maintained by separating the person who plays the prosecutorial role from the person who acts as the decision-maker. Thus, RSAC recommends, and FRA agrees, to codify this position in paragraph (c)(10).

Meanwhile, a second modification that differs from the NPRM is FRA's failure to amend the reference in paragraph (e) to the ''presiding officer'' when it published the NPRM. FRA's intent was to amend paragraph (e) so that the rule will uniformly state that a railroad official, other than the investigating officer, shall make findings as to whether revocation is required. Thus, pursuant to the new rule, the railroad official, who is someone other than the investigating officer and who determines whether revocation is necessary, could be the presiding officer or another qualified railroad official.

A third modification that FRA is making to this section that differs from the NPRM is found in paragraph (c)(10). FRA's original proposal stated that ''[a]t the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding.'' FRA received one comment that suggested that this paragraph should be revised to clarify that the written decision could be prepared at or after the close of the record; the commenter argued that unless amended, the paragraph ambiguously gave the impression that a written decision had to be provided upon the immediate closing of the hearing. In consideration of the comment, RSAC discussed that a formal deadline for written decisions in revocation proceedings not held pursuant to collective bargaining agreements was desirable so that these decisions could be expected to be completed within a reasonable period of time. RSAC recommends, and FRA agrees, that it would be fair to all parties if such a decision would be required ''no later than 10 days after the close of the record.'' The ''no later than 10 days after the close of the record'' requirement should not place a great burden on any railroad nor should it be confusing to apply. The ''no later than'' language allows issuance of the decision on the tenth day after the close of the record or any time prior to the expiration of that tenth day.

FRA did not receive comments with regard to the other proposed changes to this section, which are explained below. Paragraph (b)(2) is modified in two significant ways. First, based on RSAC's recommendation and FRA's understanding of fair process, initial notice of a revocation suspension may be either oral or written but confirmation of the suspension must be made in writing at a later date; this clarifies a railroad's obligations since FRA was silent in the rule as to whether notice could be made orally or must be in writing yet FRA's preamble stated that the notice must be in writing. Second, the amount of time the railroad will have to confirm the notice in writing will depend on a time limit imposed by an applicable collective bargaining agreement or, in the absence of such an agreement, a time limit of 96 hours will be imposed.

Modifications to paragraphs (i) and (i)(1) from the proposal are merely cosmetic. Paragraph (i)(1) will make it explicitly known that a person's certificate shall not be revoked when there is sufficient evidence of an intervening cause that prevented or materially impaired the person's ability to comply. FRA has always maintained this position and the RSAC members agreed that it would be useful to incorporate it into the rule. FRA expects that railroads which have previously believed they were under a mandate to decertify a person for a violation regardless of the particular factual defenses the person may have had, will more carefully consider similar defenses in future cases. In 1993, FRA stated that ''[f]actual disputes could also involve whether certain equitable considerations warrant reversal of the railroad's decision on the grounds that, due to certain peculiar underlying facts, the railroad's decision would produce an unjust result not intended by FRA's rules.'' 58 FR 18982, 19001 (Apr. 9, 1993). The example FRA used in 1993

applies to this proposal as well. That is, the LERB ''will consider assertions that a person failed to operate the train within the prescribed speed limits because of defective equipment.'' Similar to the defense of defective equipment, the actions of other people may sometimes be an intervening cause. For instance, a conductor or dispatcher may relay incorrect information to the engineer which is reasonably relied on in making a prohibited train movement.

Meanwhile, locomotive engineers and railroad managers will need to note that not all equipment failures or errors caused by others should serve to absolve the person from certification action. The factual issues of each circumstance must be analyzed on a case-by-case basis. For example, a broken speedometer would certainly not be an intervening factor in a violation of § 240.117(e)(3) (failure to do certain required brake tests).

Paragraph (i)(2) has been modified from the proposal although no comments were received requesting the type of change made. The proposed rule prohibited all railroads from taking revocation action for events that are of a minimal nature and that do not have either a direct or potential effect on rail safety while the final rule merely permits railroads to make such a determination. Thus, the final rule will provide a railroad with the discretion necessary to decide not to revoke an engineer's certification for an operational misconduct event that violates § 240.117(e)(1) through (e)(5) under certain limited circumstances. Without such a modification, the proposal would have created a defense in every case where many close judgment calls by railroads could be second guessed by the LERB. Rather than finalize the proposal, which FRA helped RSAC develop into a recommendation, FRA has decided to moderate it so that it is not a defense in every case and thus carry the potential to greatly increase the number of petitions to the LERB. In comparison, FRA does not believe that the modification of adding the defense of an intervening cause will greatly increase or decrease the number of petitions to the LERB since making such a determination is significantly more objective than determining what types of violations are both (1) of a minimal nature and (2) have no direct or potential effect on rail safety. The potential downside to proposed paragraph (i)(2) was not recognized until after the comment period closed and RSAC's final recommendations were made.

Paragraph (i)(2) will not permit a railroad to use their discretion to dismiss violations indiscriminately. That is, FRA will only permit railroads to excuse operational misconduct when two criteria are met. First, the violation must be of a minimal nature; for example, on high speed track at the bottom of a steep grade, the front of the lead unit in a four unit consist hauling 100 cars enters a speed restriction at 10 miles per hour over speed, but the third unit and the balance of the train enters the speed restriction at the proper speed, and maintains that speed for the remainder of the train. If more of the locomotive or train consist enters the speed restriction in violation, a railroad that is willing to consider mitigating circumstances will need to consider whether the violation was truly of a minimal nature. Other examples where violations may be of a minimal nature may include slowing down for speed restrictions that are located within difficult train-handling territory, flat switching-kicking cars, snow plow operations, and certain industrial switching operations requiring short bursts of speed to spot cars on steep inclines.

In contrast, a violation could not be considered of a minimal nature if an engineer fundamentally violated the operating rules. For example, using the same consist and location in the previous example, if the entire train were operated through the speed restriction at 10 miles per hour over the prescribed speed, then the event could not be considered of a minimal nature. In situations where the rule has been fundamentally violated, a railroad does not have the discretion to excuse this violation.

Second, for paragraph (i)(2) to apply, it will also be required that sufficient evidence be presented to prove that the violation did not have either a direct or potential effect on rail safety. This defense will certainly not apply to a violation that actually caused a collision or injury because that would be a direct effect on rail safety. It will also not apply to a violation that, given the factual circumstances surrounding the violation, could have resulted in a collision or injury because that would be a potential effect on rail safety. For instance, an example used to illustrate the term ''minimal nature'' described a situation involving a train that had the first two locomotives enter a speed restriction too fast, yet the balance of the train was in compliance with the speed restriction; since the train in this example would not be endangering other trains because it had the authority to travel on that track at a particular speed, there would be no direct or potential effect on rail safety caused by this violation.

In contrast, if a train fails to stop short of a banner, which is acting as a signal requiring a complete stop before passing it, during an efficiency test, that striking of a banner may have no direct effect on rail safety but it has a potential effect since a banner would be simulating a railroad car or another train. Meanwhile, there is a difference between passing a banner versus making an incidental touching of a banner. If a locomotive or train barely touches a banner so that the locomotive or train does not run over the banner, break the banner, or cause the banner to fall down, this incidental touching could be considered a minimal nature violation that does not have any direct or potential effect on rail safety. This is because such an incidental touching is not likely to cause damage to equipment or injuries to crew members even if the banner was another train. Although it is arguable that if the banner were a person the touching could be fatal, FRA is willing to allow railroads the discretion to consider this type of scenario in the context of excusing a violation pursuant to paragraph (i)(2); of course, if the banner was in fact a person in the manner described in the example, the railroad would not have the discretion to apply paragraph (i)(2).

Similarly, if a train has received oral and written authority to occupy a segment of main track, the oral authority refers to the correct train number, and the oral authority refers to the wrong locomotive because someone transposed the numbers, the engineer's violation in not catching this error before entering the track without proper authority could be considered of a minimal nature with no direct or potential effect on rail safety. Since the railroad would be aware of the whereabouts of this train, the additional risk to safety of this paperwork mistake may practically be zero. Under the same scenario, where there are no other trains or equipment operating within the designated limits, there may be no potential effect on rail safety as well as no direct effect.

FRA also notes that in paragraphs (i)(1) and (i)(2) of the new rule, a defense must be supported by sufficient evidence, not substantial evidence as was mistakenly proposed. As FRA discussed in the preamble topic ''Improving the Dispute Resolution Procedures,'' the rule does not contain a standard of proof for the railroad hearing and FRA did not intend to create any such standard. Although silent on the standard of proof, FRA specifically requires that the railroad determine, on the record of the hearing,

whether the person no longer meets the qualification requirements of this part and state explicitly the basis for the conclusion reached. § 240.307(b)(4). FRA wants to ensure that the railroad hearings are fair, and allow for consolidation with applicable collective bargaining agreements, without the rigidity of instituting a standard of proof. Furthermore, substantial evidence is a standard of review that would not be appropriate given the fact finding role of such a hearing, as opposed to a reviewing role.

Paragraph (j) will require that railroads keep records of those violations in which they must not or elect not to revoke the person's certificate pursuant to paragraph (i). The keeping of these records is substantially less burdensome than the current rule since the current rule requires this type of recordkeeping plus the opportunity for a hearing under § 240.307. Paragraph (j)(1) will require that railroads keep records even when they decide not to suspend a person's certificate due to a determination pursuant to paragraph (i). Paragraph (j)(2) will require that railroads keep records even when they make their determination prior to the convening of the hearing held pursuant to § 240.307.

Paragraph (k) will address concerns that problems could arise if FRA disagrees with a railroad's decision not to suspend a locomotive engineer's certificate for an alleged misconduct event pursuant to § 240.117(e). The idea behind new paragraph (i) is that as long as the railroads make good faith determinations after reasonable inquiries, they should have a defense to civil enforcement for making what the agency believes to be an incorrect determination. Since paragraph (i) will both require and permit railroads to make some difficult decisions based on factual circumstances on a case-by-case basis, FRA accepts RSAC's recommendation that it is fair not to penalize railroads for making what the agency in hindsight may decide to be the wrong decision. However, railroads are put on notice that if they do not conduct a reasonable inquiry or act in good faith, they are subject to civil penalty enforcement. In addition, even if a railroad does not take what FRA considers appropriate revocation action, FRA can still take enforcement action against a person responsible for the non-compliance by assessing a civil penalty pursuant to § 240.305 or issuing an order prohibiting an individual from performing safety-sensitive functions in the rail industry for a specified period pursuant to 49 CFR part 209, subpart D.

Section 240.309—Railroad Oversight Responsibilities

This recordkeeping section will be modified to better reflect the types of poor safety conduct identified in § 240.117(e). It is identical to the proposal except for paragraph (e)(3). FRA has made conforming changes to paragraph (e)(3) as necessary considering the Passenger Equipment Safety Standards final rule that was published at 49 CFR Part 238. See 64 FR 25540 (May 12,1999). Paragraph (e)(3) was also modified to account for whatever changes, if any, are ever made to part 232. See 63 FR 48294 (Sept. 9, 1998)(proposing changes to part 232).

Paragraphs (e)(6), (7) and (8) currently concern train handling issues (i.e., improper use of dynamic brakes, automatic brakes and a locomotive's independent brake) that are no longer considered operational misconduct events and therefore FRA should not need to ask railroads to report this information for study and evaluation. The new paragraphs (e)(6), (7) and (8) mirror those operational misconduct events that were mistakenly left off this list of conduct that needs to be reported for study and evaluation purposes.

New paragraph (h) would correct a clerical error which had mistakenly created two paragraphs labeled as (e). No comments were received in response to this section in the NPRM.

*Subpart E—Dispute Resolution Procedures*

Section 240.403—Petition Requirements

The change to paragraph (d) which shortens the amount of time an aggrieved person can take to file a petition with the LERB from 180 days to 120 days is identical to the proposal. No comments were received in response to the proposed section. The main reason for this change is the broad concept that the entire certification review process should be as short as possible because timely decisions are more meaningful. Another reason for shortening this filing period is that the RSAC members, many of whom have had significant exposure to the LERB petition process, found this time period unnecessarily long in order to complete a petition. These industry leaders recognize that the evidence typically needed for the LERB's review is readily available at the time the railroad makes its revocation decision. Petitioners need to send the LERB this evidence and add an explanation as to why they believe the railroad's decision was improper. Since this period of time was so great, some RSAC members reported that it only encouraged aggrieved persons to procrastinate before deciding whether to file a petition.

While FRA is acting to shorten the time available to file a petition, in consideration of recent circumstances experienced in administering the dispute resolution process, FRA is no longer comfortable with the Locomotive Engineer Review Board's lack of authority to accept late petitions for cause shown. Thus, FRA has modified paragraph (d) and added paragraphs (d)(1) and (2) to accept late filings under certain limited circumstances that are modeled after, to the extent possible, rule 6(b) of the Federal Rules of Civil Procedure regarding enlargement of time. Through the promulgation of paragraph (d)(1), FRA intends to give the Board wide discretion to grant a request for additional time that is made prior to the expiration of the period originally prescribed. As the Board may exercise its discretion under this rule only for ''cause shown,'' a party must demonstrate some justification for the Board to accept the late petition. Similarly, if the deadline in (d) is completely missed, the movant, under paragraph (d)(2), must allege the facts constituting ''excusable neglect'' and the mere assertion of excusable neglect unsupported by facts is insufficient. Excusable neglect requires a demonstration of good faith on the part of the party seeking an extension of time and some reasonable basis for noncompliance within the time specified in the rules. Absent a showing along these lines, relief will be denied. In addition, paragraph (e) was added to explain that a decision of untimeliness may be appealed directly to the Administrator. Ordinarily, an appeal to the Administrator may occur only after a case has been heard by FRA's hearing officer.

Section 240.405—Processing Qualification Review Petitions

The changes to this section are identical to the proposal with one exception and no comments were received in response to this proposed section. Paragraph (a) is modified to include a public pronouncement of FRA's goal to issue decisions within 180 days from the date FRA has received all the information from the parties. FRA's ability to achieve this goal is dependent on the number of petitions filed and agency resources available to handle those petitions in any given period. The modification to paragraph (c) lengthens the amount of time the railroad will be given to respond to a petition from 30 days to 60 days because FRA accepts RSAC's recommendation that a 30-day time period is unfairly short; FRA

expects that when possible, railroads will continue to file responses as soon as possible rather than wait until the sixtieth day to file. A further modification was made to paragraph (c) based on FRA's recent experiences administering the dispute resolution process; thus, FRA has decided to allow the Board to consider late filings to the extent it is practicable to do so. Also, paragraph (d)(3) is added so that railroads which submit information in response to a petition will be required to file such submission in triplicate; without this requirement, the burden placed on the Docket Clerk could cause undesirable delay in this process.

It is important to note that FRA is not amending paragraph (f). The LERB is still only determining whether the railroad's decision was based on an incorrect determination. If a railroad conducted hearing is so unfair that it causes a petitioner substantial harm, the LERB may grant the petition; however, the LERB's review is not intended to correct all procedural wrongs committed by the railroad.

Section 240.411—Appeals

Paragraph (e) is amended as proposed to give the Administrator the power to remand or vacate. No comments were received in response to this proposed section. The phrase ''except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted'' is included as part of the regulation so that parties would understand that a remand, or other intermediate decision, would not constitute final agency action. The inclusion of this phrase is made in deference to those parties that are not represented by an attorney or who might otherwise be confused as to whether any action taken by the Administrator should be considered final agency action.

Likewise, recent administration of the dispute resolution proceedings has convinced FRA to allow the Locomotive Engineer Review Board to accept late filings for cause shown under certain limited circumstances. See § 240.403(d). Given the limited authority of the FRA hearing officer, it appears appropriate for an aggrieved party to a Board decision, which denies a petition as untimely, to have the right to appeal that Board decision directly to the Administrator. See § 240.403(e). Paragraph (f) was added to adjust for that additional type of Administrator review.

Appendix A to Part 240—Schedule of Civil Penalties

No comments were received in response to this appendix. FRA is changing footnote number 1 to this schedule of civil penalties so that it will reflect recent changes in the law. The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Public Law 104–134, April 26, 1996 required agencies to adjust for inflation the maximum civil monetary penalties within the agencies jurisdiction. The resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

As promised in the proposal's analysis, FRA has considered the modifications to the rule in deciding where revisions of the penalty schedule are necessary. Although penalty schedules are statements of policy and FRA was not obligated to provide an opportunity for public comment, FRA invited comments on this issue and received none.

Appendix F to Part 240—Medical Standards Guidelines

The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 240.121 and 240.207 of this part. The main issue addressed in this appendix is the addition of acceptable test methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. Two issues were raised by one commenter to the NPRM regarding the appropriateness of some of the guidance proposed.

For consistency and clarification, the commenter asked whether Appendix F and § 240.121(e) should be revised to reflect that further testing may be conducted upon request if the railroad has not provided for such further testing without such a request. Since this issue was discussed in great detail in the section-by-section analysis for § 240.121(e), FRA requests that interested persons consult that earlier analysis.

The second of these two issues involves the appropriateness of using chromatic lenses when testing a person's color vision. The commenter recommended the deletion of the sentence ''[c]hromatic lenses may be worn in accordance with any subsequent testing pursuant to § 240.121(c) if permitted by the medical examiner and the railroad.'' RSAC and the commenter support banning the wearing of chromatic lenses during an initial test on the grounds that FRA has acquired a general body of knowledge that chromatic lenses are a safety issue. Meanwhile, the commenter requested that the rule be silent on the issue of whether chromatic lenses are acceptable for subsequent testing since such a statement from FRA might be considered an endorsement of chromatic lenses in other legal contexts. RSAC recommended that this sentence be deleted and that FRA remain silent on the acceptability of chromatic lenses in subsequent testing because it is likely that the judicial system will end up deciding such issues on a case-by-case basis regardless of FRA's pronouncements. After further consideration, FRA agrees with RSAC's recommendations.

## Regulatory Impact

### E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). Nevertheless, FRA has prepared and placed in the docket a regulatory evaluation of the final rule. This evaluation estimates the costs and other consequences of the rule as well as its anticipated economic and safety benefits. It may be inspected and photocopied during normal business hours by visiting the FRA Docket Clerk at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, NW, in Washington, DC. Photocopies may also be obtained by submitting a written request by mail to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590.

FRA expects that overall the rule will save the rail industry approximately $920,000 Net Present Value (NPV) over the next twenty-years. The NPV of the total estimated twenty-year costs associated with the rule is $1,049,964. The NPV of the total twenty-year monetary savings (non-safety benefits) expected to accrue to the industry from the rule is $1,970,999. For some rail operators, the total costs incurred may exceed the total costs saved. For others,

the cost savings will outweigh the costs incurred.

Costs/savings, and benefits/safety impacts associated with particular requirements of the final rule were analyzed separately. FRA believes it is reasonable to expect that several injuries and fatalities will be avoided as a result of implementing some of the rule modifications. FRA also believes that the safety of rail operations will not be compromised as a result of implementing the cost savings modifications.

The following table presents estimated twenty-year monetary impacts associated with the rule modifications.

| Description | Costs incurred | Costs saved |
|---|---|---|
| Supervisors of Loco. Engineers: | | |
| Qualifications | $1,012,211 | |
| First Designated Supervisor | | $ 8,422 |
| Extending Culpability | 17,798 | |
| Revocable Event Criteria (Speed) | | 232,486 |
| Ineligibility Schedule | | 574,746 |
| Vision and Hearing Acuity: | | |
| Right to Further Medical Examination | 14,185 | |
| Distribution of Rule to Medical Examiners | 4,000 | |
| New Railroads/New Territories | | 16,844 |
| Pilots for Locomotive Engineers | | 1,047,282 |
| Written Notice of Revocation | 1,769 | |
| Added Railroad Discretion | | 88,481 |
| Single Certificate | | 2,737 |
| Total (rounded) | 1,049,964 | 1,970,999 |
| Net Savings (rounded) | | 921,035 |

Note that the NPV of the total cost savings to individual locomotive engineers that commit second and third offenses within a three-year period is expected to total approximately $2.5 million over the next twenty years. However, because one engineer's lost employment opportunity would become another locomotive engineer's opportunity, this information is not included as a savings and is presented for information purposes only.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of rules on small entities. FRA has conducted a regulatory flexibility assessment of this final rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking. The regulatory flexibility assessment concludes that the final rule will have economic impact on small entities. However, FRA certifies that the final rule will not have a ''significant'' impact on a substantial number of small entities.

''Small entity,'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The United States Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a ''for-profit'' railroad may be, and still be classified as a ''small entity,'' is 1,500 employees for ''Line-Haul Operating'' Railroads, and 500 employees for ''Switching and Terminal Establishments'' (Table of Size Standards, U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121). This final rule will affect small railroads as defined by the SBA. The statutory definition of ''small government jurisdictions'' is a governmental entity that serves a population center of 50,000 or less. The transit authorities subject to the requirements of this rule do not serve communities with population levels of 50,000 or less.

Because FRA does not have information regarding the number of people employed by railroads, it cannot determine exactly how many small railroads, by SBA definition, are in operation in the United States. However, FRA maintains information regarding annual employee hours for railroads and has used the delineation of less than 400,000 annual employee hours to represent small entities in other regulatory flexibility assessments. This grouping captures most small entities that would be defined by the SBA as small businesses. FRA has also used this grouping in the past to alleviate Federal reporting requirements.

About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. The final rule applies to railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation. Approximately 25 tourist and museum railroads that are small businesses do not operate on the general railroad system. Therefore, this rule will affect approximately 620 small entities. Small railroads that will be affected by the final rule provide less than 10 percent of the industry's employment, own about 10 percent of the track, and operate less than 10 percent of the ton-miles.

The standards contained in the final rule were generally developed in consensus with the representatives from the American Shortline and Regional Railroad Association (ASLRRA). Two representatives from the ASLRRA are members of the Working Group established by the Federal Railroad Administrator's Rail Safety Advisory Committee (RSAC) to work on this rulemaking. These members represented the interests of small freight railroads and some excursion railroads operating in the United States during this rulemaking process. A representative of the Tourist Railway Association, Incorporated is a member of the RSAC which is responsible for approving the standards developed by the Working Group. Small rail operators had an opportunity to comment on the NPRM.

The impacts of the final rule on small entities are not expected to be substantial. FRA has identified four specific requirements that will result in additional regulatory burden for small railroads. The extension of culpability to DSLEs, locomotive engineers' right to receive further medical evaluation following a vision and hearing acuity test, distribution of the final rule to medical officers, and written notification of suspension of certification will all affect small railroads. The level of costs associated with these standards should vary in proportion to the size of each railroad. Railroads with fewer locomotive

engineers should experience lower costs. These standards do not offer opportunities for larger railroads to experience economies of scale.

Also note that railroads will be relieved of some of the regulatory burdens associated with current Federal regulations. Small railroads should benefit proportionally from the modifications to the ineligibility schedule and the speed violation criteria. These modifications will allow locomotive engineers committing acts that would result in revocation of certification under the current rule to remain or more quickly return to their chosen form of employment. Small railroads will also benefit from the flexibilities allowed for the selection of the first DSLE and the increased railroad discretion with regard to revocation of certification.

Small railroads are actually expected to benefit relatively more than their larger counterparts from three particular requirements. The criteria for requiring pilots for locomotive engineers not qualified on the physical characteristics of a territory grant exemptions based on factors favorable to small railroads such as operating speed and type of terrain. The allowance for a single certificate for certified locomotive engineers qualified to operate on more than one railroad will have particular applicability to small railroads owned by holding companies. Finally, the joint operations requirement for the shared responsibility of determining which locomotive engineers are qualified to operate over the host railroad's territory will provide small railroads that give other railroads trackage rights over all or part of their territory with opportunities for cost savings.

FRA expects that overall the economic benefits that will accrue to small railroads if the requirements of this rule are implemented will exceed the regulatory costs. FRA is also confident that the costs associated with particular requirements will be justified by the safety benefits achieved.

The Working Group considered proposals made by the ASLRRA to provide small railroads with economic relief from some of the burdens imposed by the existing and new federal regulations addressing locomotive engineer qualifications and certification. Of particular interest to the ASLRRA was the certification interval. The ASLRRA sought to extend certification, National Driver Register (NDR) check, and hearing and vision acuity test intervals from 3 to 5 years.

Initially, the ASLRRA proposed that recertification of locomotive engineers occur every 5 years, versus the current 3 year interval. The Working Group considered this proposal. However, the proposal would decrease the level of confidence that railroads have regarding the level of safety with which trains are operated. The recertification process provides railroads with the opportunity to ascertain that locomotive engineers can continue to operate trains in a safe manner. Unsafe locomotive engineer train operating practices are detected during the tests administered as part of the recertification process and can be corrected through appropriate training. Because the timing of training of locomotive engineers coincides with their recertification, lengthening the recertification interval could translate into delaying needed refresher training sessions. This would decrease the level of safety with which trains are operated. This extension would advance the economic interests of small entities but, would not advance the interests of rail safety.

Taking into account the safety concerns of the Group, the ASLRRA proposed that recertification remain at a 3 year interval, but that the NDR check and the hearing and vision tests be performed at 5 year intervals (instead of the current 3 year interval) for Class III railroads that do not operate passenger trains, do not operate in territory where passengers trains are operated, do not operate in territory with a grade of two percent or greater over a distance of two continuous miles or, do not operate in signal territory, and, within the past year, have not transported any hazardous materials in hazard classes 1 (explosives), 2.3 (poisonous gases) or 7 (radioactive materials). The rationale for allowing longer intervals between hearing and vision acuity tests for locomotive engineers in smaller operations is that on-site management would be more likely to notice changes in a person's medical condition. By excluding territories with passenger rail traffic, steep grades, signals, and railroads that haul hazardous materials from the extension, the rule limits its impacts to situations with the lowest level of exposure to accidents and the lowest severity of accident.

Extending the interval between NDR checks, however, raises safety concerns. This rule requires implementation of an honor system through which locomotive engineers self report to the railroads driving incidents involving reckless behavior on their part. The NDR check for motor vehicle drivers will confirm whether there were any incidents of reckless behavior while driving a highway vehicle. This information provides employers insight into whether a person can be trusted with the operation of a locomotive. The potential, and in certain cases even the incentive, exists for a locomotive engineer who operates a car under the influence of alcohol or drugs to not self-report and protect their certification and job. Increasing the interval between NDR checks would actually increase the amount of time an engineer could continue to operate trains without the railroad being aware of reckless motor vehicle driving incidents. This, in turn, would increase the risk of an accident occurring due to reckless behavior while operating a locomotive or train.

In an attempt to expedite the regulatory process associated with this rulemaking the ASLRRA withdrew their proposal for extending intervals from this particular rulemaking activity prior to publication of the NPRM. Following publication of the NPRM, the ASLRRA urged FRA to reconsider a model program jointly developed by FRA and the industry. This model would accommodate a longer certification cycle for Class III railroads by increasing testing and training. The characteristics that determine the level of train operating difficulty and other safety concerns of the Class III railroads in the country vary greatly. This proposal seems over-inclusive since the safety concerns of some Class III railroads are much greater than others. The proposal also seems under-inclusive since some Class I and Class II railroads could argue that their operations pose no greater safety risk than many Class III railroads. The proposal could arbitrarily allow railroads with a certain level of operating revenues to gain a benefit without considering the safety implications determined by the type of operation.

According to the ASLRRA, Class III railroads would save approximately $10 million over twenty years if the certification period was extended by 2 years. FRA believes that the safety risks associated with such an extension would be significant. The ASLRRA proposal increases the likelihood of a safety loss if the medical examinations are required less frequently. In addition to the dubious equity of the proposal and its possible safety degradation, FRA is concerned about how this 5-year approach would be handled by a major railroad that might need to certify a small railroad's engineers for operations on the major railroad. For all these reasons, the RSAC failed to achieve consensus recommendations and FRA has decided not to change the rule to allow Class III railroads to certify their locomotive engineers every 5 years.

The ASLRRA also commented that the administrative burden that was

imposed by the original rule and was perpetuated in the proposed revisions must be considered within the scope of the Small Business Regulatory Enforcement Fairness Act and the paperwork reduction act. FRA did consider this burden with resulting safety benefits and determined that the administrative burden is justified by the safer railroad operating environment.

In response to the NPRM, a Class III railroad recommended that Class III Switching and Terminal Carriers be excluded from the requirement that ''dual purpose vehicles'' must be operated by a certified locomotive engineer in those situations where the ''vehicle'' is being used to move disabled equipment for clearing and repair of track. Since factors such as traffic density and closeness to switches and signals will affect the safety risk of an operation, FRA believes that a general exclusion would not promote safety.

**Paperwork Reduction Act**

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR section/subject | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| **NEW REQUIREMENTS** | | | | | |
| 240.105—Selection Criteria For Design. Supervisors of Locomotive Engineers. | 10 railroads | 10 reports | 1 hour | 10 hours | $380 |
| —Qualification—DSLEs—phys. characteristics | 675 railroads | 675 plans | 6 hours | 4,050 hours | 159,300 |
| —DSLE phys. characteristics—plan rev | 8 railroads | 4 rev. plans | 3 hours | 12 hours | 472 |
| 240.111—Indiv. Duty to Furnish Data on Prior Safety Conduct as M.V. Operator. | 675 railroads | 400 calls | 10 min | 67 hours | 2,412 |
| 240.117—Criteria For Consideration of Operating Rules Compliance Data. | 675 railroads | 3 viol./appeal | 12 hours | 36 hours | 1,368 |
| 240.121—Criteria—Hearing/Vision Acuity—First Year | 675 railroads | 675 copies | 15 min | 169 hours | 5,239 |
| —Criteria—Hearing/Vision—Subseq. Yrs | 10 new railroads | 10 copies | 15 min | 3 hours | 93 |
| —Medical Examiner Consultation w DSLE | 675 railroads | 17 reports | 1 hour | 17 hours | 527 |
| —Notification—Hearing/Vision Change | 675 railroads | 10 notifications | 15 minutes | 3 hours | 108 |
| 240.229—Reqmnts—Joint Oper. Terr | 321 railroads | 184 calls | 5 min | 15 hours | 540 |
| 240.309—Railroad Oversight Resp | 43 railroads | 10 annotation | 15 min. | 3 hours | 114 |
| **CURRENT REQUIREMENTS** | | | | | |
| 240.9—Waivers | 675 railroads | 5 waivers | 1 hour | 5 hours | 165 |
| —Certification Program | 10 new railroads | 10 programs | 200 hrs/40 hrs | 1,840 hours | 57,040 |
| 240.11—Penalties For Non-Compliance | 675 railroads | 2 falsification | 10 min | 20 min | 12 |
| 240.111—Request—State Driving Lic. Data | 13,333 candidates. | 13,333 requests | 15 min | 3,333 hours | 119,988 |
| —Railroad notification—NDR match | 675 railroads | 267 requests | 30 min | 134 hours | 4,489 |
| —Written Response from Candidate | 675 railroads | 267 comment | 15 min | 67 hours | 2,412 |
| —Notice to Railroad—No License | 40,000 candidates. | 4 letters | 15 min | 1 hour | 36 |
| 240.113—Notice to Railroad Furnishing Data on Prior Safety Conduct. | 13,333 candidates. | 267 requests/ 267 responses. | 15 min/30 min | 200 hours | 6,535 |
| 240.115—Candidate's Review + Written Comments—Prior Safety Conduct Data. | 13,333 candidates. | 133 responses | 30 min | 67 hours | 2,412 |
| 240.123—Criteria For Init./Cont. Educ | 30 railroads | 30 amend | 1 hour | 30 hours | 1,680 |
| 240.201/221/223/301—List of DSLEs | 675 railroads | 675 updates | 15 minutes | 169 hours | 5,239 |
| —List of Design. Qual. Loc. Engineers | 675 railroads | 675 updates | 15 minutes | 169 hours | 5,239 |
| —Locomotive Engineers Certificate | 40,000 candidates. | 13,333 cert. | 5 minutes | 1,111 hours | $34,441 |
| —List—Des. Persons to sign L.E. Cert. | 675 railroads | 20 lists | 15 minutes | 5 hours | 165 |
| 240.205—Data to EAP Counselor | 675 railroads | 267 records | 5 minutes | 22 hours | 792 |
| 240.207—Medical Certificate | 40,000 candidates. | 13,333 cert. | 70 minutes | 15,555 hours | 482,205 |
| 240.209/213—Written Test | 40,000 candidates. | 13,333 tests | 2 hours | 26,666 hours | 826,646 |
| 240.211/213—Performance Test | 40,000 candidates. | 13,333 tests | 2 hours | 26,666 hours | 1,013,308 |
| 240.215—Recordkeeping—Cert. Loc. Eng. | 675 railroads | 13,333 record | 10 minutes | 2,222 hours | 68,882 |
| 240.219—Denial of Certification | 13,333 candidates. | 133 letters/133 responses. | 1 hr./1hr. | 266 hours | 8,911 |
| —Written Basis For Denial | 675 railroads | 133 notific. | 1 hour | 133 hours | 4,123 |
| 240.227—Canadian Cert. Data | Canadian RRs | 200 certific. | 15 minutes | 50 hours | 1,550 |
| 240.303—Annual Op. Monit. Obs. | 40,000 candidates. | 40,000 tests | 2 hours | 80,000 hours | 3,040,000 |
| —Annual Operational Observation | 40,000 candidates. | 40,000 tests | 1 hour | 40,000 hours | 1,520,000 |
| 240.305—Engineer's Non-Qual. Notific | 40,000 candidates. | 400 notific. | 5 minutes | 33 hours | 1,188 |

| CFR section/subject | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| —Engineer's Notice—Loss of Qualification | 40,000 candidates. | 40 letters | 30 minutes | 20 hours | 720 |
| 240.307—Notice to Engineer—Disqual. | 675 railroads | 650 notific. letters. | 1 hour | 650 hours | 20,150 |
| 240.309—Railroad Oversight Resp. | 43 railroads | 43 reviews | 80 hours | 3,440 hours | 192,640 |
| 240.401—Engineer's Appeal to FRA | 40,000 Loco. Eng. | 100 petitions | 12 hours | 1,200 hours | 43,200 |
| 240.405—Railroad's Response to Appeal | 675 railroads | 100 responses | 6 hours | 600 hours | 22,800 |
| 240.407—Request For a Hearing | 675 railroads/ 40,000 Loco. Eng.. | 15 hearing requests. | 30 minutes | 8 hours | 288 |
| 240.411—Appeals | 675 | 2 appeal | 2 hours | 4 hours | 144 |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after receipt of this document.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this rule. The valid OMB control number for this information collection is 2130–0533.

## Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly effecting the quality of the human environment.

## Federalism Implications

FRA believes it is in compliance with Executive Order 13132. This rule will not have a substantial 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. This regulation will not have federalism implications that impose substantial direct compliance costs on State and local governments. Meanwhile, State officials were consulted to a practicable extent through their participation in the RSAC, a federal advisory committee discussed earlier in the preamble.

The State of Wisconsin's Office of the Commissioner of Railroads was the only State or local office to comment on the NPRM. The State of Wisconsin requested that FRA clarify whether and to what extent Part 240 applies to the qualifications for train conductors. FRA addressed this comment in the preamble under the headline ''preemption.'' FRA brought the comment to the attention of the Working Group, but RSAC was unable to achieve a consensus recommendation. FRA is responding to the State of Wisconsin directly, rather than publishing a response here, because the request for legal guidance is not based on any modification suggested in the NPRM. A copy of FRA's response letter will be placed in the docket.

## List of Subjects in 49 CFR Part 240

Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, FRA amends part 240, Title 49, Code of Federal Regulations as follows::

## PART 240—[AMENDED]

1. The authority citation for Part 240 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

2. Section 240.1 is amended by revising paragraph (b) to read as follows:

### § 240.1 Purpose and scope.

* * * * *

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

* * * * *

3. Section 240.3 is revised to read as follows:

### § 240.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

4. Section 240.5 is amended by revising the title and paragraphs (a), (b) and (e) and adding paragraph (f) to read as follows:

### § 240.5 Preemptive effect and construction.

(a) Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local

safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

* * * * *

(e) Nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(f) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

5. Section 240.7 is amended by revising the definition of *Administrator*, *Locomotive* and *Railroad* and by adding definitions of *Dual purpose vehicle*, *FRA*, *Person*, *Qualified*, *Railroad rolling stock*, *Roadway maintenance equipment*, *Service*, and *Specialized roadway maintenance equipment* in alphabetical order as follows:

* * * * *

*Administrator* means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

* * * * *

*Dual purpose vehicle* means a piece of on-track equipment that is capable of moving railroad rolling stock and may also function as roadway maintenance equipment.

* * * * *

*FRA* means the Federal Railroad Administration.

* * * * *

*Locomotive* means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2):

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

* * * * *

*Person* means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

*Qualified* means a person who has passed all appropriate training and testing programs required by the railroad and this part and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified.

*Railroad* means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

* * * * *

*Railroad rolling stock* is on-track equipment that is either a freight car (as defined in § 215.5 of this chapter) or a passenger car (as defined in § 238.5 of this chapter).

* * * * *

*Roadway maintenance equipment* is on-track equipment powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.

* * * * *

*Service* has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. See also the definition of ''filing in this section.''

* * * * *

*Specialized roadway maintenance equipment* is roadway maintenance equipment that does not have the capability to move railroad rolling stock. Any alteration of such equipment that enables it to move railroad rolling stock will require that the equipment be treated as a dual purpose vehicle.

* * * * *

6. Section 240.9 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 240.9 Waivers.**

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

* * * * *

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

7. Section 240.11 is amended by revising the title and paragraphs (a), (b) and (c) to read as follows:

**§ 240.11 Penalties and consequences for noncompliance.**

(a) A person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

* * * * *

8. Section 240.103 is amended by revising paragraph (a) to read as follows:

**§ 240.103 Approval of design of individual railroad programs by FRA.**

(a) Each railroad shall submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B to this part and shall submit this written certification program for approval at least 60 days before commencing operations.

* * * * *

9. Section 240.104 is added to read as follows:

**§ 240.104 Criteria for determining whether movement of roadway maintenance equipment or a dual purpose vehicle requires a certified locomotive engineer.**

(a) A railroad is not required to use a certified locomotive engineer to perform the following functions:

(1) Operate specialized roadway maintenance equipment; or

(2) Operate a dual purpose vehicle that is:

(i) Being operated in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site;

(ii) Moving under authority of railroad operating rules designated for the movement of roadway maintenance equipment that ensure the protection of such equipment from train movements; and

(iii) Being operated by an individual trained and qualified in accordance with §§ 214.341, 214.343, and 214.355 of this chapter.

(b) A railroad is required to use a certified locomotive engineer when operating a dual purpose vehicle other than in accordance with paragraph (a)(2) of this section.

10. Section 240.105 is amended by revising paragraph (b)(4) and by adding paragraph (c) to read as follows:

**§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.**

* * * * *

(b) * * *

(4) Is a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a Designated Supervisor of Locomotive Engineers.

(c) If a railroad does not have any Designated Supervisors of Locomotive Engineers, and wishes to hire one, the chief operating officer of the railroad shall make a determination in writing that the Designated Supervisor of Locomotive Engineers designate possesses the necessary performance skills in accordance with § 240.127. This determination shall take into account any special operating characteristics which are unique to that railroad.

11. Section 240.111 is amended by revising paragraphs (a) introductory text, (a)(1), and (h) to read as follows:

**§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.**

(a) Except for initial certifications under paragraph (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (b) through (f) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

* * * * *

(h) Each certified locomotive engineer or person seeking initial certification shall report motor vehicle incidents described in § 240.115 (b)(1) and (2) to the employing railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, such violations. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed state action to cancel, revoke, or deny a motor vehicle drivers license.

12. Section 240.113 is amended by revising paragraph (a) introductory text to read as follows:

**§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.**

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

* * * * *

13. Section 240.117 is revised to read as follows:

**§ 240.117 Criteria for consideration of operating rules compliance data.**

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)(1) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have his or her certification revoked.

(2) A Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraph (e) of this section, shall have his or her certification revoked. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

(3) A person who is a certified locomotive engineer but is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer, and is performing such other duty, shall not have his or her certification revoked based on actions taken or not taken while performing that duty.

(d) Limitations on consideration of prior operating rule compliance data. Except as provided for in paragraph (i) of this section, in determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (e)(5) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

(e) A railroad shall only consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at

least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, as instances of failure to adhere to this section;

(3) Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

(4) Occupying main track or a segment of main track without proper authority or permission;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218, subpart D and Appendix C to part 218);

(6) Incidents of noncompliance with § 219.101 of this chapter; however such incidents shall be considered as a violation only for the purposes of paragraphs (g)(2) and (3) of this section;

(f)(1) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(2) A violation of one or more operating rules or practices described in paragraph (e)(1) through (e)(5) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in paragraph (g) of this section.

(3) An operational test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legitimate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.

(g) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(3) Be determined according to the following standards:

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (e)(5) of this section, the person shall have his or her certificate revoked for a period of one month.

(ii) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (e)(5) of this section, that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of six months.

(iii) In the case of three separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of one year.

(iv) In the case of four separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of three years.

(v) Where, based on the occurrence of violations described in paragraph (e)(6) of this section, different periods of ineligibility may result under the provisions of this section and § 240.119, the longest period of revocation shall control.

(4) Be reduced to the shorter periods of ineligibility imposed by paragraphs (g)(1) through (3) of this section as amended, and effective January 7, 2000 if the incident:

(i) Occurred prior to January 7, 2000; and

(ii) Involved violations described in paragraphs (e)(1) through (e)(5) of this section; and

(iii) Did not occur within 60 months of a prior violation as described in paragraph (e)(6) of this section.

(h) Future eligibility to hold certificate. A person whose certification has been denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of revocation only if:

(1) The denial or revocation of certification in accordance with the provisions of paragraph (g)(3) of this section is for a period of one year or less;

(2) Certification was denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;

(3) The person has been evaluated by a Designated Supervisor of Locomotive Engineers and determined to have received adequate remedial training;

(4) The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and

(5) At least one half the pertinent period of ineligibility specified in paragraph (g)(3) of this section has elapsed.

(i) In no event shall incidents that meet the criteria of paragraphs (i)(1) through (4) of this section be considered as prior incidents for the purposes of paragraph (g)(3) of this section even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under paragraph (g)(3) of this section are those that:

(1) Occurred prior to May 10, 1993;

(2) Involved violations of one or more of the following operating rules or practices:

(i) Failure to control a locomotive or train in accordance with a signal indication;

(ii) Failure to adhere to limitations concerning train speed;

(iii) Failure to adhere to procedures for the safe use of train or engine brakes; or

(iv) Entering track segment without proper authority;

(3) Were or could have been found to be violations under this section contained in the 49 CFR, parts 200 to 399, edition revised as of October 1, 1992; and

(4) Would not be a violation of paragraph (e) of this section.

(j) In no event shall incidents that meet the criteria of paragraphs (j)(1) through (2) of this section be considered as prior incidents for the purposes of paragraph (g)(3) of this section even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under paragraph (g)(3) of this section are those that:

(1) Occurred prior to January 7, 2000;

(2) Involved violations of one or more of the following operating rules or practices:

(i) Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it;

(ii) Failure to adhere to limitations concerning train speed when the speed

at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour or by more than one half of the authorized speed, whichever is less;

(3) Were or could have been found to be violations under this section contained in the 49 CFR, parts 200 to 399, edition revised as of October 1, 1999; and

(4) Would not be a violation of paragraph (e) of this section.

14. Section 240.121 is amended by revising paragraphs (b), (c)(3) and (e), and adding paragraph (f) to read as follows:

**§ 240.121 Criteria for vision and hearing acuity data.**

* * * * *

(b) Fitness requirement. In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix F to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(c) * * *

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix F to this part.

* * * * *

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. In accordance with the guidance prescribed in appendix F to this part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely. The railroad shall provide its medical examiner with a copy of this part, including all appendices. If, after consultation with one of the railroad's designated supervisors of locomotive engineers, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (c) and (d) of this section, the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(f) As a condition of maintaining certification, each certified locomotive engineer shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section. This notification is required prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.

15. Section 240.123 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

**§ 240.123 Criteria for initial and continuing education.**

* * * * *

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules.

* * * * *

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

(1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Acceptable methods of obtaining familiarization include using hyrail trips or initial lite locomotive trips in compliance with what is specified in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

16. Section 240.127 is amended by revising paragraph (c)(2) to read as follows:

**§ 240.127 Criteria for examining skill performance.**

* * * * *

(c) * * *

(2) Conducted by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted;

* * * * *

17. Section 240.129 is amended by revising paragraph (c)(2) to read as follows:

**§ 240.129 Criteria for monitoring operational performance of certified engineers.**

* * * * *

(c) * * *

(2) Be designed so that each engineer shall be annually monitored by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted;

* * * * *

18. Section 240.213 is amended by revising paragraph (b)(3) to read as follows:

**§ 240.213 Procedures for making the determination on completion of training program.**

* * * * *

(b) * * *

(3) A qualified Designated Supervisor of Locomotive Engineers has determined that the person is familiar with the physical characteristics of the railroad or its pertinent segments.

19. Section 240.217 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (c)(2) to read as follows:

**§ 240.217 Time limitations for making determinations.**

(a) * * *

(1) A determination concerning eligibility and the eligibility data being relied on were furnished more than 366 days before the date of the railroad's certification decision;

(2) A determination concerning visual and hearing acuity and the medical

examination being relied on was conducted more than 366 days before the date of the railroad's recertification decision;

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision; or

(4) A determination concerning demonstrated performance skills and the performance skill testing being relied on was conducted more than 366 days before the date of the railroad's certification decision;

* * * * *

(c) * * *

(2) Rely on a certification issued by another railroad that is more than 36 months old.

* * * * *

20. Section 240.223 is amended by revising paragraph (a)(1) to read as follows:

**§ 240.223 Criteria for the certificate.**

(a) * * *

(1) Identify the railroad or parent company that is issuing it;

* * * * *

21. Section 240.225 is revised to read as follows:

**§ 240.225 Reliance on qualification determinations made by other railroads.**

(a) After December 31, 1991, a railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program shall address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. A railroad relying on another's certification shall determine that:

(1) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(2) The prior certification was for the same classification of locomotive or train service as the certification being issued under this section;

(3) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(4) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 240.125;

(5) The person has demonstrated the necessary performance skills concerning the railroad's operating rules in accordance with § 240.127.

(b) [Reserved].

22. Section 240.229 is amended by revising paragraph (c) to read as follows:

**§ 240.229 Requirements for joint operations territory.**

* * * * *

(c) A railroad that controls joint operations may rely on the certification issued by another railroad under the following conditions:

(1) The controlling railroad shall determine:

(i) That the person has been certified as a qualified engineer under the provisions of this part by the railroad which employs that individual;

(ii) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;

(iii) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and

(iv) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory; and,

(2) The railroad which employs the individual shall determine that the person called to operate on the controlling railroad is a certified engineer who is qualified to operate on that track segment; and

(3) Each locomotive engineer who is called to operate on another railroad shall:

(i) Be qualified on the segment of track upon which he or she will operate in accordance with the requirements set forth by the controlling railroad; and,

(ii) Immediately notify the railroad upon which he or she is employed if he or she is not qualified to perform that service.

* * * * *

23. Section 240.231 is added to subpart C to read as follows:

**§ 240.231 Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations.**

(a) Except as provided in paragraph (b) of this section, no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program.

(b) Except as provided in paragraph (c) of this section, if a locomotive engineer lacks qualification on the physical characteristics required by paragraph (a) of this section, he or she shall be assisted by a pilot qualified over the territory pursuant to the railroad's certification program.

(1) For a locomotive engineer who has never been qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, the pilot shall be a person qualified and certified as a locomotive engineer who is not an assigned crew member.

(2) For a locomotive engineer who was previously qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, but whose qualification has expired, the pilot may be any person, who is not an assigned crew member, qualified on the physical characteristics of the territory.

(c) Pilots are not required if the movement is on a section of track with an average grade of less than 1% over 3 continuous miles, and

(1) The track is other than a main track; or

(2) The maximum distance the locomotive or train will be operated does not exceed one mile; or

(3) The maximum authorized speed for any operation on the track does not exceed 20 miles per hour; or

(4) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer.

24. Section 240.305 is amended by revising paragraph (a) to read as follows:

**§ 240.305 Prohibited conduct.**

(a) It shall be unlawful to:

(1) Operate a locomotive or train past a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it; or

(2) Operate a locomotive or train at a speed which exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, shall be considered instances of failure to adhere to this section; or

(3) Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

(4) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by occupying main track or a segment of main track without proper authority or permission;

(5) Fail to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operate or permit to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218, subpart D, and appendix C to part 218);

(6) Be a Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraphs (a)(1) through (a)(5) of this section. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

* * * * *

25. Section 240.307 is amended by revising paragraphs (b)(2), (c) introductory text, (c)(2), (c)(10), (e) and adding paragraphs (i), (j), and (k) to read as follows:

**§ 240.307 Revocation of certification.**

* * * * *

(b) * * *

(2) Prior to or upon suspending the person's certificate, provide notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the investigating officer. The notice may initially be given either orally or in writing. If given orally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed to satisfy the written confirmation requirements of this section. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours.

* * * * *

(c) Except as provided for in paragraphs (d), (f), (i) and (j) of this section, a hearing required by this section shall be conducted in accordance with the following procedures:

* * * * *

(2) The hearing shall be conducted by a presiding officer, who can be any qualified person authorized by the railroad other than the investigating officer.

* * * * *

(10) No later than 10 days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding.

* * * * *

(e) A hearing required under this section may be consolidated with any disciplinary or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

* * * * *

(i) A railroad:

(1) Shall not determine that the person failed to meet the qualification requirements of this part and shall not revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under § 240.117(e)(1) through (e)(5) of this part; or

(2) May determine that the person meets the qualification requirements of this part and decide not to revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that the violation of § 240.117(e)(1) through (e)(5) of this part was of a minimal nature and had no direct or potential effect on rail safety.

(j) The railroad shall place the relevant information in the records maintained in compliance with § 240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 240.15 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section, becomes available either:

(1) Prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section; or

(2) Prior to the convening of the hearing provided for in this section;

(k) Provided that the railroad makes a good faith determination after a reasonable inquiry that the course of conduct provided for in paragraph (i) of this section is appropriate, the railroad which does not suspend a locomotive engineer's certification, as provided for in paragraph (a) of this section, is not in violation of paragraph (a) of this section.

26. Section 240.309 is amended by revising paragraphs (e) introductory text, (e)(3), (e)(5), (e)(7), and (e)(8), removing paragraph (e)(10) and redesignating the second set of paragraphs (e) introductory text, (e)(1), (e)(2) and (e)(3) as paragraph (h) introductory text, (h)(1), (h)(2) and (h)(3), and revising them to read as follows:

**§ 240.309 Railroad oversight responsibilities.**

* * * * *

(e) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

* * * * *

(3) Incidents involving noncompliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

* * * * *

(5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(6) Incidents involving noncompliance with the provisions of restricted speed, and the operational equivalent thereof, that must be reported under the provisions of part 225 of this chapter;

(7) Incidents involving occupying main track or a segment of main track without proper authority or permission;

(8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with

an unauthorized or disabled safety device in the controlling locomotive;

* * * * *

(h) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

27. Section 240.403 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 240.403 Petition requirements.**

* * * * *

(d) A petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as untimely except that the Locomotive Engineer Review Board for cause shown may extend the petition filing period at any time in its discretion:

(1) Provided the request for extension is filed before the expiration of the period provided in this paragraph (d); or

(2) Provided that the failure to timely file was the result of excusable neglect.

(e) A party aggrieved by a Board decision to deny a petition as untimely may file an appeal with the Administrator in accordance with § 240.411.

28. Section 240.405 is amended by revising paragraphs (a) and (c), and adding paragraph (d)(3) to read as follows:

**§ 240.405 Processing qualification review petitions.**

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall contain the docket number assigned to the petition and a statement of FRA's intention that the Board will render a decision on this petition within 180 days from the date that the railroad's response is received or from the date upon which the railroad's response period has lapsed pursuant to paragraph (c) of this section.

* * * * *

(c) The railroad will be given a period of not to exceed 60 days to submit to FRA any information that the railroad considers pertinent to the petition. Late filings will only be considered to the extent practicable.

(d) * * *

(3) Submit the information in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590;

* * * * *

29. Section 240.411 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

**§ 240.411 Appeals.**

* * * * *

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) Where a party files an appeal from a Locomotive Engineer Review Board decision pursuant to § 240.403(e), the Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

30. Appendix A to part 240 is amended by adding penalty entries for §§ 240.104 and 240.231 and by revising the penalty entries for §§ 240.105, 240.111, 240.117, 240.121, 240.225, 240.229, 240.305, 240.307, 240.309 and footnote number 1 to read as follows:

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**Appendix A to Part 240—Schedule of Civil Penalties [1]**

| Section | Violation | Willful violation |
|---|---|---|
| * * * * * * | | * |
| 240.104—Allowing uncertified person to operate non-traditional locomotives | 5,000 | 10,000 |
| 240.105—Failure to have or execute adequate procedure for selection of supervisors | 2,500 | 5,000 |
| * * * * * * | | * |
| 240.111—Furnishing Motor Vehicle Records: | | |
| (a) Failure to action required to make information available | 1,000 | 2,000 |
| (b) Failure to request: | | |
| (1) local record | 1,000 | 2,000 |
| (2) NDR record | 1,000 | 2,000 |
| (f) Failure to request additional record | 1,000 | 2,000 |
| (g) Failure to notify of absence of license | 750 | 1,500 |
| (h) Failure to submit request in timely manner | 750 | 1,500 |
| (i) Failure to report within 48 hours or railroad taking certification action for not reporting earlier than 48 hours | 1,000 | 2,000 |
| * * * * * * | | * |
| 240.117—Consideration of Operational Rules Compliance Records: | | |
| (a) Failure to have program and procedures | 5,000 | 10,000 |
| (b–j) Failure to have adequate program or procedure | 2,500 | 5,000 |
| * * * * * * | | * |
| 240.121—Failure to have adequate procedure for determining acuity | 2,500 | 5,000 |
| (f) Failure of engineer to notify | 2,500 | 5,000 |
| 240.123—Failure to have: | | |
| (b) Adequate procedures for continuing education | 2,500 | 5,000 |
| (c) adequate procedures for training new engineers | 2,500 | 5,000 |

| Section | Violation | Willful violation |
|---|---|---|
| * * * * * * | | * |
| 240.225—Railroad Relying on Determination of Another: | | |
| (a) Failure to address in program or failure to require newly hired engineer to take entire training program | 5,000 | 7,500 |
| (1) Reliance on expired certification | 2,500 | 5,000 |
| (2) Reliance on wrong class of service | 2,500 | 5,000 |
| (3) Failure to familiarize person with new operational territory | 2,000 | 4,000 |
| (4) Failure to determine knowledge | 2,000 | 4,000 |
| (5) Failure to determine performance skills | 2,000 | 4,000 |
| * * * * * * | | * |
| 240.229—Requirements for Joint Operations Territory: | | |
| (a) Allowing uncertified person to operate | 2,000 | 4,000 |
| (b) Certifying without making determinations or relying on another railroad | 2,500 | 5,000 |
| (c) Failure of. | | |
| (1) controlling railroad certifying without determining certification status, knowledge, skills, or familiarity with physical characteristics | 4,000 | 8,000 |
| (2) employing railroad to determine person's certified and qualified status for controlling railroad | 4,000 | 8,000 |
| (3) person to notify employing railroad of lack of qualifications | 4,000 | 8,000 |
| (d) Failure to provide qualified person | 2,000 | 4,000 |
| 240.231—Persons Qualified on Physical Characteristics in Other Than Joint Operations: | | |
| (a) Person unqualified, no exception applies or railroad does not adequately address in program | 5,000 | 10,000 |
| (b) Failure to have a pilot. | | |
| (1) for engineer who has never been qualified | 4,000 | 8,000 |
| (2) for engineer previously qualified | 2,500 | 5,000 |
| * * * * * * | | * |
| 240.305—Prohibited Conduct: | | |
| (a) Unlawful: | | |
| (1) passing of stop signal | 2,500 | 5,000 |
| (2) control of speed | 2,500 | 5,000 |
| (3) brake tests | 2,500 | 5,000 |
| (4) occupancy of main track | 2,500 | 5,000 |
| (5) tampering on operation with disabled safety device | 2,500 | 5,000 |
| (6) supervisor, pilot, or instructor fails to take appropriate action | 2,500 | 5,000 |
| (b) Failure of engineer to: | | |
| (1) carry certificate | 1,000 | 2,000 |
| (2) display certificate when requested | 1,000 | 2,000 |
| (c) Failure of engineer to notify railroad of limitations or railroad requiring engineer to exceed limitations | 4,000 | 8,000 |
| (d) Failure of engineer to notify railroad of denial or revocation | 4,000 | 8,000 |
| 240.307—Revocation of Certification: | | |
| (a) Failure to withdraw person from service | 2,500 | 5,000 |
| (b) Failure to notify, provide hearing opportunity, or untimely procedures | 2,500 | 5,000 |
| (c–h) Failure of railroad to comply with hearing or waiver procedures | 1,000 | 2,000 |
| (j) Failure of railroad to make record | 2,500 | 5,000 |
| (k) Failure of railroad to conduct reasonable inquiry or make good faith determination | 5,000 | 10,000 |
| 240.309—Oversight Responsibility Report: | | |
| (a) Failure to report or to report on time | 1,000 | 2,000 |
| (b–h) Incomplete or inaccurate report | 2,000 | 4,000 |
| * * * * * * | | * |

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

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31. Appendix F is added to read as follows:

## Appendix F to Part 240—Medical Standards Guidelines

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 240.121 and 240,207.

(2) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

| Accepted tests | Failure criteria |
|---|---|
| **PSEUDOISOCHROMATIC PLATE TESTS** | |
| American Optical Company 1965 | 5 or more errors on plates 1–15. |
| AOC—Hardy-Rand-Ritter plates—second edition | Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book) |

| Accepted tests | Failure criteria |
|---|---|
| Dvorine—Second edition | 3 or more errors on plates 1–15 |
| Ishihara (14 plate) | 2 or more errors on plates 1–11. |
| Ishihara (16 plate) | 2 or more errors on plates 1–8. |
| Ishihara (24 plate) | 3 or more errors on plates 1–15. |
| Ishihara (38 plate) | 4 or more errors on plates 1–21. |
| Richmond Plates 1983 | 5 or more errors on plates 1–15. |
| **MULTIFUNCTION VISION TESTER** | |
| Keystone Orthoscope | Any error. |
| OPTEC 2000 | Any error. |
| Titmus Vision Tester | Any error. |
| Titmus II Vision Tester | Any error. |

(3) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that ''yellow signals'' do not always appear to be the same. It is not acceptable to use ''yarn'' or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and § 240.121(c)(3).

(4) An examinee who fails to meet the criteria in the chart, may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria from operating the train at night, during adverse weather conditions or under other circumstances. The intent of § 240.121(e) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely operate a locomotive or train. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(5) Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Issued in Washington, DC, on September 30, 1999.

**Jolene M. Molitoris,**

*Administrator.*

[FR Doc. 99–28930 Filed 11–5–99; 8:45 am]

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federal register

Monday
November 8, 1999

# Part IV

# Department of Housing and Urban Development

## Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 2000; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4538–N–01]**

## Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 2000

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of funding availability for Fiscal Year 2000.

**SUMMARY:** This Notice of Funding Availability (NOFA) announces the availability of approximately $ 54,558,000 in Fiscal Year 2000 funding for the HUD-administered Small Cities in New York State under the Community Development Block Grant Program. The funds announced in this NOFA provide small communities and counties in New York State with an opportunity to propose programs that focus on creating or expanding job opportunities, addressing housing needs, or meeting local public facilities needs. HUD encourages communities to propose programs that are creative and innovative in addressing the needs of their community. A community may propose a program that is ''single purpose'' in nature addressing a specific area of need. The maximum amount for a Single Purpose grant is $400,000 ($600,000 for counties). In the body of this NOFA, is information regarding allocation amounts, eligibility, selection criteria and rating factors, and the application submission process.

This NOFA is the first step in a transitional process to transfer administration of the Small Cities program to the State of New York, as provided for in the FY 2000 Appropriations Act for HUD. According to state officials, New York is required under state law to take certain actions prior to making funding available to Small Cities participants. In addition, there are certain federal law requirements which must be fulfilled. In order to ensure an uninterrupted flow of CDBG funds to Small Cities while the State executes the steps necessary to run the program, the Department will accept applications for funding at this time. Applicants should follow the normal application process during this transitional period. It is anticipated that the CDBG funding process will be entirely assumed by the State upon completion of the necessary actions by the State. The Department will work closely with the State and with Small Cities participants during this period to effect a smooth transition.

**APPLICATION DUE DATE:** Applications are due no later than March 7, 2000. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4 p.m. on, or postmarked by, March 7, 2000. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

**ADDRESSES, APPLICATION SUBMISSION PROCEDURES, AND APPLICATION KITS:**

*Addresses for Submitting Applications:* Applications must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.)

*Mailed Applications.* Applications, if mailed, must be postmarked no later than midnight on March 7, 2000 and received within 10 calendar days of the deadline.

*Hand Carried Applications.* If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4 p.m. (local time) on March 7, 2000.

*Application Kits.* Application kits may be obtained from HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.) In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at 1–800–998–9999. Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

**FOR FURTHER INFORMATION CONTACT:** Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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## I. Purpose and Substantive Description

### *A. Authority and Background*

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (the ''1974 HCD Act''); 24 CFR part 570, subpart F, for the New York State Small Cities program.

2. Background

Title I of the 1974 HCD Act authorizes the Community Development Block Grant (CDBG) Program. Section 106(d) of Title I permits States, in such manner and at such time as the Secretary of HUD shall prescribe, to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. HUD's regulations at 24 CFR part 570, subpart F describe the requirements for HUD's administration of the CDBG Program in nonentitled areas (the ''Small Cities Program''). This Notice of Funding Availability (NOFA) supplements subpart F of 24 CFR part 570.

In accordance with 24 CFR 570.421(b), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. (the ''HUD Reform Act''), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 2000. This NOFA announces the allocation of funds for a Single Purpose grant competition, and establishes the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold requirements for funding eligibility, and the selection criteria for rating and scoring applications for Single Purpose grants. Communities are encouraged to apply for projects which support the Canal Corridor Initiative, an economic development effort funded through the Small Cities program.

Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office (see Section II. of this NOFA). In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at 1–800–998–9999.

3. Other Program Requirements

a. *Abbreviated Consolidated Plan.* Each jurisdiction that applies for funds under this NOFA must have submitted a consolidated plan, as provided in 24 CFR part 91. An applicant for more than one grant under this NOFA need submit only one consolidated plan or abbreviated consolidated plan, as applicable, covering the activities proposed in all applications. A jurisdiction that does not expect to be a participating jurisdiction in the HOME program under 24 CFR part 92 may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD (see 24 CFR 91.235). Any applicant that plans to undertake a housing activity with funds under this NOFA needs to prepare and submit, at a minimum, an abbreviated consolidated plan that is appropriate to the types and amounts of housing assistance sought under this NOFA.

Even if the community's Small Cities application is approved, HUD must also approve an abbreviated consolidated plan that covers activities proposed in such application(s) before the community may receive Small Cities funding. Further, that applicant must also include a certification that the housing activities in its CDBG Small Cities application are consistent with the consolidated plan. The applicant's consolidated plan must describe the jurisdiction's priority nonhousing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.235(c)(2)).

The abbreviated consolidated plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation requirements before they may be submitted to HUD (see 24 CFR 570.431).

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be March 7, 2000 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable but does not have an approved consolidated plan will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. If HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time (but not more than 60 days from the date that the conditional approval is announced), HUD will rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations in 24 CFR part 135. One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low-and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in 24 CFR part 135.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Section 102 of the 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 are applicable to assistance awarded under this NOFA as follows:

a. *HUD Responsibilities.* (1) *Documentation and Public Access.* 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 at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 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 15.

b. *Units of General Local Government Responsibilities.* Units of general local government awarded assistance under this NOFA must ensure that documentation and other information regarding each application submitted to the recipient by a subsequent recipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subsequent recipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs.

*B. Allocation Amounts*

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 2000 total approximately $54,558,000. The exact amount of funds available for this Small Cities CDBG funding competition is not known at this time.

In FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative published in the **Federal Register** on December 3, 1996 (61 FR 64196) and subsequently amended on December 18, 1996 (61 FR 66692)). In FY 1999 HUD carried out a second canal Corridor Initiative (see the NOFA for this initiative published in the **Federal Register** on November 25, 1998 (63 FR 65456)). Pursuant to those NOFAs, HUD approved Canal Corridor applications for approximately $6.5 million and $1 million in FY 1997 and FY 1999 New York Small Cities funds, respectively.

HUD must also be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the 1974 HCD Act, as amended, for projects approved under the Canal Corridor Initiative NOFA. HUD approved approximately $6.55 million in FY 1997 Small Cities funds for Canal Corridor grants. However, at this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during FY 1999 is not known.

Of the approximately $54,558,000 available under this NOFA, approximately $47,024,000 (87.8%) is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Buffalo Field Office. Approximately $6,534,000 (12.2%) is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office.

Once HUD has determined the final amount of funds available for competitive distribution under this NOFA, HUD will allocate such funds in the same ratio as above to HUD's Buffalo and New York Offices. However, HUD has the option to revise these final allocations between offices by up to $400,000 in order to assure full distribution of funds. Finally, HUD reserves the right, in its sole discretion, not to award all of the funds available under this NOFA and to make any such funds available in a future NOFA, if an insufficient number of applications are determined fundable under this NOFA.

2. Imminent Threats

All imminent threat projects must meet the national objective of benefitting low-and moderate-income persons. HUD may elect to set aside up to 15 percent of the FY 2000 allocations for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

*C. Eligibility*

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding:

a. Metropolitan cities;

b. Urban counties;

c. Units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and

d. Indian tribes (as defined in section 102(a)(17) of the 1974 HCD Act).

Applications may be submitted individually, or jointly, as described in 24 CFR 570.422.

2. Previous Grantees

Eligible applicants that previously have been awarded Small Cities Program CDBG grants are also subject to an evaluation of capacity and performance (see generally, section I.E.2. of this NOFA). Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.)

In FY 1996 an additional threshold was established which relates to the submission of annual Performance Assessment Reports (PARs). A PAR was due on October 31, 1999, for each grant which a local government received prior to April 1, 1998. *Failure to submit a PAR is not a curable technical deficiency under this NOFA.*

Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (*i.e.,* benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community; see § 570.208), and each grant must meet the requirements for compliance with the primary objective of principally benefiting low- and moderate-income persons, as required under § 570.420(e).

The CDBG program requires that not less than 70 percent of the total of grant funds from a grant made under this NOFA and any Section 108 Loan Guarantee funds received within a fiscal year must be expended for activities that benefit low- and moderate-income persons under the criteria of 24 CFR

570.208(a). The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.420(e). In general, all applications must describe the projects and activities proposed in sufficient detail that compliance with these and other applicable statutory, regulatory, and NOFA provisions can be determined.

4. Anti-Pirating Prohibition

Section 588 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) amended section 105(h) of the 1974 HCD Act as follows:

(h) prohibition on use of assistance for employment relocation activities. Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

Accordingly, HUD will not award any grant for any project that would violate this prohibition.

5. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

*D. Grants*

1. General

HUD will fund only Single Purpose grants which are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of activities. Each project must address community development needs in one of the following problem areas:

a. Housing;
b. Public Facilities; or
c. Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (*i.e.*, separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can ''stand on their own'' in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

2. Grant Limits and Funding Requirements

The maximum annual grant for a Single Purpose grant is $400,000, except that counties may apply for up to $600,000 in Single Purpose funds, if the project will be carried out in more than one community. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

With respect to grant limits for joint applicants, the maximum amount that may be awarded pursuant to a joint application is the maximum single grant limit established above for communities and counties multiplied by the number of participants in the cooperation agreement, provided that for purposes of determining such a multiple grant limit, and in order to receive that amount, a participating joint applicant must receive a substantial direct benefit from the activities proposed in the application and must not be acting solely on behalf of or in conjunction with another jurisdiction for the sole purpose of raising the maximum grant amount that may be awarded. In addition, the statistics of each participant counted for maximum grant limits purposes shall also be used for purposes of the selection factors under section I.E.3. of this NOFA.

3. Applications With Multiple Projects

If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the limits identified in section I.D.2. of this NOFA.

*E. Selection Criteria/Ranking Factors and Final Selection*

1. General

Complete applications received from eligible applicants by March 7, 2000 will be rated and scored by HUD. Applications are rated and scored against five factors. These five factors are discussed in more detail in section I.E.3. of this NOFA.

Applicants should note that when an applicant proposes to use Section 108 Loan Guarantee assistance as a partial funding resource for a proposed project under this NOFA, HUD, when applying the rating factors to such projects, will consider the applicant's description of the Section 108 assisted project in arriving at the score for a particular factor. An applicant may have an approved 108 Loan Guarantee application, submit a full Section 108 Loan Guarantee application or provide a description of the Section 108 Loan Guarantee application. (The description must be specific as to the amount of the Section 108 Loan Guarantee commitment that the applicant will request and the purpose for which the 108 Loan Guarantee proceeds will be used.)

However, any such CDBG application under this NOFA that is fundable and relies upon Section 108 Loan Guarantee assistance to partially carry out the activities and does not have an approved Section 108 Loan Guarantee commitment will receive a conditional approval. If the applicant does not submit and HUD does not approve the required Section 108 Loan Guarantee application within a reasonable period of time (see section II.C.1.(f)(2) of this NOFA), HUD may rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

2. Performance Evaluation

As noted in section I.C. of this NOFA, previous recipients of Small Cities Program CDBG grants are subject to an evaluation of performance and continuing capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information that becomes available before grant awards are announced. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual community assessments. The HUD office may request and consider additional information in cases where it

is essential to make the required performance judgments (see 24 CFR 570.423(d), captioned ''Thresholds'').

No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by an evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 2000 and pertain to all Single Purpose Grants, including grants pursuant to approved multiyear plans:

(1) FY 1994 and earlier—Grants must be closed out.

(2) FY 1995—Grant funds 100 percent expended.

(3) FY 1996—Grant funds 75 percent expended.

(4) FY 1997—Grant funds 30 percent expended.

(5) FY 1998 and FY 1999—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

**Note:** These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after March 7, 2000 be accepted, unless specifically requested by HUD.

b. *Compliance with Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by:

(a) An outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) An adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance;

(c) A deferral of Federal funding based upon civil rights violations;

(d) A pending civil rights suit brought against it by the Department of Justice; or

(e) An unresolved charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. For example, an application will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program.

The Director of the Community Planning and Development Division of the HUD field office may provide an exception to this prohibition if the unit of general local government has made a good faith effort to clear the audit finding. No exception will be provided if funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) on October 31st, for the period ended September 30th, for all open grants awarded before April 1st of the same year. For an application for FY 2000 funds to be considered for funding, the applicant must be current in its submission of PARs. Failure to submit a PAR is not a curable technical deficiency under section V. of this NOFA.

3. Five Factor Rating

As noted in section I.E.1. of this NOFA, all applications are rated and scored against five factors. These five factors are:

- Need based on absolute number of persons in poverty;
- Need based on the percent of persons in poverty;
- Program Impact;
- Outstanding performance in fair housing and equal opportunity; and
- Welfare to Work Initiative

A maximum of 605 points is possible under this system with the maximum points for each factor being:

- Need—absolute number of persons in poverty *(up to 75 points)*
- Need—percent of persons in poverty *(up to 75 points)*
- Program Impact *(up to 400 points)*
- Outstanding performance—FHEO
- a. Provision of fair housing choice *(up to 20 points)*
- b. New Horizons Fair Housing Assistance Project *(up to 20 points)*
- c. Equal opportunity employment *(up to 10 points)*
- Welfare to Work Initiative *(up to 5 points)*

*Total: 605 points*

Each of the five factors is outlined below. All awarded points for each factor will be rounded to the nearest whole number.

a. *Need—Absolute number of persons in poverty (Up to 75 points).* HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Applicants which are county governments are rated separately from all other applicants. For applications from joint applicants, data from each participating unit of general local government (as described in 24 CFR 570.422) will be aggregated. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. *Need—Percent of persons in poverty (up to 75 points).* HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Applicants in each group are compared in terms of the percentage of their population below the poverty level. For applications from joint applicants, data from each participating unit of general local government will be aggregated. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. *Program Impact (up to 400 points).* In evaluating program impact, HUD will consider various factors. Within each activity type described below is a set of factors and scoring weights that will be used. Each proposal will be rated using the factors and scoring weights described in the selection criteria below.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

For projects consisting of more than one activity, the activity that directly

addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: (1) be a relatively small amount in terms of funds requested; (2) clearly be in support of the housing objective; and (3) demonstrate a positive and direct link to the national objective. For incidental activities claiming benefit to low- and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low- and moderate-income requirement. Funds should not be requested for activities that are not incidental to and in support of the principal activity.

In addressing program impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (*e.g.*, number of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e., separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can ''stand on their own'' in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernible benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating. HUD will not make a Small Cities grant when it determines that the grant will only have a minimal or insignificant impact on the grantee. For the purposes of this NOFA, any application not scoring above 100 points of the possible 400 points for the Program Impact factor will be deemed to have a minimal or insignificant impact on the grantee and will not be funded regardless of the number of points the applicant may otherwise receive or the ranking it attains as a result of its score due to points received on other rating factors.

(1) *Program Impact—Housing.* There are three distinct types of Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(a) *Housing Rehabilitation.* The following factors and weights will be used to evaluate proposed housing rehabilitation projects:

(i) *Severity of Need (proportion of units that are substandard and extent of disrepair) (up to 160 points of the total Program Impact score).* Each application should provide information on the total number of units in the project area, the number that are substandard, and the number of substandard units occupied by low- and moderate-income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications.

The application also should describe the date and methodology of any surveys used to obtain the information, including any explicit and detailed definition of ''substandard.'' Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

(ii) *Extent to which proposed program will resolve the identified problem (up to 50 points of the total Program Impact score).* Applicants should note that programs that propose minimal rehabilitation may not necessarily be addressing the identified problem.

(iii) *Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score).* The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

HUD encourages communities to support the Healthy Homes Secretarial initiative. Applicants applying for Small Cities CDBG funds to rehabilitate housing and/or construct new housing

units may support these initiatives by including Healthy Homes features in their program design, such as window locks, deadbolt locks on doors, locks or safety latches on medicine cabinets, smoke detectors, carbon monoxide detectors, energy efficient windows, elimination of lead-based paint, and any other activities that contribute to Healthy Homes, especially regarding children.

(iv) *Leveraging of other resources (up to 60 points of the total Program Impact score).* HUD encourages communities to design projects supplementing Small Cities rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower-income persons. In such cases, the Small Cities grant subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low-income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

(v) *Cost per unit (up to 80 points of the Program Impact score).* HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(b) *Creation of New Housing.* CDBG funds may be used to support the construction of new housing units, the creation of new units proposed through conversion of existing structures (currently vacant structures or conversion of nonresidential structures for residential use) and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible nonprofit entity pursuant to 24 CFR 570.204, or as last resort housing. Note that for purposes of specific uses of Section 108 Loan Guarantee proceeds, eligibility is limited to assistance for community economic development projects under § 570.204(a)(2).

See also 24 CFR 570.703(i)(2). Support of new construction could include nonconstruction assistance such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

The following factors and weights will be used to evaluate proposed projects for the creation of new housing:

(i) *Severity of need for new housing affordable to low- and moderate-income persons shown in the project area (up to 160 points of the total Program Impact score).* Where the creation of new units is proposed, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information.

(ii) *Extent to which the proposed program will create new housing units affordable to low- and moderate-income persons (up to 50 points of the total Program Impact score).* The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide nonconstruction assistance.

(iii) *Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score).* Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

(iv) *Leveraging of other resources (up to 60 points of the total Program Impact score).* Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact.

(v) *Cost per unit (up to 60 points of the total Program Impact score).* HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(vi) *Extent to which the project would affirmatively further fair housing (either through spatial deconcentration of minorities throughout the community or through spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration) (up to 20 points of the total Program Impact score).*

(c) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low- and moderate-income persons in becoming homeowners. This may include activities authorized under 24 CFR 570.201(n) for purposes of use of Small Cities grant funding. However, activities eligible solely under 24 CFR 570.201(n) are not permitted uses of Section 108 loan guarantee proceeds. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low-and moderate-income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project. Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low- and moderate-income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counseling services, including counseling pertaining to Federal, State, and local fair housing laws and requirements, which would be provided to persons selected to participate in the proposed project. Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to complement available public sector funds, including CDBG money.

The following factors and weights will be used to evaluate proposed direct homeownership assistance projects:

(i) The extent to which the application demonstrates severity of homeownership needs in the community *(up to 160 points of the total Program Impact score).*

(ii) The extent to which: the project design is appropriate to meet demonstrated homeownership needs; the project would make effective use of available funds; alternative approaches to meeting the homeownership needs have been considered; and the proposed project would target first-time homebuyers *(up to 60 points of the total Program Impact score).*

(iii) The extent to which the project is feasible and likely to be implemented in accordance with a project schedule *(up to 50 points of the total Program Impact score).*

(iv) The extent to which the proposed project would: complement other Federal, State or local programs that promote homeownership; and utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions considering the cost per unit *(up to 80 points of the total Program Impact score).*

(v) The extent to which the proposed project would provide homeownership counseling to project participants *(up to 30 points of the total Program Impact score).*

(vi) The extent to which the project would affirmatively further fair housing through proposed initiatives to reach out to potential minority homeowners and/or to promote homeownership opportunities throughout the community *(up to 20 points of the total Program Impact score).*

(2) *Program Impact—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible; the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included.

The following factors and weights will be used to evaluate proposed public facilities projects affecting the public health and safety:

(a) *Severity of Need (up to 160 points of the total Program Impact score).* The applicant should describe, including appropriate documentation, as best as possible, the degree to which the need is serious, current and requires prompt attention.

(b) *Extent to which the proposed program will resolve the identified problem and public health and safety concerns (up to 50 points of the total Program Impact score).* The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(c) *Feasibility (up to 50 points of the total Program Impact score).* The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered, and the funding requested will be sufficient to resolve the problem. Total project costs should be documented by qualified third-party estimates, and be as recent as possible.

(d) *Extent of benefit to affected persons and the cost per household (up to 80 points of the total Program Impact score).*

(e) *Leveraging other resources to minimize project costs (up to 40 points of the total Program Impact score).* To the extent that Small Cities grant funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds.

(f) *Extent to which the project addresses deficiencies in accessibility for disabled persons and/or provides a significant increase in the number of public facilities accessible to disabled persons (up to 20 points of the total Program Impact score).*

(3) *Program Impact—Economic Development Projects.*

As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an ''all or nothing'' situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

Section 807(c)(3) of the Housing and Community Development Act of 1992 (42 U.S.C. 5305 note) provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the 1974 HCD Act to facilitate economic development through commercial microenterprises. A ''microenterprise'' is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. While not a requirement, this intent should be considered in developing an economic development application.

It is noted that in accordance with section 105 of the 1974 HCD Act, HUD published on January 5, 1995 (60 FR 1922), a final rule relating to evaluation and selection of Economic Development activities by grantees, including evaluation of public benefit (generally codified at 24 CFR 570.209). Economic Development applications must be specific enough to permit a determination that such threshold public benefit standards are met.

HUD encourages applicants to submit economic development applications which build on or are related to Canal Corridor Initiative activities.

(a) *Scoring.* The following factors and weights will be used to evaluate proposed economic development projects:

(i) *The extent to which the project will have a direct and positive impact on employment opportunities for persons from low- and moderate-income households (up to 160 points of the total Program Impact score).* Applicants are reminded that for an activity to be consistent with the statutory objective of low- and moderate-income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low- and moderate-income families. Applicants must fully document and describe employment

benefits. In addition, applicants should address the following issues:

*a.* All employment data must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

*b.* The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

*c.* The use of CDBG funds to assist a business with transferring to a different community will generally be considered as having *no* employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. An applicant that fails to document a basis for such an exception could receive a substantially lower score under this ranking factor. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low-income citizens to take control of their lives.

(ii) *The extent to which market analysis and other risk data provides assurance that the proposed project will be successful (up to 50 points of the total Program Impact score).*

(iii) *The extent to which the proposed project addresses all appropriate feasibility issues (including extent of firm private financing commitments) and the extent to which there is reasonable assurance that the project will be completed in a timely manner (up to 50 points of the total Program Impact score).* Projects that are likely to encounter feasibility issues which would hinder the timely completion of the project will receive a lower score under this criterion. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact. In order to receive a higher rating, the costs must be reasonable (*i.e.*, not inflated).

(iv) *Extent to which the project provides Public Benefits relative to other proposals' cost per job (up to 80 points of the total Program Impact score).*

(v) *The extent to which Small Cities grant funds will leverage the investment of private and other dollars and the extent to which Small Cities grant funds are NOT used to substitute for private financing (up to 60 points of the total Program Impact score).* Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which provide the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

In addition to the standard submission requirements, HUD will evaluate the following as part of its Eligibility Review prior to considering an application for funding in the FY 2000 competition.

(b) *The Appropriate Determination.* HUD has developed guidelines for review of economic development activities undertaken with CDBG funds. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating project costs and financial requirements are not. The guidelines for evaluating project costs are to ensure:

(i) *Reasonableness of Proposed Costs.* The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

(ii) *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver.

(iii) *No Substitution of CDBG Funds (including Section 108 Loan Guarantee proceeds) for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (*e.g.*, real estate, user project, capital equipment, working capital, *etc.*). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

(iv) *Establishment of Small Cities Grant Financing Terms.* The amount of Small Cities grant assistance provided to a for-profit business ideally should be limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting Small Cities grant funds for available private debt or cash equity. The applicant should structure its repayment terms so that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. Equity funds generally should bear the greatest risk of all funds invested in a project.

(v) *Public Benefit Determination.* The applicant's activities must meet the public benefit standards found in 24 CFR 570.209(b). Activities covered by these guidelines (subject to certain exceptions) must, in the aggregate, either:

- Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or
- Provide goods or services to residents of an area, such as the number of low- and moderate-income persons

residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(c) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(d) *Section 105(a)(17) Requirements.* Section 105(a)(17) of the 1974 HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(i) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(ii) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(iii) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this criterion without any additional documentation);

(iv) Creates or retains businesses owned by community residents;

(v) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(vi) Provides technical assistance to promote any of the activities under (i) through (v) of this subsection.

(e) *National Objectives.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low- and moderate-income persons in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

The application must contain adequate documentation to explain fully, and to support, the process that will be used to ensure that project(s) comply with the low- and moderate-income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process. In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the income of the entire family must be considered. This consideration is necessary because a ''low- and moderate-income person'' is defined as a member of a low- and moderate-income family.

HUD will accept a written certification by a person of his or her family income and size to establish low- and moderate-income status. The certification may simply state that the person's family income is below that required to be low- and moderate-income in that area. The form for such certification must include a statement that the information is subject to verification.

In addition to person-by-person income certifications discussed above, under section 105(c)(4) of the 1974 HCD Act, an employee may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons, and a presumption of low- and moderate-income may also be made if the business is located in and/or the employee resides in a census tract (or block numbering group) where 20 percent of the residents are in poverty. The key consideration in this presumption is the location of the business or employee. The documentation to support the presumption must contain the location. (See 24 CFR 570.209(b)(2)(v) for more information on this subject.)

In cases where an activity (*e.g.*, a shopping center or a super market) provides goods and services to residents of an area, the low- and moderate-income objective may be met by the area benefit requirements at 24 CFR 570.208(a)(1). To document low and moderate income, 51 percent of the residents of the area or block numbering group must be low- and moderate-income persons.

(f) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic development projects. The material should be submitted for each proposed activity, whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since economic development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

(i) A letter from each appropriate developmental entity which includes at least the following information:

*a.* A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

*b.* The estimated costs for the project, including any working capital requirements.

*c.* A discussion of all financing sources, including the need for CDBG, the terms of the CDBG assistance, and the proposed lien structure. The amount, source, and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

*d.* A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each permanent position to be created. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income households will be accorded first consideration for employment opportunities.

*e.* A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, impact fees, corporate authorizations, infrastructure, environment and relocation.

*f.* An analysis and summary of market and other data which supports the anticipated success of the project.

*g.* A statement as to whether or not the project will result in the relocation

of any industrial or commercial plant, facility, or operation from one area to another. If the CDBG funded project will result in the relocation of a plant, facility, or operation, then the application shall include a statement as to the total number of jobs that are currently filled at the existing/current plant, facility, or operation and the number of jobs that are projected to exist at that former plant, facility, or operation after the proposed CDBG funded project is complete and fully operational.

(ii) A development budget showing all costs for the project, including professional fees and working capital.

(iii) Documentation to support project costs. Documentation generally should be from a third-party source and be consistent with the following guidelines:

*a.* Acquisition costs should be supported by an appraisal.

*b.* Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

*c.* Machinery and equipment costs should be supported by vendor quotes.

*d.* Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

(iv) Letters from all financing sources discussing (at a minimum) the amount and terms of the proposed financing, and the current status of the application for funding.

(v) Historical financial data of the development entity, preferably for the last 3 years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

(vi) A 2- to 5-year cash flow pro forma with accompanying notes citing basic assumptions.

(vii) The applicant's assessment of the project's consistency with the CDBG program eligibility requirements and standards for evaluating project cost, financial requirements and public benefit.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 50 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a ''minority'' is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the separate category of ''women'' is not considered a minority.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following factors will be used to judge outstanding performance in these areas. Please note that points for outstanding performance may be claimed under each criterion:

(1) *Housing Achievements (40 points total).* (a) *Provision of Fair Housing Choice (20 points).* (i) HUD will consider the extent to which the applicant demonstrates that it has provided housing assistance for low and moderate income families that results in housing choice in areas outside of minority or low- and moderate income concentration. Such actions may include the construction or rehabilitation of housing in areas outside of minority or low and moderate income concentration; the provision of Section 8 Existing Certificate or Voucher assistance in ways that lessen concentration of such assisted units within minority and low- and moderate income concentrated areas; or the provision of direct homeownership assistance such as homeownership counseling, downpayment assistance, or first-time homebuyer assistance. If applicable, the applicant may use a map to show the general location(s) of individual projects and/or housing occupied by Section 8 Existing Program participants.

(ii) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of paragraphs (a) and (b) in order to receive points. Points will be awarded where more than one-half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

- The neighborhood experienced revitalization;
- The amount of displacement was substantial;
- Displacement was caused by private reinvestment;
- Low- and moderate-income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) *Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing (20 points).* The applicant must demonstrate that it is implementing or plans to implement a Fair Housing Strategy on its own or demonstrate that it does or plans to participate in a county/State or regional analysis of impediments to fair housing choice. A fair housing strategy must include the following elements:

- Local compliance activities;
- Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and persons with disabilities;
- Assistance to minority families;
- Special programs (e.g., utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.);
- Assistance to minority families through mobility counseling programs and other activities that encourage such families to pursue such housing opportunities outside of minority concentrated areas;
- Special programs targeted at lenders, builders, realtors, and other housing industry groups; and
- Affirmative marketing strategies targeted at those groups in the eligible population considered least likely to apply without special outreach.

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Opportunity Performance.* HUD encourages the use of minority

contracting, although it will not be used as an evaluation factor in this NOFA.

(3) *Equal Opportunity Employment (10 points).* Under this factor, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

e. *Welfare to Work Initiative (5 points).* Five bonus points will be added to proposals which support the Welfare to Work Initiative. These points will be added to those proposals that include activities which will provide assistance to persons moving from welfare to work. Examples of such activities are: jobs, day care slots, training or transportation assistance.

4. Final Selection

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the program areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. If an applicant submits two applications under this NOFA, it may receive up to two single grants in the amounts of the project or projects applied for in those applications which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

- The project receiving the highest program impact rating will be funded;
- If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded;
- If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded; and
- If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

## II. Application and Funding Award Process

### *A. Obtaining Applications*

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068. Telephone (212) 264–2885 x3401,

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 551–5755 x5800.

In addition, application kits and additional information are available on the HUD website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

### *B. Submitting Applications*

A final application must be submitted to HUD no later than March 7, 2000. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, March 7, 2000. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by March 7, 2000. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

### *C. The Application*

1. Application Requirements

An application for the Small Cities Program CDBG Grants is made by the submission of:

(a) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(b) A completed Standard Form 424;

(c) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of the Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF–LLL);

(d) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart A of 24 CFR part 4 (Accountability in the Provision of HUD Assistance); and, if applicable,

(e) Abbreviated Consolidated Plan.

(f) A Section 108 Loan Guarantee application or request, if applicable, consisting of one of the following:

(1) A formal application for Section 108 Loan Guarantee(s), including the documents listed at § 570.704(b);

(2) A brief description of a Section 108 Loan Guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of CDBG Small Cities grant award. (The CDBG grant award will be conditioned on approval of actual Section 108 Loan Guarantee commitments within a stated period of time.) This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance; or

(3) If applicable, a copy of a Section 108 Loan Guarantee approval document with grant number and date of approval.

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1997/98 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by March 7, 2000 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there

is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

*D. Funding Award Process*

In accordance with section 102 of the HUD Reform Act and HUD's regulation in 24 CFR part 4, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 4, HUD also will ensure that documentation and other information regarding each application submitted under this NOFA is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 4.5(b) of these regulations, HUD will make this material available for public inspection for a period of 5 years, beginning not less than 30 calendar days after the date on which assistance is provided.

## III. Technical Assistance

Prior to the application deadline, the Buffalo and New York offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the New York or Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the New York or Buffalo Offices. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

## IV. Checklist of Application Submission Requirements

The following checklist is intended to aid applicants in determining whether their application is complete:

### Application Completeness Checklist

Applicant: _____

Amount Requested $_____

1. Is amount of funds requested within established maximum?

2. Part I—Needs Description (HUD Form 4124.1)

a. Program Area

____Housing

____Target Area

____Nontarget Area

____Public Facilities

____Economic Development (If an ''appropriate'' analysis is required but is not included, the application cannot be rated.)

b. Is description of community development needs included in application?

3. Part II—Community Development Activities (HUD Form 4124.2)

a. Has national objective been identified for each activity?

b. Will 70 percent of grant funds primarily benefit low-and moderate-income persons? (If not, the application cannot be rated.)

4. Part III—Impact Description (HUD Form 4124.3)

5. Part IV—Outstanding Performance (HUD Form 4124.4)

6. Part V—Program Schedule (HUD Form 4124.5)

7. Part VI—Maps

a. Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)

b. Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)

c. Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)

8. a. Is Standard Form 424 complete?

Yes No

b. Is original signature on at least one copy?

Yes No

9. Is Certification signed with original signature?

Yes No

10. Has the abbreviated consolidated plan been prepared and submitted to HUD (or included with this application)?

11. Form HUD–2880, Application/Recipient Disclosure/Update Report.

12. Do proposed economic development activities meet the public benefit standards as defined in 24 CFR 570.209?

## V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if an abbreviated consolidated plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

## VI. Findings and Certifications

*Paperwork Reduction Act Statement*

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB approval number 2506–0020. *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.*

### Environmental Impact

This NOFA provides funding under, and does not alter environmental requirements of, a regulation previously published in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act. The environmental review provisions of this regulation are in 24 CFR 570.604.

*Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

*Accountability in the Provision of HUD Assistance*

See Section I.A.4. of this NOFA.

*Prohibition Against Lobbying Activities*

Applicants for funding under this NOFA 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) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application package.

The Lobbying Disclosure Act of 1995, which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

*Prohibition Against Advance Information on Funding Decisions*

Section 103 of the Department of Housing and Urban Development Reform Act of 1989, and HUD's implementing regulation codified at subpart B of 24 CFR part 4, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees, including those conducting technical assistance sessions or workshops and those involved in the review of applications and in the making of funding decisions, are limited by section 103 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 section 103 and subpart B of 24 CFR part 4.

Applicants who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.)

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance Number for this program is 14.219.

Dated: October 29, 1999.

**Joseph A. D'Agosta,**

*Acting General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 99–29173 Filed 11–5–99; 8:45 am]

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| §§ 1.501–1.640 | (869–038–00083–1) | 27.00 | [7] Apr. 1, 1999 |
| §§ 1.641–1.850 | (869–038–00084–9) | 35.00 | Apr. 1, 1999 |
| §§ 1.851–1.907 | (869–038–00085–7) | 40.00 | Apr. 1, 1999 |
| §§ 1.908–1.1000 | (869–038–00086–5) | 38.00 | Apr. 1, 1999 |
| §§ 1.1001–1.1400 | (869–038–00087–3) | 40.00 | Apr. 1, 1999 |
| §§ 1.1401–End | (869–038–00088–1) | 55.00 | Apr. 1, 1999 |
| 2–29 | (869–038–00089–0) | 39.00 | Apr. 1, 1999 |
| 30–39 | (869–038–00090–3) | 28.00 | Apr. 1, 1999 |
| 40–49 | (869–038–00091–1) | 17.00 | Apr. 1, 1999 |
| 50–299 | (869–038–00092–0) | 21.00 | Apr. 1, 1999 |
| 300–499 | (869–038–00093–8) | 37.00 | Apr. 1, 1999 |
| 500–599 | (869–038–00094–6) | 11.00 | Apr. 1, 1999 |
| 600–End | (869–038–00095–4) | 11.00 | Apr. 1, 1999 |
| **27 Parts:** | | | |
| 1–199 | (869–038–00096–2) | 53.00 | Apr. 1, 1999 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200–End | (869–038–00097–1) | 17.00 | Apr. 1, 1999 |
| **28 Parts:** | | | |
| 0-42 | (869–038–00098–9) | 39.00 | July 1, 1999 |
| 43-end | (869-038-00099-7) | 32.00 | July 1, 1999 |
| **29 Parts:** | | | |
| 0–99 | (869–038–00100–4) | 28.00 | July 1, 1999 |
| 100–499 | (869–038–00101–2) | 13.00 | July 1, 1999 |
| 500–899 | (869–038–00102–1) | 40.00 | [8] July 1, 1999 |
| 900–1899 | (869–038–00103–9) | 21.00 | July 1, 1999 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–038–00104–7) | 46.00 | July 1, 1999 |
| 1910 (§§ 1910.1000 to end) | (869–038–00105–5) | 28.00 | July 1, 1999 |
| 1911–1925 | (869–038–00106–3) | 18.00 | July 1, 1999 |
| 1926 | (869–038–00107–1) | 30.00 | July 1, 1999 |
| 1927–End | (869–038–00108–0) | 43.00 | July 1, 1999 |
| **30 Parts:** | | | |
| 1–199 | (869–038–00109–8) | 35.00 | July 1, 1999 |
| 200–699 | (869–038–00110–1) | 30.00 | July 1, 1999 |
| 700–End | (869–038–00111–0) | 35.00 | July 1, 1999 |
| **31 Parts:** | | | |
| 0–199 | (869–038–00112–8) | 21.00 | July 1, 1999 |
| 200–End | (869–038–00113–6) | 48.00 | July 1, 1999 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–038–00114–4) | 46.00 | July 1, 1999 |
| 191–399 | (869–038–00115–2) | 55.00 | July 1, 1999 |
| 400–629 | (869–038–00116–1) | 32.00 | July 1, 1999 |
| 630–699 | (869–038–00117–9) | 23.00 | July 1, 1999 |
| 700–799 | (869–038–00118–7) | 27.00 | July 1, 1999 |
| 800–End | (869–038–00119–5) | 27.00 | July 1, 1999 |
| **33 Parts:** | | | |
| 1–124 | (869–034–00120–3) | 29.00 | July 1, 1998 |
| 125–199 | (869–038–00121–7) | 41.00 | July 1, 1999 |
| 200–End | (869–038–00122–5) | 33.00 | July 1, 1999 |
| **34 Parts:** | | | |
| 1–299 | (869–038–00123–3) | 28.00 | July 1, 1999 |
| 300–399 | (869–038–00124–1) | 25.00 | July 1, 1999 |
| *400–End | (869–038–00125–0) | 46.00 | July 1, 1999 |
| **35** | (869–034–00126–2) | 14.00 | July 1, 1998 |
| **36 Parts** | | | |
| 1–199 | (869–038–00127–6) | 21.00 | July 1, 1999 |
| 200–299 | (869–038–00128–4) | 23.00 | July 1, 1999 |
| 300–End | (869–038–00129–2) | 38.00 | July 1, 1999 |
| **37** | (869–038–00130–6) | 29.00 | July 1, 1999 |
| **38 Parts:** | | | |
| 0–17 | (869–038–00131–4) | 37.00 | July 1, 1999 |
| 18–End | (869–038–00132–2) | 41.00 | July 1, 1999 |
| **39** | (869–038–00133–1) | 24.00 | July 1, 1999 |
| **40 Parts:** | | | |
| 1–49 | (869–038–00134–9) | 33.00 | July 1, 1999 |
| 50–51 | (869–038–00135–7) | 25.00 | July 1, 1999 |
| 52 (52.01–52.1018) | (869–034–00136–0) | 28.00 | July 1, 1998 |
| 52 (52.1019–End) | (869–038–00137–3) | 37.00 | July 1, 1999 |
| 53–59 | (869–038–00138–1) | 19.00 | July 1, 1999 |
| *60 | (869–038–00139–0) | 59.00 | July 1, 1999 |
| 61–62 | (869–038–00140–3) | 19.00 | July 1, 1999 |
| 63 (63.1–63.1119) | (869–038–00141–1) | 58.00 | July 1, 1999 |
| 64–71 | (869–038–00143–8) | 11.00 | July 1, 1999 |
| 72–80 | (869–034–00143–2) | 36.00 | July 1, 1998 |
| 81–85 | (869–034–00144–1) | 31.00 | July 1, 1998 |
| *86 | (869–038–00144–6-2) | 59.00 | July 1, 1999 |
| 87-135 | (869–034–00146–7) | 47.00 | July 1, 1998 |
| 136–149 | (869–038–00148–9) | 40.00 | July 1, 1999 |
| *150–189 | (869–038–00148–9-7) | 35.00 | July 1, 1999 |
| 190–259 | (869–038–00150–1) | 23.00 | July 1, 1999 |
| 260–265 | (869–038–00151–9) | 32.00 | July 1, 1999 |
| 266–299 | (869–038–00152–7) | 33.00 | July 1, 1999 |
| 300–399 | (869–038–00153–5) | 26.00 | July 1, 1999 |
| *400–424 | (869–038–00153–4-3) | 34.00 | July 1, 1999 |
| 425–699 | (869–034–00154–8) | 42.00 | July 1, 1998 |
| *700–789 | (869–038–00155–6-0) | 42.00 | July 1, 1999 |
| 790–End | (869–038–00157–8) | 23.00 | July 1, 1999 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–034–00157–2) | 13.00 | July 1, 1998 |
| 101 | (869–038–00159–4) | 39.00 | July 1, 1999 |
| 102–200 | (869–038–00160–8) | 16.00 | July 1, 1999 |
| 201–End | (869–038–00161–6) | 15.00 | July 1, 1999 |
| **42 Parts:** | | | |
| 1–399 | (869–034–00161–1) | 34.00 | Oct. 1, 1998 |
| 400–429 | (869–034–00162–9) | 41.00 | Oct. 1, 1998 |
| 430–End | (869–034–00163–7) | 51.00 | Oct. 1, 1998 |
| **43 Parts:** | | | |
| 1–999 | (869–034–00164–5) | 30.00 | Oct. 1, 1998 |
| 1000–end | (869–034–00165–3) | 48.00 | Oct. 1, 1998 |
| **44** | (869–034–00166–1) | 48.00 | Oct. 1, 1998 |
| **45 Parts:** | | | |
| 1–199 | (869–034–00167–0) | 30.00 | Oct. 1, 1998 |
| 200–499 | (869–034–00168–8) | 14.00 | Oct. 1, 1998 |
| 500–1199 | (869–034–00169–6) | 30.00 | Oct. 1, 1998 |
| 1200–End | (869–034–00170–0) | 39.00 | Oct. 1, 1998 |
| **46 Parts:** | | | |
| 1–40 | (869–034–00171–8) | 26.00 | Oct. 1, 1998 |
| 41–69 | (869–034–00172–6) | 21.00 | Oct. 1, 1998 |
| 70–89 | (869–034–00173–4) | 8.00 | Oct. 1, 1998 |
| 90–139 | (869–034–00174–2) | 26.00 | Oct. 1, 1998 |
| 140–155 | (869–034–00175–1) | 14.00 | Oct. 1, 1998 |
| 156–165 | (869–034–00176–9) | 19.00 | Oct. 1, 1998 |
| 166–199 | (869–034–00177–7) | 25.00 | Oct. 1, 1998 |
| 200–499 | (869–034–00178–5) | 22.00 | Oct. 1, 1998 |
| 500–End | (869–034–00179–3) | 16.00 | Oct. 1, 1998 |
| **47 Parts:** | | | |
| 0–19 | (869–034–00180–7) | 36.00 | Oct. 1, 1998 |
| 20–39 | (869–034–00181–5) | 27.00 | Oct. 1, 1998 |
| 40–69 | (869–034–00182–3) | 24.00 | Oct. 1, 1998 |
| 70–79 | (869–034–00183–1) | 37.00 | Oct. 1, 1998 |
| 80–End | (869–034–00184–0) | 40.00 | Oct. 1, 1998 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–034–00185–8) | 51.00 | Oct. 1, 1998 |
| 1 (Parts 52–99) | (869–034–00186–6) | 29.00 | Oct. 1, 1998 |
| 2 (Parts 201–299) | (869–034–00187–4) | 34.00 | Oct. 1, 1998 |
| 3–6 | (869–034–00188–2) | 29.00 | Oct. 1, 1998 |
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| 15–28 | (869–034–00190–4) | 33.00 | Oct. 1, 1998 |
| 29–End | (869–034–00191–2) | 24.00 | Oct. 1, 1998 |
| **49 Parts:** | | | |
| 1–99 | (869–034–00192–1) | 31.00 | Oct. 1, 1998 |
| 100–185 | (869–034–00193–9) | 50.00 | Oct. 1, 1998 |
| 186–199 | (869–034–00194–7) | 11.00 | Oct. 1, 1998 |
| 200–399 | (869–034–00195–5) | 46.00 | Oct. 1, 1998 |
| 400–999 | (869–034–00196–3) | 54.00 | Oct. 1, 1998 |
| 1000–1199 | (869–034–00197–1) | 17.00 | Oct. 1, 1998 |
| 1200–End | (869–034–00198–0) | 13.00 | Oct. 1, 1998 |
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| 1–199 | (869–034–00199–8) | 42.00 | Oct. 1, 1998 |
| 200–599 | (869–034–00200–5) | 22.00 | Oct. 1, 1998 |
| 600–End | (869–034–00201–3) | 33.00 | Oct. 1, 1998 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| CFR Index and Findings Aids | (869–038–00047–4) | 48.00 | Jan. 1, 1999 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.